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Contents

Federal Register

Vol. 83, No. 224

Tuesday, November 20, 2018

Agriculture Department

See Farm Service Agency

See Food Safety and Inspection Service

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58524

Antitrust Division

NOTICES

Changes under the National Cooperative Research and Production Act:
Pistoia Alliance, Inc., 58595–58596

Centers for Disease Control and Prevention

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58570–58572

Centers for Medicare & Medicaid Services

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58572–58574

Children and Families Administration

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58574

Civil Rights Commission

NOTICES

Meetings:

Colorado Advisory Committee, 58527–58528

Connecticut Advisory Committee, 58527

Coast Guard

RULES

Safety Zones:

Corpus Christi Ship Channel, Corpus Christi, TX, 58504–58506

NASA Activities, Gulf of Mexico, Galveston, TX, 58501–58504

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58585–58589

Meetings:

Towing Safety Advisory Committee, 58586–58587

Commerce Department

See Industry and Security Bureau

See International Trade Administration

See National Oceanic and Atmospheric Administration

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58528

Defense Department

NOTICES

Charter Renewals:

Department of Defense Federal Advisory Committees, 58555

Drug Enforcement Administration

NOTICES

Bulk Manufacturer of Controlled Substances Application:
Organix, Inc., 58601

Bulk Manufacturers of Controlled Substances; Applications:
Patheon API Manufacturing, Inc., 58596

Decision and Order:

Edward A. Ridgill, M.D., 58599–58601

Decisions and Orders:

Eldor Brish, M.D., 58596–58598

Importer of Controlled Substances Application:

Lipomed, 58601–58604

Importers of Controlled Substances; Applications:

Janssen Pharmaceuticals Inc., 58598–58599

Education Department

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

High School and Beyond 2020 Base-Year Field Test Sampling and Recruitment, 58555–58556

Energy Department

See Federal Energy Regulatory Commission

Environmental Protection Agency

RULES

Testing Regulations for Air Emission Sources, 58506

Tolerance Exemptions:

Bacillus amyloliquefaciens strain ENV503, 58506–58508

Farm Service Agency

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Measurement Service Records, 58524–58525

Federal Aviation Administration

RULES

Amendment of Class E Airspace:

Hillsdale, MI, 58467–58468

Jacksonville, IL, 58472–58473

Lapeer, MI, 58471–58472

Revocation of Class D and E Airspace; and Amendment of Class D and E Airspace:

Fort Sill; and Lawton, OK, 58468–58470

Standard Instrument Approach Procedures, and Takeoff

Minimums and Obstacle Departure Procedures:

Miscellaneous Amendments, 58473–58476

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Flight and Duty Limitations and Rest Requirements—Flightcrew Members, 58676

Federal Communications Commission

PROPOSED RULES

Elimination of Outdated Tariff-Related Requirements, 58510–58513

Revitalization of the AM Radio Service, 58513–58522

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58564–58566

Federal Deposit Insurance Corporation**NOTICES**

Requests for Information:

Small-Dollar Lending, 58566–58568

Federal Energy Regulatory Commission**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58557–58558

Combined Filings, 58562–58563

Environmental Assessments; Availability, etc.:

El Paso Natural Gas Co.; South Mainline Expansion Project, 58560

Northern Natural Gas Co.; Palmyra to Ogden A-Line Project, 58560–58562

Environmental Impact Statements; Availability, etc.:

Venture Global Plaquemines LNG, LLC and Venture Global Gator Express, LLC; Plaquemines LNG and Gator Express Pipeline Project, 58558–58559

Filings:

Dominion Energy Transmission, Inc., 58563–58564

PJM Interconnection, L.L.C., 58556–58557

Federal Motor Carrier Safety Administration**NOTICES**

Qualification of Drivers; Exemption Applications:

Diabetes Mellitus, 58681–58682

Epilepsy and Seizure Disorders, 58676–58678, 58683–58685

Implantable Cardioverter Defibrillator, 58682–58683

Vision, 58678–58681

Federal Railroad Administration**NOTICES**

Safety Advisory Related to Temporary Signal Suspensions, 58685–58688

Federal Reserve System**RULES**

Federal Reserve Bank Capital Stock, 58466–58467

NOTICES

Change in Bank Control Notices:

Acquisitions of Shares of a Bank or Bank Holding Company, 58568

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies, 58568

Federal Trade Commission**NOTICES**

Proposed Consent Agreements:

Creaxion Corp. and Inside Publications, LLC, 58568–58570

Financial Crimes Enforcement Network**NOTICES**

Combined Performance Review Board Membership, 58688–58689

Fiscal Service**NOTICES**

Appointment of Members:

Senior Executive Service; Fiscal Service Performance Review Board, 58689

Fish and Wildlife Service**NOTICES**

Habitat Conservation Plan:

Morro Shoulderband Snail; Categorical Exclusion for the Seascape Place Single-Family Residence; Community of Los Osos, San Luis Obispo County, CA, 58590–58591

Food and Drug Administration**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

General Licensing Provisions; Section 351(k) Biosimilar Applications, 58583–58585

Survey of Current Manufacturing Practices for the Cosmetics Industry, 58582–58583

Requests for Comments:

Prescription Drug-Use-Related Software, 58574–58582

Food Safety and Inspection Service**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Stakeholder Input on Federal Outreach to Control Listeria Monocytogenes at Retail, 58525–58527

Health and Human Services Department*See* Centers for Disease Control and Prevention*See* Centers for Medicare & Medicaid Services*See* Children and Families Administration*See* Food and Drug Administration*See* Substance Abuse and Mental Health Services Administration**Homeland Security Department***See* Coast Guard*See* U.S. Customs and Border Protection**Industry and Security Bureau****NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58528–58529

Interior Department*See* Fish and Wildlife Service**NOTICES**

Meetings:

Women's Suffrage Centennial Commission, 58591–58592

Internal Revenue Service**RULES**

Allocation of Costs Under the Simplified Methods, 58476–58498

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 58690

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Regulation Project, 58689–58690

International Trade Administration**NOTICES**

Antidumping or Countervailing Duty Investigations, Orders, or Reviews:

Chlorinated Isocyanurates from the People's Republic of China, 58532–58533

Magnesium from Israel, 58529–58532

Rubber Bands from the People's Republic of China, 58538–58540

Determination of Sales at Less than Fair Value:
 Certain Quartz Surface Products from the People's
 Republic of China, 58540–58547
 Rubber Bands from the People's Republic of China,
 58547–58549

Initiation of Less-Than-Fair-Value Investigation:
 Magnesium from Israel, 58533–58538

International Trade Commission

NOTICES

Investigations; Determinations, Modifications, and Rulings,
 etc.:

Certain Digital Cameras, Software, and Components
 Thereof, 58592–58594

Certain Magnetic Data Storage Tapes and Cartridges
 Containing the Same, 58594–58595

Xanthan Gum from China, 58592

Justice Department

See Antitrust Division

See Drug Enforcement Administration

See Parole Commission

See United States Marshals Service

NOTICES

Proposed Consent Decrees:

Oil Pollution Act, 58604–58605

National Aeronautics and Space Administration

NOTICES

Meetings:

NASA Advisory Council; STEM Engagement Committee,
 58605–58606

National Oceanic and Atmospheric Administration

PROPOSED RULES

Fisheries of the Caribbean, Gulf of Mexico, and South
 Atlantic:

Electronic Reporting for Federally Permitted Charter
 Vessels and Headboats in Gulf of Mexico Fisheries,
 58522–58523

NOTICES

Agency Information Collection Activities; Proposals,
 Submissions, and Approvals:

North Pacific Observer Safety and Security Survey,
 58554–58555

West Coast Fisheries Participation Survey, 58549–58550

Fisheries of the Exclusive Economic Zone off Alaska:

Application for an Exempted Fishing Permit, 58550–
 58552

Meetings:

Mid-Atlantic Fishery Management Council, 58555

New England Fishery Management Council, 58552–58554

Nuclear Regulatory Commission

RULES

Miscellaneous Corrections, 58463–58466

PROPOSED RULES

Elimination of Immediate Notification Requirements for
 Non-Emergency Events, 58509–58510

NOTICES

Applications and Amendments Involving Proposed No
 Significant Hazards Considerations, etc., 58607–58626

Meetings:

Advisory Committee on Reactor Safeguards, 58606–58607

Parole Commission

RULES

Paroling, Recommitting, and Supervising Federal Prisoners:
 Prisoners Serving Sentences Under the United States and
 District of Columbia Codes, 58499–58501

Personnel Management Office

NOTICES

OMB Emergency Review:

Federal Employees Dental and Vision Insurance Program
 Enrollment System, 58626

Pipeline and Hazardous Materials Safety Administration

RULES

Pipeline Safety:

Plastic Pipe Rule, 58694–58720

Securities and Exchange Commission

NOTICES

Agency Information Collection Activities; Proposals,

Submissions, and Approvals, 58645–58646, 58663

Self-Regulatory Organizations; Proposed Rule Changes:

Miami International Securities Exchange, LLC, 58633–
 58637, 58642–58645, 58655–58657

MIAX PEARL, LLC, 58630–58633, 58646–58649, 58671–
 58673

Nasdaq BX, Inc., 58664–58665

Nasdaq GEMX, LLC, 58657–58662

Nasdaq ISE, LLC, 58626–58628, 58649–58655

Nasdaq MRX, LLC, 58665–58671

New York Stock Exchange, LLC, 58637–58640

NYSE Arca, Inc., 58628–58630

The Nasdaq Stock Market, LLC, 58640–58642

Small Business Administration

NOTICES

Disaster Declarations:

Virginia, 58673–58674

State Department

NOTICES

Meetings:

Cuba Internet Task Force, 58674

Requests for Expert Reviewers:

U.S. Government Review of the Second and Third
 Special Reports to be undertaken by the
 Intergovernmental Panel on Climate Change during
 the Sixth Assessment Report Cycle, 58674–58675

Substance Abuse and Mental Health Services Administration

NOTICES

Meetings:

Interdepartmental Serious Mental Illness Coordinating
 Committee, 58585

Surface Transportation Board

NOTICES

Acquisition and Operation Exemptions:

North Central Mississippi Regional Railroad Authority;
 Mississippi Department of Transportation, 58675

Continuances in Control Exemptions:

North Central Mississippi Regional Railroad Authority,
 58675

Transportation Department

See Federal Aviation Administration

See Federal Motor Carrier Safety Administration
See Federal Railroad Administration
See Pipeline and Hazardous Materials Safety Administration

Treasury Department

See Financial Crimes Enforcement Network
See Fiscal Service
See Internal Revenue Service

U.S. Customs and Border Protection**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Vessel Entrance or Clearance Statement, 58589–58590

United States Marshals Service**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Applications for Special Deputation, 58605

Veterans Affairs Department**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application for Disability Compensation and Related Compensation Benefits, 58690–58691

Separate Parts In This Issue**Part II**

Transportation Department, Pipeline and Hazardous Materials Safety Administration, 58694–58720

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents electronic mailing list, go to <https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new>, enter your e-mail address, then follow the instructions to join, leave, or manage your subscription.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

10 CFR

| | |
|----------|-------|
| 26..... | 58463 |
| 30..... | 58463 |
| 40..... | 58463 |
| 50..... | 58463 |
| 70..... | 58463 |
| 73..... | 58463 |
| 110..... | 58463 |

Proposed Rules:

| | |
|---------|-------|
| 50..... | 58509 |
|---------|-------|

12 CFR

| | |
|----------|-------|
| 209..... | 58466 |
|----------|-------|

14 CFR

| | |
|------------------------|---------------------|
| 71 (4 documents) | 58467, |
| | 58468, 58471, 58472 |
| 97 (2 documents) | 58473, |
| | 58475 |

26 CFR

| | |
|--------|-------|
| 1..... | 58476 |
|--------|-------|

28 CFR

| | |
|-----------------------|--------|
| 2 (2 documents) | 58499, |
| | 58500 |

33 CFR

| | |
|-------------------------|--------|
| 165 (2 documents) | 58501, |
| | 58504 |

40 CFR

| | |
|----------|-------|
| 51..... | 58506 |
| 60..... | 58506 |
| 63..... | 58506 |
| 180..... | 58506 |

47 CFR**Proposed Rules:**

| | |
|---------|-------|
| 61..... | 58510 |
| 73..... | 58513 |

49 CFR

| | |
|----------|-------|
| 192..... | 58694 |
|----------|-------|

50 CFR**Proposed Rules:**

| | |
|----------|-------|
| 622..... | 58522 |
|----------|-------|

Rules and Regulations

Federal Register

Vol. 83, No. 224

Tuesday, November 20, 2018

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

The Code of Federal Regulations is sold by the Superintendent of Documents.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 26, 30, 40, 50, 70, 73, and 110

[NRC–2018–0200]

RIN 3150–AK15

Miscellaneous Corrections

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations to make miscellaneous corrections. These changes include removing obsolete language and correcting references, an appendix, operating hours, a telephone number, an inconsistency in a definition, and an office title. This document is necessary to inform the public of these non-substantive amendments to the NRC's regulations.

DATES: This final rule is effective on December 20, 2018.

ADDRESSES: Please refer to Docket ID NRC–2018–0200 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–2018–0200. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: Carol.Gallagher@nrc.gov.

- *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.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Jill Shepherd-Vladimir, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1230, email: Jill.Shepherd-Vladimir@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is amending its regulations in parts 26, 30, 40, 50, 70, 73, and 110 of title 10 of the *Code of Federal Regulations* (10 CFR) to make miscellaneous corrections. These changes include removing obsolete language and correcting references, an appendix, operating hours, a telephone number, an inconsistency in a definition, and an office title. This document is necessary to inform the public of these non-substantive amendments to the NRC's regulations.

II. Summary of Changes

10 CFR Part 26

Correct an Inconsistency. In § 26.5, this final rule revises the last sentence in the definition of *Positive result* to correct an inconsistency between the definition and the requirement in § 26.103 by replacing the word "exceeds" with the phrase "is equal to or greater than".

Remove Obsolete Language. In §§ 26.183(a) and 26.187(a), this final rule revises the language to remove an expired deadline for submission with the original final rule.

10 CFR Parts 30, 40, and 50

Correct Reference. In §§ 30.7, 40.7, and 50.7, this final rule removes the incorrect reference to "10 CFR 19.11(c)" for NRC Form 3 and replaces it with the correct reference to "10 CFR 19.11(e)(1)."

10 CFR Part 50

Correct Missing Reference. In § 50.8(b), this final rule adds § 50.12, in numerical order, to the list of sections in 10 CFR part 50 that contain information collections.

10 CFR Part 70

Correct Reference. In § 70.38(k)(4), this final rule removes the incorrect reference to "§ 70.51(b)(6)" and replaces it with the correct reference to "§ 70.51(a)."

10 CFR Part 73

Correct Appendix F. In appendix F to 10 CFR part 73, this final rule corrects the title of the appendix, updates footnote 1 to reference the International Atomic Energy Agency's website for current information, and corrects the current list of ratified countries and organizations participating in the Convention on the Physical Protection of Nuclear Material.

10 CFR Part 110

Correct Operating Hours. In § 110.2, this final rule removes the incorrect operating hours of between "8:30 a.m. and 4:15 p.m." and replaces it with the correct operating hours of between "8:00 a.m. and 4:00 p.m." for reference service and access to documents requested by telephone as described in the definition for the NRC Public Document Room.

Correct Telephone Number. In § 110.4, this final rule removes the incorrect telephone number "(301) 415–2344" and replaces it with the correct telephone number "301–287–9057" for the Deputy Director of the Office of International Programs.

Correct Office Title. In § 110.6(b), this final rule removes the incorrect Department of Energy (DOE) office title "Office of International Regimes and Agreements" and replaces it with the correct DOE office title "Office of Nonproliferation and Arms Control."

III. Rulemaking Procedure

Under section 553(b) of the Administrative Procedure Act (5 U.S.C. 553(b)), an agency may waive the requirements for publication in the **Federal Register** of a notice of proposed rulemaking and opportunity for comment if it finds, for good cause, that it is impracticable, unnecessary, or contrary to the public interest. As authorized by 5 U.S.C. 553(b)(3)(B), the NRC finds good cause to waive notice and opportunity for comment on these amendments, because notice and opportunity for comment is unnecessary. The amendments will have no substantive impact and are of

a minor and administrative nature dealing with corrections to certain CFR sections or are related only to management, organization, procedure, and practice. These changes include removing obsolete language and correcting references, an appendix, operating hours, a telephone number, an inconsistency in a definition, and an office title. The Commission is exercising its authority under 5 U.S.C. 553(b) to publish these amendments as a final rule. The amendments are effective December 20, 2018. These amendments do not require action by any person or entity regulated by the NRC, and do not change the substantive responsibilities of any person or entity regulated by the NRC.

IV. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in 10 CFR 51.22(c)(2), which categorically excludes from environmental review rules that are corrective or of a minor, nonpolicy nature and do not substantially modify existing regulations. Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this rule.

V. Paperwork Reduction Act

This final rule does not contain a collection of information as defined in the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

VI. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, “Plain Language in Government Writing,” published June 10, 1998 (63 FR 31883).

VII. Backfitting and Issue Finality

The NRC has determined that the corrections in this final rule do not constitute backfitting and are not inconsistent with any of the issue finality provisions in 10 CFR part 52. These changes include removing obsolete language and correcting

references, an appendix, operating hours, a telephone number, an inconsistency in a definition, and an office title. They impose no new requirements and make no substantive changes to the regulations. The corrections do not involve any provisions that would impose backfits as defined in 10 CFR chapter I or that would be inconsistent with the issue finality provisions in 10 CFR part 52. For these reasons, the issuance of the rule in final form would not constitute backfitting or represent a violation of any of the issue finality provisions in 10 CFR part 52. Therefore, the NRC has not prepared any additional documentation for this correction rulemaking addressing backfitting or issue finality.

VIII. Congressional Review Act

This final rule is not a rule as defined in the Congressional Review Act (5 U.S.C. 801–808).

List of Subjects

10 CFR Part 26

Administrative practice and procedure, Alcohol abuse, Alcohol testing, Appeals, Chemical testing, Drug abuse, Drug testing, Employee assistance programs, Fitness for duty, Management actions, Nuclear power plants and reactors, Privacy, Protection of information, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear energy, Nuclear materials, Penalties, Radiation protection, Reporting and recordkeeping requirements, Whistleblowing.

10 CFR Part 40

Criminal penalties, Exports, Government contracts, Hazardous materials transportation, Hazardous waste, Nuclear energy, Nuclear materials, Penalties, Reporting and recordkeeping requirements, Source material, Uranium, Whistleblowing.

10 CFR Part 50

Administrative practice and procedure, Antitrust, Classified information, Criminal penalties, Education, Fire prevention, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalties, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements, Whistleblowing.

10 CFR Part 70

Classified information, Criminal penalties, Emergency medical services, Hazardous materials transportation, Material control and accounting, Nuclear energy, Nuclear materials, Packaging and containers, Penalties, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material, Whistleblowing.

10 CFR Part 73

Criminal penalties, Exports, Hazardous materials transportation, Incorporation by reference, Imports, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 110

Administrative practice and procedure, Classified information, Criminal penalties, Exports, Incorporation by reference, Imports, Intergovernmental relations, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements, Scientific equipment.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 26, 30, 40, 50, 70, 73, and 110:

PART 26—FITNESS FOR DUTY PROGRAMS

- 1. The authority citation for part 26 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 53, 103, 104, 107, 161, 223, 234, 1701 (42 U.S.C. 2073, 2133, 2134, 2137, 2201, 2273, 2282, 2297f); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); 44 U.S.C. 3504 note.

§ 26.5 [Amended]

- 2. In § 26.5, in the last sentence of the definition for *Positive result*, remove the word “exceeds” and add in its place the phrase, “is equal to or greater than”.

§ 26.183 [Amended]

- 3. In § 26.183(a), remove the phrase “By March 31, 2010, the” and add in its place the word “The”.

§ 26.187 [Amended]

- 4. In § 26.187(a), remove the phrase “By March 31, 2010, any” and add in its place the word “Any”.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

■ 5. The authority citation for part 30 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 11, 81, 161, 181, 182, 183, 184, 186, 187, 223, 234, 274 (42 U.S.C. 2014, 2111, 2201, 2231, 2232, 2233, 2234, 2236, 2237, 2273, 2282, 2021); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); 44 U.S.C. 3504 note.

§ 30.7 [Amended]

■ 6. In § 30.7(e)(1), remove the reference “10 CFR 19.11(c)” and add in its place the reference “10 CFR 19.11(e)(1)”.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

■ 7. The authority citation for part 40 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 62, 63, 64, 65, 69, 81, 83, 84, 122, 161, 181, 182, 183, 184, 186, 187, 193, 223, 234, 274, 275 (42 U.S.C. 2092, 2093, 2094, 2095, 2099, 2111, 2113, 2114, 2152, 2201, 2231, 2232, 2233, 2234, 2236, 2237, 2243, 2273, 2282, 2021, 2022); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Uranium Mill Tailings Radiation Control Act of 1978, sec. 104 (42 U.S.C. 7914); 44 U.S.C. 3504 note.

§ 40.7 [Amended]

■ 8. In § 40.7(e)(1), remove the reference “10 CFR 19.11(c)” and add in its place the reference “10 CFR 19.11(e)(1)”.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

■ 9. The authority citation for part 50 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 11, 101, 102, 103, 104, 105, 108, 122, 147, 149, 161, 181, 182, 183, 184, 185, 186, 187, 189, 223, 234 (42 U.S.C. 2014, 2131, 2132, 2133, 2134, 2135, 2138, 2152, 2167, 2169, 2201, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2239, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Nuclear Waste Policy Act of 1982, sec. 306 (42 U.S.C. 10226); National Environmental Policy Act of 1969 (42 U.S.C. 4332); 44 U.S.C. 3504 note; Sec. 109, Pub. L. 96–295, 94 Stat. 783.

§ 50.7 [Amended]

■ 10. In § 50.7(e)(1), remove the reference “10 CFR 19.11(c)” and add in its place the reference “10 CFR 19.11(e)(1)”.

§ 50.8 [Amended]

■ 11. In § 50.8(b), remove “§§ 50.30,” and add “§§ 50.12, 50.30,” in its place.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

■ 12. The authority citation for part 70 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 51, 53, 57(d), 108, 122, 161, 182, 183, 184, 186, 187, 193, 223, 234, 274, 1701 (42 U.S.C. 2071, 2073, 2077(d), 2138, 2152, 2201, 2232, 2233, 2234, 2236, 2237, 2243, 2273, 2282, 2021, 2297f); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Nuclear Waste Policy Act of 1982, secs. 135, 141 (42 U.S.C. 10155, 10161); 44 U.S.C. 3504 note.

§ 70.38 [Amended]

■ 13. In § 70.38(k)(4), remove the reference “§ 70.51(b)(6)” and add in its place the reference “§ 70.51(a)”.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

■ 14. The authority citation for part 73 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 53, 147, 149, 161, 170D, 170E, 170H, 170I, 223, 229, 234, 1701 (42 U.S.C. 2073, 2167, 2169, 2201, 2210d, 2210e, 2210h, 2210i, 2273, 2278a, 2282, 2297f); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); Nuclear Waste Policy Act of 1982, secs. 135, 141 (42 U.S.C. 10155, 10161); 44 U.S.C. 3504 note.

Section 73.37(b)(2) also issued under Sec. 301, Public Law 96–295, 94 Stat. 789 (42 U.S.C. 5841 note).

■ 15. Revise appendix F to part 73 to read as follows:

Appendix F to Part 73—Countries and Organizations That Are Parties to the Convention on the Physical Protection of Nuclear Material¹

Countries/Organizations

Afghanistan
Albania
Algeria
Andorra
Antigua and Barbuda
Argentina
Armenia
Australia
Austria
Azerbaijan
Bahamas
Bahrain

Bangladesh
Belarus
Belgium
Bolivia
Bosnia and Herzegovina
Botswana
Brazil
Bulgaria
Burkina Faso
Cabo Verde
Cambodia
Cameroon
Canada
Central African Republic
Chile
China
Colombia
Comoros
Costa Rica
Côte d'Ivoire
Croatia
Cuba
Cyprus
Czech Republic
Democratic Rep. of the Congo
Denmark
Djibouti
Dominica
Dominican Republic
Ecuador
El Salvador
Equatorial Guinea
Estonia
Eswatini
Fiji
Finland
France
Gabon
Georgia
Germany
Ghana
Greece
Grenada
Guatemala
Guinea
Guinea-Bissau
Guyana
Haiti
Honduras
Hungary
Iceland
India
Indonesia
Iraq
Ireland
Israel
Italy
Jamaica
Japan
Jordan
Kazakhstan
Kenya
Korea, Republic of
Kuwait
Kyrgyzstan
Lao P.D.R.
Latvia
Lebanon
Lesotho

¹ An updated list of party countries and organizations will appear annually in the International Atomic Energy Agency's publication, Convention on the Physical Protection of Nuclear Material, at https://www.legacy.iaea.org/Publications/Documents/Conventions/cppnm_status.pdf. Appendix F will be amended as required to maintain its currency.

Libya
 Liechtenstein
 Lithuania
 Luxembourg
 Madagascar
 Malawi
 Mali
 Malta
 Marshall Islands
 Mauritania
 Mexico
 Monaco
 Mongolia
 Montenegro
 Morocco
 Mozambique
 Myanmar
 Namibia
 Nauru
 Netherlands
 New Zealand
 Nicaragua
 Niger
 Nigeria
 Niue
 Norway
 Oman
 Pakistan
 Palau
 Panama
 Paraguay
 Peru
 Philippines
 Poland
 Portugal
 Qatar
 Republic of Moldova
 Romania
 Russian Federation
 Rwanda
 Saint Kitts and Nevis
 Saint Lucia
 San Marino
 Saudi Arabia
 Senegal
 Serbia
 Seychelles
 Singapore
 Slovakia
 Slovenia
 South Africa
 Spain
 Sudan
 Sweden
 Switzerland
 Tajikistan
 Thailand
 The frmr. Yug. Rep. of Macedonia
 Togo
 Tonga
 Trinidad and Tobago
 Tunisia
 Turkey
 Turkmenistan
 Uganda
 Ukraine
 United Arab Emirates
 United Kingdom
 United Republic of Tanzania

United States of America
 Uruguay
 Uzbekistan
 Viet Nam
 Yemen
 Zambia
 EURATOM

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

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

Authority: Atomic Energy Act of 1954, secs. 11, 51, 53, 54, 57, 62, 63, 64, 65, 81, 82, 103, 104, 109, 111, 121, 122, 123, 124, 126, 127, 128, 129, 133, 134, 161, 170h, 181, 182, 183, 184, 186, 187, 189, 223, 234 (42 U.S.C. 2014, 20710, 2073, 2074, 2077, 2092, 2093, 2094, 2095, 2111, 2112, 2133, 2134, 2139, 2141, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2160C, 2160D, 2201, 2210H, 2231, 2232, 2233, 2234, 2236, 2237, 2239, 2273, 2282); Energy Reorganization Act of 1974, secs. 201 (42 U.S.C. 5841); Administrative Procedure Act (5 U.S.C. 552, 553); 42 U.S.C. 2139a, 2155a; 44 U.S.C. 3504 note.

Section 110.1(b) also issued under 22 U.S.C. 2403; 22 U.S.C. 2778a; 50 App. U.S.C. 2401 *et seq.*

§ 110.2 [Amended]

■ 17. In § 110.2 in the definition for *NRC Public Document Room*, remove the phrase “8:30 a.m. and 4:15 p.m.” and add in its place the phrase “8:00 a.m. and 4:00 p.m.”.

§ 110.4 [Amended]

■ 18. In § 110.4, remove the phone number “(301) 415–2344” and add in its place the phone number “301–287–9057”.

§ 110.6 [Amended]

■ 19. In § 110.6(b), remove the phrase “Office of International Regimes and Agreements” and add in its place the phrase “Office of Nonproliferation and Arms Control”.

Dated at Rockville, Maryland, this 14th day of November, 2018.

For the Nuclear Regulatory Commission.

Pamela J. Shepherd-Vladimir,

Acting Chief, Regulatory Analysis and Rulemaking Support Branch, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2018–25181 Filed 11–19–18; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 209

[Regulation I; Docket No. R–1635]

RIN 7100–AF27

Federal Reserve Bank Capital Stock

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors (Board) is publishing a final rule that applies an inflation adjustment to the threshold for total consolidated assets in Regulation I. Federal Reserve Bank (Reserve Bank) stockholders that have total consolidated assets above the threshold receive a different dividend rate on their Reserve Bank stock than stockholders with total consolidated assets at or below the threshold. The Federal Reserve Act requires that the Board annually adjust the total consolidated asset threshold to reflect the change in the Gross Domestic Product Price Index, published by the Bureau of Economic Analysis (BEA). Based on the change in the Gross Domestic Product Price Index as of September 27, 2018, the total consolidated asset threshold will be \$10,518,000,000 through December 31, 2019.

DATES: This final rule is effective January 1, 2019.

FOR FURTHER INFORMATION CONTACT: Evan Winerman, Senior Counsel (202) 872–7578), Legal Division; or Jamie Noonan, Lead Financial Institutions Policy Analyst (202) 530–6296), Reserve Bank Operations and Payments Systems Division. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

Regulation I governs the issuance and cancellation of capital stock by the Reserve Banks. Under section 5 of the Federal Reserve Act¹ and Regulation I,² a member bank must subscribe to capital stock of the Reserve Bank of its district in an amount equal to six percent of the member bank’s capital and surplus. The member bank must pay for one-half of this subscription on the date that the Reserve Bank approves its application for capital stock, while the remaining half of the subscription shall be subject to call by the Board.³

¹ 12 U.S.C. 287.

² 12 CFR 209.4(a).

³ 12 U.S.C. 287 and 12 CFR 209.4(c)(2).

Section 7(a)(1) of the Federal Reserve Act⁴ provides that Reserve Bank stockholders with \$10 billion or less in total consolidated assets shall receive a six percent dividend on paid-in capital stock, while stockholders with more than \$10 billion in total consolidated assets shall receive a dividend on paid-in capital stock equal to the lesser of six percent and “the rate equal to the high yield of the 10-year Treasury note auctioned at the last auction held prior to the payment of such dividend.” Section 7(a)(1) requires that the Board adjust the threshold for total consolidated assets annually to reflect the change in the Gross Domestic Product Price Index, published by the BEA.

Regulation I implements section 7(a)(1) of the Federal Reserve Act by (1) defining the term “total consolidated assets,”⁵ (2) incorporating the statutory dividend rates for Reserve Bank stockholders⁶ and (3) providing that the Board shall adjust the threshold for total consolidated assets annually to reflect the change in the Gross Domestic Product Price Index.⁷ The Board has explained that it “expects to make this adjustment [to the threshold for total consolidated assets] using the final second quarter estimate of the Gross Domestic Product Price Index for each year, published by the Bureau of Economic Analysis.”⁸

II. Adjustment

The Board annually adjusts the \$10 billion total consolidated asset threshold based on the change in the Gross Domestic Product Price Index between the second quarter of 2015 (the baseline year) and the second quarter of the current year.⁹ The second quarter 2018 Gross Domestic Product Price

Index estimate published by the BEA in September 2018 (110.172) is 5.18% higher than the second quarter 2015 Gross Domestic Product Price Index estimate published by the BEA in September 2018 (104.745). Based on this change in the Gross Domestic Product Price Index, the threshold for total consolidated assets in Regulation I will be \$10,518,000,000 as of the effective date of January 1, 2019.

III. Administrative Law Matters

Administrative Procedure Act

The provisions of 5 U.S.C. 553(b) relating to notice of proposed rulemaking have not been followed in connection with the adoption of these amendments. The amendments involve expected, ministerial adjustments that are required by statute and Regulation I and are consistent with a method previously set forth by the Board.¹⁰ Accordingly, the Board finds good cause for determining, and so determines, that notice in accordance with 5 U.S.C. 553(b) is unnecessary.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking where a general notice of proposed rulemaking is not required.¹¹ As noted previously, the Board has determined that it is unnecessary to publish a general notice of proposed rulemaking for this final rule. Accordingly, the RFA’s requirements relating to an initial and final regulatory flexibility analysis do not apply.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995,¹² the Board has reviewed this final rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

List of Subjects in 12 CFR Part 209

Banks and banking, Federal Reserve System, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set forth in the preamble, the Board amends Regulation I, 12 CFR part 209, as follows:

PART 209—ISSUE AND CANCELLATION OF FEDERAL RESERVE BANK CAPITAL STOCK (REGULATION I)

■ 1. The authority citation for part 209 continues to read as follows:

Authority: 12 U.S.C. 222, 248, 282, 286–288, 289, 321, 323, 327–328, and 466.

■ 2. In part 209, remove all references to “\$10,283,000,000” and add in their place “\$10,518,000,000”, wherever they appear.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, November 14, 2018.

Ann Misback,

Secretary of the Board.

[FR Doc. 2018–25266 Filed 11–19–18; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0500; Airspace Docket No. 18–AGL–14]

RIN 2120–AA66

Amendment of Class E Airspace; Hillsdale, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace extending upward from 700 feet above the surface at Hillsdale Municipal Airport, Hillsdale, MI, due to the decommissioning of the Jackson and Litchfield VHF omnidirectional range (VOR) navigation aids, which provided navigation information for the instrument procedures at this airport, as part of the VOR Minimum Operational Network (MON) Program. The geographic coordinates of this airport are also updated to coincide with the FAA’s aeronautical database.

DATES: Effective 0901 UTC, February 28, 2019. 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 7400.11C, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at http://www.faa.gov/air_traffic/publications/. For further

⁴ 12 U.S.C. 289(a)(1).

⁵ 12 CFR 209.1(d)(3) (Total consolidated assets means the total assets on the stockholder’s balance sheet as reported by the stockholder on its Consolidated Report of Condition and Income (Call Report) as of the most recent December 31, except in the case of a new member or the surviving stockholder after a merger “total consolidated assets” means (until the next December 31 Call Report becomes available) the total consolidated assets of the new member or the surviving stockholder at the time of its application for capital stock”).

⁶ 12 CFR 209.4(e), (c)(1)(ii), and (d)(1)(ii); 209.2(a); and 209.3(d)(3).

⁷ 12 CFR 209.4(f).

⁸ 81 FR 84415, 84417 (Nov. 23, 2016).

⁹ The BEA makes ongoing revisions to its estimates of the Gross Domestic Product Price Index for historical calendar quarters. The Board calculates annual adjustments from the baseline year (rather than from the prior-year total consolidated asset threshold) to ensure that the adjusted total consolidated asset threshold accurately reflects the cumulative change in the BEA’s most recent estimates of the Gross Domestic Product Price Index.

¹⁰ See 12 CFR 209.4(f) and n. 8 and accompanying text, *supra*.

¹¹ 5 U.S.C. 603 and 604.

¹² 44 U.S.C. 3506; 5 CFR part 1320.

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: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222-5711.

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 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 amends Class E airspace extending upward from 700 feet above the surface at Hillsdale Municipal Airport, Hillsdale, MI, to support instrument flight rules operations at this airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (83 FR 31708; July 9, 2018) for Docket No. FAA-2018-0500 to amend Class E airspace extending upward from 700 feet above the surface at Hillsdale Municipal Airport, Hillsdale, MI. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations

listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018. FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11C lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 modifies the Class E airspace extending upward from 700 feet above the surface to within a 6.5-mile radius (increased from a 6.4-mile radius) at Hillsdale Municipal Airport, Hillsdale, MI. The geographic coordinates of the airport are also updated to coincide with the FAA's aeronautical database.

This action is due to an airspace review caused by the decommissioning of the Jackson and Litchfield VORs, which provided navigation information for the instrument procedures at this airport, as part of the VOR MON Program.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, 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 qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures," paragraph 5-6.5.a. This airspace action

is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, is amended as follows:

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

* * * * *

AGL MI E5 Hillsdale, MI [Amended]

Hillsdale Municipal Airport, MI
(Lat. 41°55'17" N, long. 84°35'12" W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Hillsdale Municipal Airport.

Issued in Fort Worth, Texas, on November 8, 2018.

Walter Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2018-25185 Filed 11-19-18; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2018-0246; Airspace Docket No. 18-ASW-6]

RIN 2120-AA66

Revocation of Class D and E Airspace; Fort Sill; and Amendment of Class D and E Airspace; Lawton, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes Class D airspace, Class E airspace designated as a surface area, and Class E airspace designated as an extension to a Class D and Class E airspace at Henry Post Army Air Field (AAF), Fort Sill, OK; amends Class D airspace and Class E airspace designated as a surface area at Lawton-Fort Sill Regional Airport, Lawton, OK; and amends Class E airspace extending upward from 700 feet above the surface at Lawton-Fort Sill Regional Airport and Henry Post AAF. This action is due to the closure of the air traffic control tower (ATCT) at Henry Post AAF. The name of Lawton-Fort Sill Regional Airport and the geographic coordinates of Henry Post AAF are also being updated to coincide with the FAA's aeronautical database, and the outdated term "Airport/Facility Directory" is replaced with the term "Chart Supplement."

DATES: Effective 0901 UTC, February 28, 2019. 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 7400.11C, 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 7400.11C 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: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222-5711.

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 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 removes Class D airspace, Class E airspace designated as a surface area, and Class E airspace designated as an extension to a Class D and Class E airspace at Henry Post AAF, Fort Sill, OK; amends Class D airspace and Class E airspace designated as a surface area at Lawton-Fort Sill Regional Airport, Lawton, OK; and amends Class E airspace extending upward from 700 feet above the surface at Lawton-Fort Sill Regional Airport and Henry Post AAF to support instrument flight rule operations at these airports.

History

The FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (83 FR 22889; May 17, 2018) for Docket No. FAA-2018-0246 to remove Class D airspace, Class E airspace designated as a surface area, and Class E airspace designated as an extension to a Class D and Class E airspace at Henry Post AAF, Fort Sill, OK; amend Class D airspace and Class E airspace designated as a surface area at Lawton-Fort Sill Regional Airport, Lawton, OK; and amend Class E airspace extending upward from 700 feet above the surface at Lawton-Fort Sill Regional Airport and Henry Post AAF. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Subsequent to publication, the FAA found a typographic error in the in the airspace legal description for the Class E airspace extending upward from 700 feet above the surface at Lawton-Fort Sill Regional Airport, Lawton, OK. The extension to the south from the Lawton VOR/DME was incorrectly stated from the 6.9-mile radius, instead of the 6.8-mile radius, and is corrected in this rule.

Class D and E airspace designations are published in paragraphs 5000, 6002, 6004, and 6005, respectively, of FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018. FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11C lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This rule amends Title 14 Code of Federal Regulations (14 CFR) part 71 by:

Removing Class D airspace at Henry Post AAF, Fort Sill, OK;

Amending Class D airspace at Lawton-Fort Sill Regional Airport (formerly Lawton Municipal Airport), Lawton, OK, by adding an extension 1.1 miles each side of the 167° radial of the Lawton VOR/DME extending from the 4.3-mile radius to 5.3 miles south of the airport; amending the exclusionary language from "that airspace north of a line between lat. 34°36'18" N, long. 98°20'33" W and lat. 34°37'16" N, long. 98°28'29" W to "that airspace within a 2-mile radius of Henry Post AAF"; updating the name of the airport to coincide with the FAA's aeronautical database; and making an editorial change to the legal description replacing "Airport/Facility Directory" with "Chart Supplement";

Removing Class E airspace designated as a surface area at Henry Post AAF;

Amending Class E airspace designated as a surface area at Lawton-Fort Sill Regional Airport by adding an extension 1.1 miles each side of the 167° radial of the Lawton VOR/DME extending from the 4.3-mile radius to 5.3 miles south of the airport; removing that area within a 4-mile radius of Henry Post AAF from the airspace legal description; amending the exclusionary language from "within Restricted Areas R5601A and R-5601B when these restricted areas are activated" to "that airspace within a 2-mile radius of Henry Post AAF"; updating the name of the Lawton-Fort Sill Airport (formerly Lawton Municipal Airport), and the geographic coordinates of Henry Post AAF to coincide with the FAA's aeronautical database; removing the city name associated with Henry Post AAF to comply with FAA Order 7400.2L, Procedures for Handling Airspace Matters; and making an editorial change to the legal description replacing "Airport/Facility Directory" with "Chart Supplement";

Removing Class E airspace designated as an extension of Class D and Class E airspace at Henry Post AAF; and

Amending Class E airspace extending upward from 700 feet above the surface at Lawton-Fort Sill Regional Airport and Henry Post AAF by amending the extension to the south of Lawton-Fort Sill Regional Airport from the 167° (previously 178°) radial from the Lawton VOR/DME extending from the 6.8-mile radius to 13.1 (decreased from 20.6) miles south of the Lawton-Fort Sill Regional Airport; removing the extension from the 358° radial from Lawton VOR/DME; removing the extension to the north of Henry Post AAF referencing the 003° radial from the Lawton VOR/DME; adding an extension 4 miles each side of the 360° bearing from the Henry Post AAF from the 6.5-mile radius of Henry Post AAF to 10.9 miles north of Henry Post AAF; amending the exclusionary language pertaining to restricted areas from “R-5601A and R-5601B when these restricted areas are activated” to “R-5601A, R-5601B and R-5601H when active”; removing the exclusionary language “and excluding that airspace within the Wichita Falls, TX, Class E airspace area” from the airspace legal description; and updating the name of Lawton-Fort Sill Regional (formerly Lawton Municipal Airport) and the geographic coordinates of Henry Post AAF to coincide with the FAA’s aeronautical database.

The typographical error in the airspace legal description for the Class E airspace extending upward from 700 feet above the surface at Lawton-Ft. Sill Regional Airport, Lawton, OK, is corrected as follows: The extension to the south from the Lawton VOR/DME is corrected to extend from a “6.8-mile radius” instead of a “6.9-mile radius.” Except for this change, this rule is the same as published in the NPRM.

This action is due to the closure of the ATCT at Henry Post AAF and to remove the associated airspace.

Regulatory Notices and Analyses

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

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace.
* * * * *

ASW OK D Fort Sill, OK [Removed]

ASW OK D Lawton, OK [Amended]

Lawton-Fort Sill Regional Airport, OK (Lat. 34°34’04” N, long. 98°25’00” W)
Lawton VOR/DME (Lat. 34°29’46” N, long. 98°24’47” W)
Henry Post AAF (Lat. 34°38’59” N, long. 98°24’08” W)

That airspace extending upward from the surface to and including 3,700 feet MSL within a 4.3-mile radius of Lawton-Fort Sill Regional Airport, and within 1.1 miles each side of the 167° radial from the Lawton VOR/DME extending from the 4.3-mile radius to 5.3 miles south of the airport, excluding that airspace within a 2-mile radius of Henry Post AAF. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will

thereafter be continuously published in the Chart Supplement.

Paragraph 6002 Class E Airspace Areas Designated as Surface Areas.

* * * * *

ASW OK E2 Fort Sill, OK [Removed]

* * * * *

ASW OK E2 Lawton, OK [Amended]

Lawton-Fort Sill Regional Airport, OK (Lat. 34°34’04” N, long. 98°25’00” W)
Lawton VOR/DME (Lat. 34°29’46” N, long. 98°24’47” W)
Henry Post AAF (Lat. 34°38’59” N, long. 98°24’08” W)

That airspace extending upward from the surface to and including 3,700 feet MSL within a 4.3-mile radius of Lawton-Fort Sill Regional Airport, and within 1.1 miles each side of the 167° radial from the Lawton VOR/DME extending from the 4.3-mile radius to 5.3 miles south of the airport, excluding that airspace within a 2-mile radius of Henry Post AAF. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6004 Class E Airspace Designated as an Extension of Class D and Class E Surface Areas.

* * * * *

ASW OK E4 Fort Sill, OK [Removed]

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

* * * * *

ASW OK E5 Lawton, OK [Amended]

Lawton-Fort Sill Regional Airport, OK (Lat. 34°34’04” N, long. 98°25’00” W)
Lawton VOR/DME (Lat. 34°29’46” N, long. 98°24’47” W)
Henry Post AAF (Lat. 34°38’59” N, long. 98°24’08” W)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Lawton-Fort Sill Regional Airport, and within 4 miles each side of the 167° radial from the Lawton VOR/DME extending from the 6.8-mile radius to 13.1 miles south of Lawton-Fort Sill Regional Airport, and within a 6.5-mile radius of Henry Post AAF, and within 4 miles each side of the 360° bearing from Henry Post AAF extending from the 6.5-mile radius to 10.9 miles north of Henry AAF, excluding that airspace within Restricted Areas R-5601A, R-5601B, and R-5601H when active.

Issued in Fort Worth, Texas, on November 8, 2018.

Walter Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2018–25183 Filed 11–19–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**[Docket No. FAA-2018-0683; Airspace
Docket No. 18-AGL-17]

RIN 2120-AA66

**Amendment of Class E Airspace;
Lapeer, MI**AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace extending upward from 700 feet above the surface at Dupont-Lapeer Airport, Lapeer, MI. This action is the result of an airspace review caused by the decommissioning of the Pontiac VHF omnidirectional range (VOR) navigation aid, which provided navigation information for the instrument procedures at this airport, as part of the VOR Minimum Operational Network (MON) Program. This action is necessary for the safety and management of instrument flight rules (IFR) operations at this airport.

DATES: Effective 0901 UTC, February 28, 2019. 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 7400.11C, 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 7400.11C 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: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222-5711.

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 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 amends Class E airspace extending upward from 700 feet above the surface at Dupont-Lapeer Airport, Lapeer, MI, to support IFR operations at this airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (83 FR 44249; August 30, 2018) for Docket No. FAA-2018-0683 to amend Class E airspace extending upward from 700 feet above the surface at Dupont-Lapeer Airport, Lapeer, MI. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018. FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11C lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 amends the Class E airspace extending upward from 700 feet above the surface to within a 6.4-mile radius (decreased from a 6.5-mile radius) at Dupont-Lapeer Airport, Lapeer, MI; and amends the extension to the north to extend from the 6.4-mile radius (decreased

from the 6.5-mile radius) to 11 miles (increased from 10.9 miles) north of the airport.

This action is the result of an airspace review caused by the decommissioning of the Pontiac VOR, which provided navigation information to the instrument procedures at this airport, as part of the VOR MON Program.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, 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 qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures," paragraph 5-6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, is amended as follows:

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

* * * * *

AGL MI E5 Lapeer, MI [Amended]

Dupont-Lapeer Airport, MI
(Lat. 43°03'59" N, long. 83°16'18" W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Dupont-Lapeer Airport, and within 2 miles each side of the 357° bearing from the airport extending from the 6.4-mile radius to 11 miles north of the airport.

Issued in Fort Worth, Texas, on November 8, 2018.

Walter Tweedy,

*Acting Manager, Operations Support Group,
ATO Central Service Center.*

[FR Doc. 2018-25182 Filed 11-19-18; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA-2018-0684; Airspace
Docket No. 18-AGL-18]

RIN 2120-AA66

**Amendment of Class E Airspace;
Jacksonville, IL**

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet above the surface at Jacksonville Municipal Airport, Jacksonville, IL. This action is the result of an airspace review caused by the decommissioning of the Jacksonville VHF omnidirectional range (VOR) navigation aid, which provided navigation information for the instrument procedures at this airport, as part of the VOR Minimum Operational Network (MON) Program. The geographic coordinates for the airport are also updated to coincide with the FAA's aeronautic database. This action is necessary for the safety and management of instrument flight rules (IFR) operations at this airport.

DATES: Effective 0901 UTC, February 28, 2019. 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 7400.11C, 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 7400.11C 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:

Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222-5711.

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 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 amends Class E airspace extending upward from 700 feet above the surface at Jacksonville Municipal Airport, Jacksonville, IL, to support IFR operations at this airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (83 FR 44251; August 30, 2018) for Docket No. FAA-2018-0684 to amend Class E airspace extending upward from 700 feet above the surface at Jacksonville Municipal Airport, Jacksonville, IL. Interested parties were invited to participate in this rulemaking

effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11C, dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018. FAA Order 7400.11C is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11C lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 amends the Class E airspace extending upward from 700 feet above the surface to within a 6.5-mile radius (decreased from a 7-mile radius) at Jacksonville Municipal Airport, Jacksonville, IL. The geographic coordinates of the airport are also updated to coincide with the FAA's aeronautic database.

This action is result of an airspace review caused by the decommissioning of the Jacksonville VOR, which provided navigation information to the instrument procedures at this airport, as part of the VOR MON Program.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, 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 qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures," paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, is amended as follows:

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

* * * * *

AGL IL E5 Jacksonville, IL [Amended]

Jacksonville Municipal Airport, IL
(Lat. 39°46'29" N, long. 90°14'18" W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Jacksonville Municipal Airport.

Issued in Fort Worth, Texas, on November 8, 2018.

Walter Tweedy,

*Acting Manager, Operations Support Group,
ATO Central Service Center.*

[FR Doc. 2018–25170 Filed 11–19–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 97**

[Docket No. 31223; Amdt. No. 3826]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective November 20, 2018. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 20, 2018.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. 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/code_of_federal_regulations/ibr_locations.html.

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at nfdc.faa.gov to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT:

Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration, Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29 Room 104, Oklahoma City, OK 73125. Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary.

This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and

safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

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 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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on November 2, 2018.

Rick Domingo,
Executive Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97, (14 CFR part 97), is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

* * * *Effective Upon Publication*

| AIRAC Date | State | City | Airport | FDC No. | FDC Date | Subject |
|---------------|-------|-----------------|---------------------------|---------|----------|--|
| 6-Dec-18 | NJ | Newark | Newark Liberty Intl | 8/1634 | 10/15/18 | RNAV (RNP) Z RWY 29, Orig-E. |
| 6-Dec-18 | NJ | Newark | Newark Liberty Intl | 8/1636 | 10/15/18 | RNAV (RNP) Y RWY 29, Amdt 1C. |
| 6-Dec-18 | MT | Glendive | Dawson Community | 8/1795 | 10/17/18 | RNAV (GPS) RWY 30, Orig-A. |
| 6-Dec-18 | MT | Glendive | Dawson Community | 8/1861 | 10/17/18 | RNAV (GPS) RWY 12, Orig-A. |
| 6-Dec-18 | NY | Albany | Albany Intl | 8/3214 | 10/29/18 | VOR RWY 28, Orig-C. |
| 6-Dec-18 | TX | Albany | Albany Muni | 8/3862 | 10/17/18 | RNAV (GPS) RWY 35, Amdt 1A. |
| 6-Dec-18 | TX | Albany | Albany Muni | 8/3873 | 10/17/18 | RNAV (GPS) RWY 17, Amdt 1A. |
| 6-Dec-18 | NY | Albany | Albany Intl | 8/6757 | 10/29/18 | RNAV (RNP) Z RWY 19, Orig-A. |
| 6-Dec-18 | PA | Pottstown | Heritage Field | 8/8210 | 10/25/18 | Takeoff Minimums and Obstacle DP, Amdt 2A. |
| 6-Dec-18 | NY | Albany | Albany Intl | 8/8629 | 10/29/18 | RNAV (GPS) RWY 28, Orig-B. |

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 97**

[Docket No. 31222; Amdt. No. 3825]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective November 20, 2018. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of November 20, 2018.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. 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/code_of_federal_regulations/ibr_locations.html.

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at nfdc.faa.gov to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT:

Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29 Room 104, Oklahoma City, OK 73125. Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or removes SIAPs, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and/or ODPS as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making some SIAPs effective in less than 30 days.

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 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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 97:

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on November 2, 2018.

Rick Domingo,

Executive Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

* * * *Effective 6 December 2018*

Estherville, IA, Estherville Muni, RANV (GPS) RWY 16, Amdt 1B

Rexburg, ID, Rexburg-Madison County, Takeoff Minimums and Obstacle DP, Amdt 5

Philipsburg, PA, Mid-State, RNAV (GPS) RWY 16, Orig-C

Breckenridge, TX, Stephens County, RNAV (GPS) RWY 17, Orig-B

Breckenridge, TX, Stephens County, RNAV (GPS) RWY 35, Orig-B

* * * *Effective 3 January 2019*

Brevig Mission, AK, Brevig Mission, BREVIG TWO, Graphic DP

Brevig Mission, AK, Brevig Mission, RNAV (GPS) RWY 12, Amdt 1

Brevig Mission, AK, Brevig Mission, RNAV (GPS) RWY 30, Amdt 1

Brevig Mission, AK, Brevig Mission, Takeoff Minimums and Obstacle DP, Orig-A

Hot Springs, AR, Memorial Field, VOR RWY 5, Amdt 4D

Crescent City, CA, Jack McNamara Field, Takeoff Minimums and Obstacle DP, Amdt 2A

Reedley, CA, Reedley Muni, RNAV (GPS) RWY 16, Orig

Reedley, CA, Reedley Muni, RNAV (GPS) RWY 34, Orig

Reedley, CA, Reedley Muni, Takeoff Minimums and Obstacle DP, Orig

Canon City, CO, Fremont County, RNAV (GPS) RWY 29, Amdt 1

Canon City, CO, Fremont County, RNAV (RNP) RWY 11, Orig-B, CANCELED

Canon City, CO, Fremont County, RNAV (RNP) Z RWY 29, Orig-B, CANCELED

Bridgeport, CT, Igor I Sikorsky Memorial, RNAV (GPS) RWY 29, Amdt 2

Oxford, CT, Waterbury-Oxford, ILS OR LOC RWY 36, Amdt 15

Oxford, CT, Waterbury-Oxford, RNAV (GPS) RWY 18, Amdt 3

Oxford, CT, Waterbury-Oxford, RNAV (GPS) RWY 36, Amdt 3

Idaho Falls, ID, Idaho Falls Rgnl, ILS OR LOC RWY 21, Amdt 12

Idaho Falls, ID, Idaho Falls Rgnl, LOC BC RWY 3, Amdt 7

Idaho Falls, ID, Idaho Falls Rgnl, RNAV (GPS) Y RWY 3, Amdt 2

Idaho Falls, ID, Idaho Falls Rgnl, RNAV (GPS) Y RWY 21, Amdt 2

Idaho Falls, ID, Idaho Falls Rgnl, RNAV (RNP) Z RWY 3, Amdt 1

Idaho Falls, ID, Idaho Falls Rgnl, RNAV (RNP) Z RWY 21, Amdt 1

Idaho Falls, ID, Idaho Falls Rgnl, Takeoff Minimums and Obstacle DP, Amdt 5

Idaho Falls, ID, Idaho Falls Rgnl, VOR RWY 3, Amdt 6D

Idaho Falls, ID, Idaho Falls Rgnl, VOR RWY 21, Amdt 10B

Chicago, IL, Chicago O'Hare Intl, ILS OR LOC RWY 9R, Amdt 12B

Mount Vernon, IL, Mount Vernon, ILS OR LOC RWY 23, Amdt 12

Mount Vernon, IL, Mount Vernon, VOR RWY 5, Amdt 16C, CANCELED

Pittsfield, IL, Pittsfield Penstone Muni, RNAV (GPS) RWY 31, Orig-A

Connersville, IN, Mettel Field, ILS OR LOC RWY 18, Amdt 1

Connersville, IN, Mettel Field, VOR-A, Amdt 1B, CANCELED

Peru, IN, Peru Muni, RNAV (GPS) RWY 1, Orig-B

Junction City, KS, Freeman Field, RNAV (GPS) RWY 36, Orig-E

Eunice, LA, Eunice, RNAV (GPS) RWY 34, Orig-A

Taunton, MA, Taunton Muni—King Field, RNAV (GPS) RWY 30, Amdt 2

Albert Lea, MN, Albert Lea Muni, VOR RWY 35, Amdt 1C

Bigfork, MN, Bigfork Muni, RNAV (GPS) RWY 15, Orig-C

Bigfork, MN, Bigfork Muni, RNAV (GPS) RWY 33, Orig-C

St Louis, MO, St Louis Lambert Intl, ILS OR LOC RWY 6, Amdt 2

St Louis, MO, St Louis Lambert Intl, ILS OR LOC RWY 11, ILS RWY 11 CAT II, ILS RWY 11 CAT III, Amdt 1

St Louis, MO, St Louis Lambert Intl, ILS OR LOC RWY 29, Amdt 2

St Louis, MO, St Louis Lambert Intl, ILS OR LOC RWY 30L, Amdt 12D

St Louis, MO, St Louis Lambert Intl, ILS OR LOC RWY 30R, ILS RWY 30R

CAT II, ILS RWY 30R CAT III, Amdt 12

Greensboro, NC, Piedmont Triad Intl, ILS OR LOC RWY 5R, ILS RWY 5R SA CAT II, Amdt 7C

Grand Forks, ND, Grand Forks Intl, RNAV (GPS) RWY 17R, Amdt 1

Nebraska City, NE, Nebraska City Muni, NDB RWY 33, Amdt 2

Pender, NE, Pender Muni, RNAV (GPS) RWY 15, Orig-B

Pender, NE, Pender Muni, RNAV (GPS) RWY 33, Orig-B

Carson City, NV, Carson, RNAV (GPS)-B, Orig

Ticonderoga, NY, Ticonderoga Muni, Takeoff Minimums and Obstacle DP, Amdt 1

Dayton, OH, James M Cox Dayton Intl, ILS OR LOC RWY 24L, Amdt 11

Dayton, OH, James M Cox Dayton Intl, RNAV (GPS) RWY 24L, Amdt 2

Dayton, OH, James M Cox Dayton Intl, RNAV (GPS) Z RWY 6L, Amdt 1E

Dayton, OH, James M Cox Dayton Intl, RNAV (GPS) Z RWY 24R, Amdt 2B

Clearfield, PA, Clearfield-Lawrence, RNAV (GPS) RWY 30, Amdt 1B

Philadelphia, PA, Philadelphia Intl, ILS OR LOC RWY 27L, Amdt 14B

Tullahoma, TN, Tullahoma Rgnl Arpt/Wm Northern Field, NDB RWY 18, Amdt 3B, CANCELED

Tullahoma, TN, Tullahoma Rgnl Arpt/Wm Northern Field, RNAV (GPS) RWY 6, Amdt 2

Borger, TX, Hutchinson County, Takeoff Minimums and Obstacle DP, Amdt 2

Corpus Christi, TX, Corpus Christi Intl, ILS OR LOC RWY 36, Amdt 14

Corpus Christi, TX, Corpus Christi Intl, RNAV (GPS) Y RWY 36, Amdt 3

Beaver, UT, Beaver Muni, Takeoff Minimums and Obstacle DP, Orig-A

Stafford, VA, Stafford Rgnl, RNAV (GPS) RWY 33, Amdt 1A

Olympia, WA, Olympia Rgnl, VOR-A, Amdt 2

Kenosha, WI, Kenosha Rgnl, ILS OR LOC RWY 7L, Amdt 3A

Kenosha, WI, Kenosha Rgnl, RNAV (GPS) RWY 7L, Orig-A

[FR Doc. 2018-24960 Filed 11-19-18; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1**

[TD 9843]

RIN 1545-BG07

Allocation of Costs Under the Simplified Methods

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations on allocating costs to certain property produced or acquired for resale by a taxpayer. These final regulations: Provide rules for the treatment of negative adjustments related to certain costs required to be capitalized to property produced or acquired for resale; provide a new simplified method of accounting for determining the additional costs allocable to property produced or acquired for resale; and redefine how certain types of costs are categorized for purposes of the simplified methods. These final regulations affect taxpayers that are producers or resellers of property that are required to capitalize costs to the property and that elect to allocate costs using a simplified method.

DATES:

Effective Date: These regulations are effective on November 20, 2018.

Applicability Date: For date of applicability, see §§ 1.263A-1(l)(5) and 1.263A-2(g)(3).

FOR FURTHER INFORMATION CONTACT:

Natasha M. Mulleneaux, of the Office of the Associate Chief Counsel (Income Tax and Accounting) at (202) 317-7007 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations that amend the Income Tax Regulations (26 CFR part 1) relating to allocation of costs to certain property produced or acquired for resale under section 263A of the Internal Revenue Code (Code).

Section 263A requires taxpayers to capitalize the direct costs and indirect costs that are properly allocable to: (1) Real or tangible personal property produced by the taxpayer, and (2) real and personal property described in section 1221(a)(1) acquired for resale by the taxpayer. The costs that a taxpayer must capitalize under section 263A are its section 471 costs, additional section 263A costs, and interest capitalizable under section 263A(f). Section 263A generally requires taxpayers to allocate capitalizable section 263A costs to specific items of property produced or acquired for resale. However, section 263A(j) instructs the Secretary to prescribe regulations that may be necessary or appropriate to carry out the purposes of section 263A, including regulations providing simplified procedures. Accordingly, § 1.263A-1(f)(1) allows taxpayers to use the simplified methods provided in § 1.263A-2(b) (the simplified

production method (SPM)) or § 1.263A-3(d) (the simplified resale method (SRM)) to allocate a lump sum of additional section 263A costs properly allocable to property produced or acquired for resale to property that is on hand at the end of the taxable year, in lieu of allocating costs to specific items of property. Some taxpayers using the SPM or SRM include a negative adjustment in additional section 263A costs when the taxpayer capitalizes a cost as a section 471 cost in an amount that is greater than the amount required to be capitalized for tax purposes. Notice 2007-29 (2007-14 IRB 881) provides that, pending the issuance of additional published guidance, the IRS generally will not challenge the inclusion of negative adjustments in computing additional costs under section 263A or the permissibility of aggregate negative additional section 263A costs.

On September 5, 2012, the Treasury Department and the IRS published in the **Federal Register** (77 FR 54482) a notice of proposed rulemaking (REG-126770-06, 2012-38 IRB 347) under section 263A (the proposed regulations) relating to the inclusion of negative adjustments in additional section 263A costs under the simplified methods. The proposed regulations also provided a new simplified method of accounting, the modified simplified production method (MSPM), for determining the additional section 263A costs allocable to property produced or acquired for resale, and redefined how certain types of costs are categorized for purposes of the simplified methods. Two comments responding to the proposed regulations were received and a public hearing was held on January 7, 2013. After consideration of the comments received, these final regulations adopt the proposed regulations as revised by this Treasury decision.

Summary of Comments and Explanation of Provisions

1. General Prohibition on Negative Adjustments in Additional Section 263A Costs

The proposed regulations generally provided that taxpayers could not include negative adjustments in additional section 263A costs to remove section 471 costs, unless the taxpayers used: (1) The SPM and had average annual gross receipts of \$10,000,000 or less; (2) the SRM; or (3) the MSPM.

Both commenters stated that the proposed regulations' prohibition on including negative adjustments in additional section 263A costs for taxpayers using the SPM (and above the

gross receipts threshold) was unfair to taxpayers unable or unwilling to use the MSPM. One commenter suggested that taxpayers using the SPM are at a disadvantage compared to taxpayers using the MSPM, because the SPM overcapitalizes additional section 263A costs to the raw material content of ending inventory. Another commenter stated that the proposed regulations' prohibition on including negative adjustments in additional section 263A costs under the SPM unduly punished taxpayers that were unable to use the MSPM by requiring those taxpayers to calculate the amount of deductible section 471 costs that should be excluded from ending inventory. This commenter also suggested that only a small number of taxpayers have the resources to determine these costs.

The Treasury Department and the IRS do not adopt these comments because including negative adjustments in additional section 263A costs under the SPM may result in significant distortions of the amount of additional section 263A costs and section 471 costs allocated to ending inventory. However, these final regulations include several changes to address these comments and reduce compliance costs, burden, and administrative complexity. Generally, including negative adjustments in additional section 263A costs results in distortions because the method used to capitalize the section 471 cost is different than the method used to remove the cost from ending inventory. The extent of the distortion, and whether it is favorable or unfavorable to the taxpayer, generally depends on whether the cost was incurred in the production process and how the cost was allocated to raw materials, work-in-process, or finished goods inventories for purposes of section 471.

Accordingly, the general restriction on the inclusion of negative adjustments in additional section 263A costs provided in the proposed regulations remains unchanged in these final regulations.

In order to limit potential distortion in the simplified methods, these final regulations also provide a new consistency requirement for taxpayers that are permitted to include negative adjustments in additional section 263A costs to remove section 471 costs and that include negative adjustments to remove section 471 costs. The rule provides that such taxpayer must use this method of accounting for all section 471 costs that are permitted to be removed using negative adjustments.

In addition, these final regulations clarify that certain business expenses described in section 162(c), (e), (f), and (g), including bribes, lobbying expenses,

and fines and penalties, cannot be removed from a taxpayer's section 471 costs as negative adjustments in additional section 263A costs. This clarification is consistent with § 1.471-3(f), which provides that certain of these expenses are not permitted to be included in the cost of inventories.

2. Classification of Costs

One commenter stated that it was unclear how negative adjustments in additional section 263A costs are measured (for example, in the case of depreciation, at the individual asset level or using total depreciation expense). These final regulations provide that section 471 costs, additional section 263A costs, and any adjustments to section 471 costs or additional section 263A costs are classified using the narrower of (1) the classifications of costs used by the taxpayer in its financial statement or (2) the classifications of costs in § 1.263A-1(e)(2), (3), and (4). If a cost is not described within § 1.263A-1(e)(2), (3), or (4), the cost is classified using the classification of costs used in the taxpayer's financial statement.

3. Modified Simplified Production Method

The proposed regulations provided a new simplified method, the MSPM, to reduce distortions that may result from the SPM. The MSPM in the proposed regulations reduced distortions by more precisely allocating additional section 263A costs, including negative adjustments, among raw materials, work-in-process, and finished goods inventories on hand at year end. Generally, taxpayers would have determined the allocable portion of pre-production additional section 263A costs using a pre-production absorption ratio of pre-production additional section 263A costs incurred during the taxable year over raw materials costs incurred during the taxable year. This ratio would have applied to raw material section 471 costs incurred during the taxable year and remaining on hand at year end (including unprocessed raw materials, and raw materials integrated into work-in-process and finished goods). Similarly, under the MSPM in the proposed regulations, taxpayers would have determined the allocable portion of all other additional section 263A costs using a production absorption ratio of production additional section 263A costs incurred during the taxable year over production section 471 costs incurred during the taxable year. This ratio would have applied to production section 471 costs incurred during the

taxable year and remaining on hand at year end (excluding raw materials integrated into work-in-process and finished goods).

Both commenters stated that some taxpayers could not readily identify raw materials that are integrated into work-in-process and finished goods inventories on hand at year end. The commenters asserted that those taxpayers would have to modify their books and records or purchase a new computer system to track these raw materials. Both commenters stated that this requirement would place an unfair burden on taxpayers, especially smaller taxpayers. One commenter suggested that the final regulations clarify that a taxpayer may use any reasonable method to estimate the raw material component of work-in-process and finished goods inventories on hand at year end.

First, to reduce the number of defined terms and to be consistent with the use of that term in § 1.263A-1(e)(2)(i)(A), these final regulations use the term "direct material costs" rather than "raw material costs," as used in the proposed regulations.

Second, the Treasury Department and the IRS understand that some taxpayers may not be able to readily identify direct material costs in work-in-process and finished goods inventories on hand at year end. Accordingly, these final regulations modify the MSPM so that taxpayers using the MSPM are not required to separately track direct material costs that are integrated into work-in-process and finished goods inventories. Specifically, these final regulations modify the MSPM by: (1) Applying the pre-production absorption ratio to only unprocessed direct material section 471 costs incurred during the taxable year and remaining on hand at year end; (2) applying the production absorption ratio to all production section 471 costs incurred during the taxable year and remaining on hand at year end, which includes direct material costs that have entered or completed production; (3) including the pre-production additional section 263A costs that are not allocated by the pre-production absorption ratio in the numerator of the production absorption ratio; and (4) including the direct material costs that have entered or completed production in the denominator of the production absorption ratio. These modifications to the proposed MSPM reduce compliance costs, burden, and administrative complexity by eliminating the need to separately track direct material costs in work-in-process and finished goods inventories on hand at year end.

One commenter stated that the production absorption ratio under the MSPM in the proposed regulations was distortive because it included post-production additional section 263A costs (for example, storage and handling allocable to finished goods). This commenter suggested the MSPM include a third ratio to allocate post-production additional section 263A costs to finished goods inventories. This suggestion is not adopted in the final regulations because including a third ratio to allocate post-production additional 263A costs adds a degree of complexity to the MSPM that outweighs the benefit of the additional precision it might provide.

4. Allocation of Mixed Service Costs Under the MSPM

The proposed regulations provided that taxpayers must allocate capitalizable mixed service costs to pre-production additional section 263A costs in proportion to the raw material costs in total section 471 costs, with the remaining amount of capitalizable mixed service costs allocated to production additional section 263A costs. The proposed regulations also specifically requested comments on how mixed service costs should be allocated between raw materials, work-in-process, and finished goods under the MSPM.

Both commenters stated that generally raw materials do not attract a large amount of mixed service costs, except for a limited amount of labor-related purchasing costs. The commenters stated that the proposed regulations' allocation of capitalizable mixed service costs between pre-production and production additional section 263A costs resulted in a disproportionate allocation of mixed service costs to pre-production additional section 263A costs. One commenter suggested that the final regulations allow taxpayers to allocate capitalizable mixed service costs between pre-production and production additional section 263A costs using any reasonable method and provided an example of a labor-based allocation method to allocate mixed service costs.

In response to the comments, these final regulations expand the types of methods permitted under the MSPM to allocate mixed service costs between pre-production and production additional section 263A costs. These regulations provide that a taxpayer using the MSPM that capitalizes mixed service costs using the simplified service cost method under § 1.263A-1(h) may allocate capitalizable mixed service costs to pre-production

additional section 263A costs based on unprocessed direct material costs in section 471 costs or, alternatively, based on pre-production labor costs in total labor costs. Additionally, if a taxpayer using the MSPM determines its capitalizable mixed service costs using a method described in § 1.263A-1(g)(4) (a direct reallocation method, a step-allocation method, or any other reasonable allocation method), the taxpayer must use a reasonable method to allocate the costs (for example, department or activity costs) between pre-production and production additional section 263A costs, unless the taxpayer's departments or activities are identified as exclusively pre-production or production. For example, it may be reasonable for a taxpayer using a method described in § 1.263A-1(g)(4) to allocate a department's mixed service costs between pre-production and production additional section 263A costs based on labor associated with the department when the department is not exclusively identified as pre-production or production. If a taxpayer that determines its capitalizable mixed service costs using a method described in § 1.263A-1(g)(4) has departments or activities that are identified as exclusively pre-production or production, the department or activity costs must be allocated to pre-production or production additional section 263A costs according to the department's or activity's identification.

One commenter stated that the proposed regulations would unnecessarily require taxpayers that do not have any additional section 263A costs that relate to raw material costs to compute a pre-production absorption ratio. The commenter suggested allocating capitalizable mixed service costs between pre-production and production additional section 263A costs based on the relative proportion of additional section 263A costs in each category that are incurred by the taxpayer. These final regulations do not adopt this suggestion because the relative amount of pre-production and production additional section 263A costs reflect the amount of capitalizable tax costs in excess of the costs capitalized for financial statement purposes but do not accurately reflect the amount of mixed service costs allocable to pre-production and production activities. However, in response to this comment and to reduce compliance costs and burden, these final regulations include a de minimis rule that allows taxpayers using the MSPM to allocate 100 percent of capitalizable mixed service costs to pre-

production or production additional section 263A costs if 90 percent or more of the mixed service costs would otherwise be allocated to that amount.

5. Property Produced for the Taxpayer Under a Contract and Property Acquired for Resale

The proposed regulations did not provide explicit rules for the treatment of costs related to property produced for the taxpayer under a contract with another party that is treated as property produced by the taxpayer, as described in § 1.263A-2(a)(1)(ii)(B) (property produced under a contract), and property acquired for resale under the MSPM.

One commenter suggested that all costs related to property produced under a contract and property acquired for resale should be included in the pre-production absorption ratio under the MSPM. The Treasury Department and the IRS agree that generally costs related to property produced under a contract and property acquired for resale are best treated as pre-production costs because costs related to such property are primarily purchasing, storage, and handling costs, which are the costs frequently attributable to property that has not entered production. Accordingly, these final regulations adopt this suggestion and provide that additional section 263A costs properly allocable to property produced under a contract and property acquired for resale are generally included in pre-production additional section 263A costs under the MSPM. Similarly, section 471 costs for property produced under a contract and property acquired for resale are generally included in pre-production section 471 costs under the MSPM.

One commenter also suggested that the final regulations clarify the treatment of costs related to property produced under a contract when the property is used in an additional production activity of the taxpayer. These final regulations adopt this suggestion and clarify that for purposes of the MSPM, direct material costs include property produced under a contract that are direct material costs for the taxpayer to be used in an additional production process of the taxpayer. These costs are included in pre-production section 471 costs.

6. Last-In, First-Out (LIFO) Method Taxpayers Using the MSPM

The proposed regulations provided that LIFO method taxpayers using the MSPM must multiply an inventory increment by a combined absorption ratio to determine the amount of

additional section 263A costs that must be added to the taxpayers' increment for the year. The proposed regulations defined the numerator of the combined absorption ratio as total additional section 263A costs allocable to eligible property remaining on hand at year end and the denominator as the total section 471 costs remaining on hand at year end. The proposed regulations also specifically requested comments on how the MSPM should apply to taxpayers using the LIFO method.

One commenter suggested that LIFO-method taxpayers should be allowed to use the same two absorption ratios as taxpayers using the first-in, first-out (FIFO) method of accounting for inventories, rather than a combined absorption ratio, to determine the amount of additional section 263A costs that must be added to the inventory increment for the year. This suggestion is not adopted because it would require LIFO-method taxpayers to divide their inventory increments and decrements into raw material and production components, which would add unnecessary complexity and administrability challenges to the LIFO method and the MSPM.

One commenter suggested that LIFO-method taxpayers should be allowed to choose between annual absorption ratios and shorter-term ratios, and base the shorter-term ratios on the taxpayer's method of determining the current-year cost of the items in ending inventory and the value of any inventory increments. This suggestion is not adopted because it ignores the fact that indirect costs are frequently incurred outside of the period used for determining current-year cost, and use of a shorter-term ratio could cause distortions.

One commenter suggested that the final regulations provide special rules for taxpayers that have elected to apply the LIFO method only to raw materials, including raw materials that have entered or completed the production process (the raw material content LIFO method). Specifically, the commenter suggested that final regulations provide that the combined absorption ratio should be applied to any LIFO increment of a taxpayer using the raw material content LIFO method with the pre-production and production absorption ratios applied separately to non-LIFO inventory. The Treasury Department and the IRS agree that the combined, pre-production, and production absorption ratios could all apply in the case of a taxpayer using the raw material content LIFO method and believe this point is sufficiently clear in these final regulations.

One commenter stated that the definition of the combined absorption ratio was ambiguous because it did not indicate whether the combined absorption ratio was determined on a LIFO basis. The Treasury Department and the IRS intended that the combined absorption ratio be determined on a non-LIFO basis; accordingly, this point is clarified in these final regulations.

7. Definition of Section 471 Costs

The proposed regulations provided one definition of section 471 costs that applied to taxpayers using the SRM, SPM, or MSPM, regardless of whether those taxpayers were in existence before the effective date of section 263A. The proposed regulations generally provided that a taxpayer's section 471 costs were the costs, other than interest, that the taxpayer capitalized to its inventory or other eligible property in its financial statements. The proposed regulations also provided, consistent with the IRS's established administrative practice, that taxpayers must include all direct costs in section 471 costs regardless of the treatment of the costs in their financial statements.

These final regulations clarify that a taxpayer's section 471 costs are the types of costs capitalized to property produced or property acquired for resale in the taxpayer's financial statement. These final regulations also clarify that a taxpayer determines the amounts of its section 471 costs by using the amounts of those costs that are incurred in the taxable year for federal income tax purposes. These final regulations also generally retain the proposed regulations' requirement that section 471 costs must include all direct costs of property produced and property acquired for resale.

However, the Treasury Department and the IRS understand that maintaining separate financial statement and federal income tax cost accounting systems or adjusting the amounts of costs capitalized using the taxpayer's financial statement methods for federal income tax purposes can be costly and burdensome. Therefore, these final regulations provide an alternative method that certain taxpayers may use to determine the amounts of their section 471 costs. This alternative method is available to a taxpayer that is permitted to include negative adjustments in additional section 263A costs to remove section 471 costs if that taxpayer's financial statement is described in § 1.263A-1(d)(6)(i), (ii), or (iii) (for example, a financial statement required to be filed with the Securities and Exchange Commission (SEC); a certified audited financial statement

used for a substantial non-tax purpose; or a financial statement (other than a tax return) required to be provided to the government). This method is not available to a taxpayer if the taxpayer's financial statement is described only in § 1.263A-1(d)(6)(iv) (for example, an unaudited financial statement used for a substantial non-tax purpose). The use of this alternative method is limited to taxpayers that have certain financial statements in order to provide adequate safeguards for the use of financial statement amounts in the simplified method formulas. A taxpayer that uses the alternative method determines the amounts of all of its section 471 costs by using the amounts of costs capitalized to property produced or property acquired for resale in the taxpayer's financial statement using the taxpayer's financial statement methods of accounting. A taxpayer using the alternative method may not include any financial statement write-downs, reserves, or other financial statement valuation adjustments when determining the amounts of its section 471 costs.

In order to limit potential distortions in the simplified methods' absorption ratios, these final regulations require a taxpayer that uses the alternative method to consistently apply the method to all of its section 471 costs, including any direct costs required to be included in section 471 costs, any costs used for purposes of applying the de minimis direct costs rules, any costs included in additional section 263A costs after applying the de minimis direct costs rules and the safe harbor rule for certain variances and under or over-applied burdens, and any costs removed from section 471 costs because such costs are not required to be, or are not permitted to be, capitalized under section 263A. In addition, a taxpayer using the alternative method includes in additional section 263A costs all negative adjustments to remove section 471 costs and all permitted positive and negative book-to-tax adjustments. A taxpayer using the alternative method, and the burden rate or standard cost methods described in § 1.263A-1(f)(3), determines the book-to-tax adjustments required to be made as a result of differences in financial statement and tax amounts by comparing the actual amount of the cost incurred in the taxable year for federal income tax purposes to the actual amount of the cost incurred in the taxable year in its financial statement using the taxpayer's financial statement methods of accounting, regardless of how the taxpayer treats its variances or under or over-applied burdens.

One commenter noted that the proposed regulations do not specify how taxpayers must account for differences between their financial statement methods and the tax methods used to determine the value of ending inventory. These differences include special tax methods, such as the lower of cost or market method and the retail inventory method, as well as special financial statement methods, such as write-downs or reserves for slow-moving goods. The final regulations do not change the current requirement that a taxpayer must value its ending inventory by applying its tax methods of accounting, and provide that a taxpayer using the alternative method to determine the amounts of its section 471 costs may not include any financial statement write-downs, reserves, or other financial statement valuation adjustments when determining the amounts of its section 471 costs.

8. Financial Statement Hierarchy and Recordkeeping Requirements for Financial Statements

The proposed regulations did not provide any guidance as to which financial statement a taxpayer uses to determine its section 471 costs. For clarity and consistency, these final regulations provide that for purposes of section 263A, a taxpayer's financial statement is its financial statement of the highest priority, in accordance with the list of categories of financial statements, in order of priority, provided in these final regulations. For example, in order to determine its types of section 471 costs, a taxpayer uses the types of costs capitalized in its financial statement with the highest priority within the categories described in these final regulations.

These final regulations do not impose any specific record keeping requirements for a taxpayer's identification of costs as section 471 or additional section 263A costs, or for a taxpayer's determination of the amounts of section 471 costs. However, the regulations under section 6001 require a taxpayer to keep books and records sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown in an income tax return, which includes the identification of costs as section 471 or additional section 263A costs and the determination of the amounts of section 471 costs. This requirement also includes any books and records sufficient to establish a taxpayer's calculation of variances and under or over-applied burdens used for financial statement purposes.

9. De Minimis Exceptions for Certain Direct Costs in Section 471 Costs

a. Direct Labor Costs

As noted previously, the proposed regulations provided, consistent with the IRS's established administrative practice, that taxpayers must include all direct costs in section 471 costs regardless of the treatment of the costs in their financial statement. Both commenters stated that some taxpayers do not capitalize certain direct labor costs (for example, holiday pay, sick leave pay, shift differential, and payroll taxes) to inventory for financial statement purposes, and that the proposed regulations' requirement to include all direct costs in section 471 costs would force these taxpayers to create or purchase and maintain a second inventory costing system for tax purposes only.

These final regulations generally retain the proposed regulations' requirement that section 471 costs must include all direct costs of property produced and property acquired for resale. However, to reduce compliance costs, burden, and administrative complexity, these final regulations provide a de minimis direct labor costs rule to allow taxpayers using the SRM, SPM, or MSPM to include in additional section 263A costs, and exclude from section 471 costs, certain direct labor costs that are not capitalized to property produced or property acquired for resale in the taxpayer's financial statement (uncapitalized direct labor costs). However, a taxpayer cannot use this de minimis direct labor costs rule to include in additional section 263A costs basic compensation or overtime or the types of costs included in the taxpayer's standard cost or burden rate methods used for section 471 costs.

Under this de minimis direct labor costs rule, a taxpayer includes in additional section 263A costs, and excludes from section 471 costs, the total amount of all direct labor costs that are incurred in the taxable year that are uncapitalized direct labor costs, if the total amount of those costs is less than five percent of total direct labor costs incurred in the taxable year (whether or not capitalized for financial statement purposes). The de minimis direct labor costs rule requires that any amounts that constitute a reduction to costs be treated as positive amounts for purposes of determining whether the taxpayer's uncapitalized direct labor costs meet the five percent test. For a taxpayer using the alternative method to determine the amounts of its section 471 costs, the five percent test and the amount included in additional section 263A costs are based

on the amount of uncapitalized direct labor costs and total direct labor costs that are incurred in the taxable year in the taxpayer's financial statement using the taxpayer's financial statement methods of accounting. The alternative-method taxpayer includes in additional section 263A costs any negative or positive adjustment required to be made as a result of differences in financial statement and tax amounts of the taxpayer's de minimis direct labor costs.

A taxpayer using a historic absorption ratio (HAR) that uses the de minimis direct labor costs rule during its test period or updated test period could treat a particular direct labor cost as an additional section 263A cost in one year of the test period or updated test period, and as a section 471 cost in a different year of the test period or updated test period. The de minimis direct labor costs rule provides a special rule that requires this taxpayer to use the SRM, SPM, or MSPM and HAR during the qualifying period or extended qualifying period in a manner that is most consistent with the treatment of the direct labor costs during the test period or updated test period. Under this rule, the taxpayer determines whether direct labor costs are included in any of its section 471 costs remaining on hand at year end during its qualifying period or extended qualifying period consistent with how those direct labor costs were classified in at least two of the three years of the taxpayer's applicable test period or updated test period.

b. Direct Material Costs

The preamble to the proposed regulations stated that the proposed regulations generally prohibited treating cash or trade discounts as negative adjustments in additional section 263A costs under any of the simplified methods. The proposed regulations expressly prohibited treating cash or trade discounts as negative adjustments in additional section 263A costs under the MSPM and the SRM, inadvertently omitting taxpayers using the SPM from the prohibition. The operative rule in the proposed regulations also specifically requested comments on reasonable methods of allocating cash or trade discounts that taxpayers do not capitalize for financial statement purposes between ending inventory and cost of goods sold. In addition, the Treasury Department and the IRS are aware that some taxpayers do not capitalize for financial statement purposes certain direct material costs (for example, transportation and other necessary charges incurred to acquire possession of goods).

One commenter stated that the proposed regulations' treatment of cash and trade discounts would impose an administrative burden on taxpayers that do not treat any or all of their cash and trade discounts as negative purchase or production costs for financial statement purposes. The commenter suggested that, if the final regulations preclude a taxpayer from treating cash and trade discounts as negative additional section 263A costs, then taxpayers should be allowed to allocate cash and trade discounts between ending inventory and costs of goods sold using some type of averaging convention.

In general, cash and trade discounts related to section 471 costs, and transportation and other necessary charges incurred to acquire possession of goods, are treated as adjustments to the underlying section 471 costs, and cannot be included as a negative adjustment in additional section 263A costs. However, to reduce compliance costs, burden, and administrative complexity, these final regulations provide a de minimis direct material costs rule to allow taxpayers using the SRM, SPM, or MSPM to include in additional section 263A costs, and exclude from section 471 costs, certain direct material costs that are uncapitalized financial statement costs. This de minimis direct material costs rule can be used for certain direct material costs that are not capitalized to property produced or property acquired for resale in a taxpayer's financial statement (uncapitalized direct material costs) such as cash discounts, trade discounts, and freight-in costs. However, a taxpayer cannot use this de minimis direct material costs rule to include in additional section 263A costs the types of costs that are included in the taxpayer's standard cost method used for section 471 costs (including cash and trade discounts).

Under this de minimis direct material costs rule, a taxpayer includes in additional section 263A costs, and excludes from section 471 costs, the total amount of all direct material costs incurred in the taxable year that are uncapitalized direct material costs, if the amount of those costs in total comprise less than five percent of total direct material costs incurred in the taxable year (whether or not capitalized for financial statement purposes). The de minimis direct material costs rule requires that any amounts that constitute a reduction to costs, such as cash and trade discounts, be treated as positive amounts for purposes of determining whether the taxpayer's uncapitalized direct material costs meet the five percent test. The de minimis

direct material costs rule operates similarly to the de minimis direct labor costs rule for an alternative method taxpayer, and for a taxpayer using a HAR. Because any direct material costs included in additional section 263A costs after applying the de minimis direct material costs rule are excluded from section 471 costs, such direct material costs are not treated as section 471 costs for any purpose, including as section 471 costs that are direct material costs in the modified simplified production method formula.

10. Variances and Under- or Over-Applied Burdens

Both commenters stated that some taxpayers do not capitalize certain variances related to direct costs to inventory for financial statement purposes, and that the proposed regulations' requirement to include all direct costs in section 471 costs would force these taxpayers to create or purchase and maintain a second inventory costing system for tax purposes only. The IRS's established administrative practice requires taxpayers to treat positive and negative cost variances and under or over-applied burden amounts related to direct and indirect section 471 costs as adjustments to the underlying section 471 costs. However, to reduce compliance costs, burden, and administrative complexity, these final regulations provide a safe harbor rule for taxpayers using the SRM, SPM, or MSPM to include in additional section 263A costs, and exclude from section 471 costs, certain variances and under or over-applied burdens that are not capitalized to property produced or property acquired for resale in the taxpayer's financial statement (uncapitalized variances or uncapitalized under or over-applied burdens).

Under this safe harbor rule, a taxpayer includes in additional section 263A costs, and excludes from section 471 costs, the sum of the amounts of all of those uncapitalized variances and uncapitalized under or over-applied burdens for that taxable year, if such sum is less than five percent of the taxpayer's total section 471 costs for all items for which the taxpayer uses a standard cost or burden rate method to allocate costs. For purposes of this rule, total section 471 costs for all items for which the taxpayer uses a standard cost or burden rate method to allocate costs are computed before application of the safe harbor method, and must reflect the actual amounts incurred by the taxpayer on these items, which therefore include variances and under or over-applied

burdens. If the sum of the amounts of all of those uncapitalized variances and uncapitalized under or over-applied burdens in a taxable year are not less than five percent for the taxable year, the taxpayer must reallocate such uncapitalized amounts to or among units of property as required by § 1.263A-1(f)(3)(i)(C) or (f)(3)(ii)(B), respectively.

Under this safe harbor rule, all variances and under or over-applied burdens are treated as positive amounts for purposes of determining whether the taxpayer's uncapitalized variances and uncapitalized under or over-applied burdens meet this five percent test. Additionally, this safe harbor rule applies to any variances on cash or trade discounts that are included in the taxpayer's standard cost, if those discounts are capitalized as part of the taxpayer's standard cost method used for section 471 costs. An eligible taxpayer must consistently apply the safe harbor method to all items for which the taxpayer uses a standard cost or burden rate method to allocate costs. However, the safe harbor rule only applies to a taxpayer's uncapitalized variances and uncapitalized under or over-applied burdens. In addition, a taxpayer using this safe harbor rule is not permitted to treat uncapitalized variances and uncapitalized under or over-applied burdens that are not significant as not allocable to property produced or property acquired for resale under § 1.263A-1(f)(3)(i)(C) and (f)(3)(ii)(B), respectively.

Finally, for taxpayers using either the SRM or MSPM, allocation rules are provided to help taxpayers allocate these uncapitalized costs between storage and handling costs and current year purchasing costs, in the case of the SRM, and pre-production and production costs, in the case of the MSPM.

11. Smaller Taxpayers Using the SPM

The proposed regulations allowed taxpayers with average annual gross receipts of \$10,000,000 or less for the three previous taxable years to include negative adjustments in additional section 263A costs under the SPM.

One commenter stated that average annual gross receipts of \$10,000,000 or less does not accurately represent a "small taxpayer." The commenter suggested using the average aggregate value of ending inventory, rather than gross receipts, to identify this group of taxpayers. Both commenters also stated that small taxpayers would have difficulty complying with the MSPM.

The Treasury Department and the IRS do not believe that an average

aggregated ending inventory value accurately identifies smaller taxpayers because inventory value can fluctuate greatly within the taxable year, or from year to year. Accordingly, this suggestion is not adopted. However, to reduce compliance costs and burden for smaller taxpayers using the SPM and minimize the difficulty that smaller taxpayers may face complying with the MSPM, these final regulations allow taxpayers with average annual gross receipts of \$50,000,000 or less for the three previous taxable years to include negative adjustments in additional section 263A costs under the SPM.

12. Comments Regarding the HAR and the MSPM

The proposed regulations provided that a taxpayer using the MSPM could make the HAR election. Under the proposed regulations, a non-LIFO-method taxpayer using the MSPM with the HAR election calculates both a pre-production HAR and a production HAR, to be used for each taxable year within a qualifying period (in place of the actual pre-production absorption ratio and actual production absorption ratio). In the first taxable year following the close of a qualifying period—the recomputation year—if the taxpayer's actual pre-production absorption ratio or actual production absorption ratio is not within one-half of one percentage point (plus or minus) of the corresponding HAR, the taxpayer must use actual absorption ratios during an updated test period, and the qualifying period is not extended. A LIFO-method taxpayer using the MSPM with the HAR election, however, calculates a combined HAR to be used for each taxable year within a qualifying period (in place of the actual combined absorption ratio). In the recomputation year, if the LIFO-method taxpayer's actual combined absorption ratio is not within one-half of one percentage point (plus or minus) of the combined HAR, the taxpayer must use an actual combined absorption ratio during an updated test period, and the qualifying period is not extended.

One commenter suggested that the rules for determining whether a qualifying period is extended for LIFO taxpayers should also apply to non-LIFO-method taxpayers, and therefore, in the recomputation year, all taxpayers should use a combined HAR to compare to an actual combined absorption ratio. This suggestion is not adopted because calculating combined absorption ratios does not match the ratios required to be calculated by a non-LIFO-method taxpayer using the MSPM. A non-LIFO-method taxpayer using the MSPM is

required to calculate separate absorption ratios, even when using the HAR.

The proposed regulations also specifically requested comments on transition rules for taxpayers currently using the SPM with the HAR election that change to the MSPM, including comments on how the regulations should apply to taxpayers within a qualifying period as described in § 1.263A-2(b)(4)(ii)(C). One commenter suggested allowing taxpayers currently using the HAR that are changing to the MSPM with the HAR election to open a new test period. Additionally, one commenter suggested that taxpayers be permitted to make the change using a section 481(a) adjustment instead of a cut-off method.

Except as otherwise expressly provided by the Code or the regulations thereunder, section 446(e) and § 1.446-1(e)(2) require a taxpayer to secure the consent of the Commissioner before changing a method of accounting for federal income tax purposes. Section 1.446-1(e)(3)(ii) authorizes the Commissioner to prescribe administrative procedures setting forth the terms and conditions necessary for a taxpayer to obtain consent to a change in method of accounting. Revenue Procedure 2015-13, 2015-5 IRB 419, as clarified and modified by Rev. Proc. 2015-33, 2015-24 IRB 1067, as modified by Rev. Proc. 2016-1, 2016-1 IRB 1, and as modified by Rev. Proc. 2017-59, 2017-48 IRB 543, provides the general procedures by which a taxpayer may obtain automatic consent of the Commissioner to a change in method of accounting described in Rev. Proc. 2018-31, 2018-22 IRB 637. The automatic consent procedures reduce filing requirements, waive user fees, and extend filing deadlines normally associated with a request for change in method of accounting.

Simultaneously with the publication of these final regulations, the Treasury Department and the IRS are issuing Revenue Procedure 2018-56 (2018-50 IRB) to modify Rev. Proc. 2018-31 and provide the procedures by which a taxpayer may obtain automatic consent to make certain method changes to conform to these final regulations, such as a change to the MSPM by a taxpayer using the HAR.

13. Procedural Requirements for Changing Section 471 Costs or Changing to the MSPM

The proposed regulations did not provide procedural rules for taxpayers changing to comply with the final regulations. One commenter suggested that the automatic change procedures apply or that procedures be

implemented allowing the change to be made on an expedited basis.

Simultaneously with the publication of these final regulations, the Treasury Department and the IRS are issuing Revenue Procedure 2018-56 to modify Rev. Proc. 2018-31 and provide the procedures by which a taxpayer may obtain automatic consent to make certain method changes to conform to these final regulations, such as a change to comply with the new definition of section 471 costs or a change to the MSPM.

Effective Date

These final regulations are generally effective as of November 20, 2018 and apply for taxable years beginning on or after November 20, 2018. For any taxable year that both begins before November 20, 2018 and ends after November 20, 2018, the IRS will not challenge return positions consistent with all of these final regulations.

Special Analyses

Regulatory Planning and Review—Economic Analysis

Executive Orders 13563 and 12866 direct agencies to assess 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, reducing costs, of harmonizing rules, and of promoting flexibility.

These final regulations have been designated by the Office of Information and Regulatory Affairs (OIRA) as Significant under Executive Order 12866 and section 1(b) of the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget (OMB) regarding review of tax regulations and thereby subject to review under Executive Order 12866. Accordingly, these final regulations have been reviewed by OIRA.

A. Overview

These final regulations provide taxpayers with computational and definitional guidance regarding the application of section 263A under the simplified methods. Specifically, they provide guidance for taxpayers to determine the amount of additional section 263A costs to capitalize and make several changes regarding the application of section 263A under the

simplified methods to reduce compliance costs, burden, and administrative complexity. This economic analysis describes the economic benefits and costs of these final regulations.

B. Economic Analysis of the Final Regulations

1. Background

For a discussion of the background of these final regulations, see the Background sections of this preamble and the proposed regulations.

2. Anticipated Benefits and Costs of the Final Regulations

a. Baseline

The Treasury Department and the IRS have assessed the benefits and costs of these final regulations against a status quo baseline that reflects projected tax-related and other behavior in the absence of these final regulations and includes the effect of Notice 2007-29. Notice 2007-29 allows taxpayers to include negative adjustments in computing additional costs under section 263A and allows aggregate negative additional section 263 costs.

b. Anticipated Benefits

The Treasury Department and the IRS expect that the certainty and clarity provided by these final regulations as well as the substantive contribution of the regulations will enhance economic efficiency relative to the baseline.

In developing these final regulations, the Treasury Department and the IRS have generally aimed to apply the principle that an economically efficient tax system would treat income derived from similar economic decisions similarly, to the extent consistent with the Code and considerations of administrability of the tax system.

An economically efficient tax system would generally allow businesses to deduct from income taxes an amount meant to capture the economic cost of their capital investments. Under this principle, rules for capitalization and deductions are most efficient when they most closely mimic true economic depreciation. This conclusion is complicated by a large number of real world factors, including that economic depreciation is endogenous and difficult to measure and that the tax system itself will affect true depreciation. Furthermore, the principles from which the true-economic-depreciation prescription is derived are themselves based on a “pure” tax system rather than the complex real world tax code. The Treasury Department and the IRS do not anticipate substantial changes to

the aggregate cost of goods sold, the aggregate tax bases of other produced assets, or the depreciation deductions that will be generated under the new simplified method, the MSPM, relative to the baseline. Therefore these final regulations should not materially affect aggregate tax revenues or aggregate inventory investment relative to the baseline. There may be some modest increase in investment in inventory. For example, investment in raw materials inventory may increase under these final regulations because the relative tax cost of buying and carrying raw materials under the MSPM is generally less than under the SPM. Treatment of inventory under the simplified methods generally remains the same. Because the tax system requires a periodic determination of inventory, there was and still is, an incentive to minimize inventory as of that date, usually the end of the taxable year. The increased investment in raw materials inventory under the MSPM is due to the fact that inventory as of the determination date may be divided into pre-production and production inventory and a specific rate is applied to estimate overhead for each category. While under the SPM the inventory as of the determination date is not divided and one rate is used to estimate overhead for all inventory. There may also be a modest shifting of investment between different types of inventory because the MSPM should improve the measurement of certain types of final inventory and improved precision would generally lead to small adjustments in inventory amounts. Though no specific types of inventory are treated favorably, the modest shifting of investment is expected because the reduced carrying cost associated with maintaining raw materials inventory may encourage or allow some taxpayers to carry a larger quantity of raw materials for business purposes.

c. Anticipated Impacts on Administrative and Compliance Costs

The Treasury Department and the IRS expect that the certainty, clarity, and simplifying changes regarding the application of section 263A provided by these final regulations, relative to the baseline, will reduce annual compliance costs, burden, and administrative complexity. Absent these final regulations, different parties would continue to take different positions regarding the inclusion of negative adjustments in computing additional costs under section 263A and the permissibility of aggregate negative additional section 263A costs. More uniform positions by taxpayers will in

general reduce the costs of tax administration.

For taxpayers, the major cost savings of these final regulations derive from the reduction in the computational and record-keeping burdens involved with the use of the simplified methods for calculating end-of-year inventory. These burdens are reduced because taxpayers will now generally be able to use their own current financial accounting methods to determine their section 471 costs, albeit using cost amounts determined under tax law. Taxpayers with audited financial statements, or those who file regulatory financial statements, will also be able to use cost amounts determined according to financial accounting rules. In addition, taxpayers using a simplified method will be able to make positive and negative adjustments to their additional section 263A costs in cases where their section 471 costs, determined using financial accounting methods, either do not capitalize all actual costs or over-capitalized those costs. Finally, taxpayers using the SRM or the MSPM, and smaller taxpayers (those with average gross receipts of \$50 million or less) using the SPM will be able to make negative adjustments to their additional section 263A costs in cases where the capitalization of certain costs is either optional or not permitted under the tax law. It is anticipated that larger taxpayers using the SPM who desire such treatment will switch from using the SPM to the MSPM in order to continue to make these negative adjustments.

In addition, absent these final regulations, taxpayers and the IRS would: (1) Continue to be required to use definitions based on a taxpayer's accounting practices used in 1986; (2) continue to be required to use tax accounting rules, rather than their own financial accounting rules, to determine the allocation of certain capitalized amounts; (3) not be able to use the MSPM to more precisely determine the lump-sum of costs to capitalize; (4) not be able to use the new safe-harbors for direct labor and direct material costs not capitalized on a taxpayer's financial statements; and (5) not be able to use the *de minimis* rules for variances and under- or over-applied burden not capitalized on a taxpayer's financial statements. The changes in each of these directions under the final regulations will generally reduce taxpayer compliance costs. For example, under these final regulations, one definition of section 471 costs applies to all taxpayers, regardless of when the taxpayer came into existence. Previously, taxpayers in existence when

section 263A was enacted were required to use definitions based on their actual tax cost accounting practices as of enactment. However, taxpayers that were not in existence when section 263A was enacted were required to use definitions based on what their tax cost accounting practices would have been as of enactment under the law at that time. Under these final regulations, all taxpayers use their present financial statement cost accounting practices. Moreover, taxpayers using the simplified resale method or simplified production method will benefit from no longer being required to adjust their section 471 costs incurred during the taxable year to reflect tax adjustments in their respective simplified method formula. Rather, these simplified method taxpayers may use an alternative method that permits them to use their financial statement amounts for their section 471 costs incurred during the taxable year and make tax adjustments to these costs by using negative adjustments to their section 263A costs.

The most recently available Statistics of Income (SOI) indicates that approximately 30,000 taxpayers were subject to section 263A in 2015 and would be impacted by these final regulations. While the number of affected taxpayers will increase with growth in the economy, the Treasury Department and the IRS do not expect that these final regulations will change the portion of affected taxpayers that use a simplified method because those taxpayers not using a simplified method will likely continue to allocate capitalizable costs to specific items of property under their present method, and taxpayers using a simplified method are not likely to begin capitalizing costs to specific items of property due to these final regulations. The IRS's Office of Research, Applied Analytics, and Statistics (RAAS) estimate that these 30,000 taxpayers spent approximately 315,000 hours and \$26 million (\$2015) annually to comply with the simplified methods, as implemented under Notice 2007-29. The dollar burden is derived from RAAS's Business Taxpayer Burden model that relates time and out-of-pocket costs of business tax preparation, derived from survey data, to assets and receipts of affected taxpayers along with other relevant variables, and converted by the Treasury Department to 2015. See Tax Compliance Burden (John Guyton et al, July 2018) at <https://www.irs.gov/pub/irs-soi/d13315.pdf>. The Treasury Department and IRS then used this framework to estimate the

taxpayer burden associated with section 263A compliance under the final regulations. These estimates reflect the Treasury Department's and IRS's estimate that because these final regulations implement an approach

substantially consistent with current practice, but also offer taxpayers additional compliance simplifications, these final regulations will result in a reduction in the aggregate annual taxpayer compliance burden of

approximately ten percent. The estimated reduction in annual compliance burden for impacted taxpayers is summarized below.

ESTIMATED REDUCTION IN ANNUAL COMPLIANCE BURDEN (2015 levels)

| | Baseline | Final regulations | Burden reduction |
|---------------------|--------------|-------------------|------------------|
| Taxpayers | 30,000 | 30,000 | — |
| Hours | 315,000 | 283,500 | 31,500 |
| Cost (\$2015) | \$26,000,000 | \$23,400,000 | \$2,600,000 |

C. Paperwork Reduction Act

The collection of information in these final regulations is in § 1.263A–2(c)(4)(i). The collection of information in § 1.263A–2(c)(4)(i) only applies to taxpayers using the MPSM with HAR. The burden for the collection of information contained in these final regulations is reflected in the burden for §§ 1.263A–2(b)(4)(iii)(A) and (B) and 1.263A–3(d)(4)(iii)(A) and (B) and is not expected to change the previously determined estimated annual burden per respondent, the estimated annual burden per recordkeeper, or the estimated number of respondents because (i) taxpayers could previously use a simplified method with HAR, (ii) these final regulations do not make a simplified method with HAR more or less desirable, and (iii) only those taxpayers previously using a simplified method with HAR are likely to do so under these final regulations. For purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the reporting burden associated with § 1.263A–2(c)(4)(i) will be reflected in the IRS Form 14029, Paperwork Reduction Act Submission, associated with Form 1120 (OMB control number 1545–0123) at www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201706-1545-005.

D. Executive Order 13771

These final regulations are expected to be an Executive Order 13771 deregulatory action. Details on the estimated effects of this rule can be found in the rule's economic analysis.

E. Regulatory Flexibility Analysis

It is hereby certified that these final regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that: (1) Many small business taxpayers are no longer required to capitalize costs under section 263A if their average annual gross receipts are less than \$25,000,000;

(2) a taxpayer with average annual gross receipts of less than \$50,000,000 may continue to use the simplified production method and the simplified production method with a historical absorption rate (HAR) with negative amounts in additional section 263A costs; and (3) a relatively small number of taxpayers use a simplified method with HAR compared to a simplified method without HAR and, therefore, it is expected that few small business taxpayers will use the modified simplified production method with HAR. Thus, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

F. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. In 2018, that threshold is approximately \$150 million. This rule does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

G. Executive Order 13132: Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on

state and local governments or preempt state law within the meaning of the Executive Order.

Drafting Information

The principal author of these final regulations is Natasha M. Mulleneaux of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART I—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by revising the sectional authority entries for §§ 1.263A–1, 1.263A–2, 1.263A–3 and 1.263A–7, and adding a sectional authority for § 1.471–3 in numerical order to read in part as follows:

- Authority: 26 U.S.C. 7805.
- * * * * *
- Section 1.263A–1 also issued under 26 U.S.C. 263A(j).
- Section 1.263A–2 also issued under 26 U.S.C. 263A(j).
- Section 1.263A–3 also issued under 26 U.S.C. 263A(j).
- * * * * *
- Section 1.263A–7 also issued under 26 U.S.C. 263A(j).
- * * * * *
- Section 1.471–3 issued under 26 U.S.C. 471(a).
- * * * * *

■ **Par. 2.** Section 1.263A–0 is amended by:

- 1. Revising the entry for § 1.263A–1(d)(2)(ii).
- 2. Adding entries for § 1.263A–1(d)(2)(ii)(A) and (B).

- 3. Revising the entry for § 1.263A–1(d)(2)(iii).
- 4. Adding entries for § 1.263A–1(d)(2)(iii)(A) through (E), (d)(2)(iv), (d)(2)(iv)(A) through (E), (d)(2)(v), (d)(2)(v)(A) through (E), and (d)(2)(vi) and (vii).
- 5. Adding entries for § 1.263A–1(d)(3)(i), (d)(3)(ii), and (d)(3)(ii)(A) through (E).
- 6. Adding entries for § 1.263A–1(d)(5) and (6).
- 7. Adding entries for § 1.263A–2(b)(4)(v)(A) and (B).
- 8. Revising the entry for § 1.263A–2(c).
- 9. Adding entries for § 1.263A–2(c)(1), (c)(2), (c)(2)(i) and (ii), (c)(3), (c)(3)(i), (c)(3)(i)(A) and (B), (c)(3)(ii), (c)(3)(ii)(A) and (B), (c)(3)(ii)(B)(1) and (2), (c)(3)(ii)(C) and (D), (c)(3)(ii)(D)(1) through (4), (c)(3)(ii)(E) and (F), (c)(3)(iii), (c)(3)(iii)(A) through (C), (c)(3)(iv), (c)(3)(iv)(A) and (B), (c)(3)(iv)(B)(1) and (2), (c)(3)(iv)(C), (c)(3)(v) and (vi), (c)(4), (c)(4)(i) and (ii), (c)(4)(ii)(A) and (B), (c)(4)(iii), (c)(4)(iii)(A) and (B), (c)(4)(iii)(B)(1) and (2), and (c)(4)(iv) and (v).
- 10. Revising the entry for § 1.263A–2(d).
- 11. Revising the entry for § 1.263A–2(e).
- 12. Removing the entries for § 1.263A–2(e)(1) through (5).
- 13. Revising the entry for § 1.263A–2(f).
- 14. Adding entries for § 1.263A–2(f)(1) through (5).
- 15. Adding an entry for § 1.263A–2(g).
- 16. Adding entries for § 1.263A–3(d)(4)(v)(A) and (B).

The revisions and additions read as follows:

§ 1.263A–0 Outline of regulations under section 263A.

* * * * *

§ 1.263A–1 Uniform Capitalization of Costs.

* * * * *

- (d) * * *
- (2) * * *
- (ii) Inclusion of direct costs.
 - (A) In general.
 - (B) Allocation of direct costs.
 - (iii) Alternative method to determine amounts of section 471 costs by using taxpayer’s financial statement.
 - (A) In general.
 - (B) Book-to-tax adjustments.
 - (C) Exclusion of certain financial statement items.
 - (D) Changes in method of accounting.
 - (E) Examples.
 - (iv) De minimis rule exceptions for certain direct costs.
 - (A) In general.

- (B) De minimis rule for certain direct labor costs.
- (C) De minimis rule for certain direct material costs.
 - (D) Taxpayers using a historic absorption ratio.
 - (E) Examples.
 - (v) Safe harbor method for certain variances and under or over-applied burdens.
 - (A) In general.
 - (B) Consistency requirement.
 - (C) Allocation of variances and under or over-applied burdens between production and preproduction costs under the modified simplified production method.
 - (D) Allocation of variances and under or over-applied burdens between storage and handling costs absorption ratio and purchasing costs absorption ratio under the simplified resale method.
 - (E) Method of accounting.
 - (vi) Removal of section 471 costs.
 - (vii) Method changes.
 - (3) * * *
 - (i) In general.
 - (ii) Negative adjustments.
 - (A) In general.
 - (B) Exception for certain taxpayers removing costs from section 471 costs.
 - (C) No negative adjustments for cash or trade discounts.
 - (D) No negative adjustments for certain expenses.
 - (E) Consistency requirement for negative adjustments.
 - (4) Section 263A costs.
 - (5) Classification of costs.
 - (6) Financial statement.

§ 1.263A–2 Rules Relating to Property Produced by the Taxpayer.

* * * * *

- (b) * * *
- (4) * * *
- (v) * * *
- (A) Transition to elect historic absorption ratio.
 - (B) Transition to revoke historic absorption ratio.
 - (c) Modified simplified production method.
 - (1) Introduction.
 - (2) Eligible property.
 - (i) In general.
 - (ii) Election to exclude self-constructed assets.
 - (3) Modified simplified production method without historic absorption ratio election.
 - (i) General allocation formula.
 - (A) In general.
 - (B) Effect of allocation.
 - (ii) Definitions.
 - (A) Direct material costs.
 - (B) Pre-production absorption ratio.

- (1) Pre-production additional section 263A costs.
- (2) Pre-production section 471 costs.
 - (C) Pre-production section 471 costs remaining on hand at year end.
 - (D) Production absorption ratio.
 - (1) Production additional section 263A costs.
 - (2) Residual pre-production additional section 263A costs.
 - (3) Production section 471 costs.
 - (4) Direct materials adjustment.
 - (E) Production section 471 costs remaining on hand at year end.
 - (F) Costs allocated to property sold.
 - (iii) Allocable mixed service costs.
 - (A) In general.
 - (B) Taxpayer using the simplified service cost method.
 - (C) De minimis rule.
 - (iv) LIFO taxpayers electing the modified simplified production method.
 - (A) In general.
 - (B) LIFO increment.
 - (1) In general.
 - (2) Combined absorption ratio defined.
 - (C) LIFO decrement.
 - (v) De minimis rule for producers with total indirect costs of \$200,000 or less.
 - (vi) Examples.
 - (4) Modified simplified production method with historic absorption ratio election.
 - (i) In general.
 - (ii) Operating rules and definitions.
 - (A) Pre-production historic absorption ratio.
 - (B) Production historic absorption ratio.
 - (iii) LIFO taxpayers making the historic absorption ratio election.
 - (A) In general.
 - (B) Combined historic absorption ratio.
 - (1) Total allocable additional section 263A costs incurred during the test period.
 - (2) Total section 471 costs remaining on hand at each year end of the test period.
 - (iv) Extension of qualifying period.
 - (v) Examples.
 - (d) Additional simplified methods for producers.
 - (e) Cross reference.
 - (f) Change in method of accounting.
 - (1) In general.
 - (2) Scope limitations.
 - (3) Audit protection.
 - (4) Section 481(a) adjustment.
 - (5) Time for requesting change.
 - (g) Effective/applicability date.

§ 1.263A–3 Rules Relating to Property Acquired for Resale.

* * * * *

- (d) * * *

(4) * * *

(v) * * *

(A) Transition to elect historic absorption ratio.

(B) Transition to revoke historic absorption ratio.

* * * * *

■ **Par. 3.** Section 1.263A–1 is amended by:

■ 1. Revising the last sentence of paragraph (c)(1).

■ 2. Revising paragraphs (d)(2) and (3).

■ 3. Adding paragraphs (d)(5) and (6).

■ 4. Revising the third sentence of paragraph (f)(1).

■ 5. In paragraphs (f)(3)(i)(C) and (f)(3)(ii)(B), removing the language “financial reports” and adding “financial statement” in its place.

■ 6. Revising paragraph (h)(9).

■ 7. Adding paragraph (l)(5).

The revisions and additions read as follows:

§ 1.263A–1 Uniform capitalization of costs.

* * * * *

(c) * * *

(1) * * * See however, the simplified production method, the modified simplified production method, and the simplified resale method in §§ 1.263A–2(b) and (c) and 1.263A–3(d).

* * * * *

(d) * * *

(2) *Section 471 costs—(i) In general.*

Except as otherwise provided in paragraphs (d)(2)(ii), (iv), (v), and (vi) of this section, for purposes of section 263A, a taxpayer’s section 471 costs are the types of costs, other than interest, that a taxpayer capitalizes to property produced or property acquired for resale in its financial statement. Thus, although section 471 applies only to inventories, section 471 costs include any non-inventory costs, other than interest, that a taxpayer capitalizes to, or includes in acquisition or production costs of, property produced or property acquired for resale in its financial statement. Except as otherwise provided in paragraph (d)(2)(iii) of this section, a taxpayer determines the amounts of section 471 costs by using the amounts of such costs that are incurred in the taxable year for federal income tax purposes.

(ii) *Inclusion of direct costs—(A) In general.* Notwithstanding the last sentence of paragraph (g)(2) of this section, a taxpayer’s section 471 costs must include all direct costs of property produced and property acquired for resale, whether or not a taxpayer capitalizes these costs to property produced or property acquired for resale in its financial statement. See paragraph (e)(2) of this section for a description of

direct costs of property produced and property acquired for resale.

(B) *Allocation of direct costs.* Except for any direct costs that are treated as additional section 263A costs under paragraphs (d)(2)(iv) and (v) of this section, a taxpayer’s direct costs of property produced and property acquired for resale must be allocated using a method provided in paragraph (f) of this section.

(iii) *Alternative method to determine amounts of section 471 costs by using taxpayer’s financial statement—(A) In general.* In lieu of determining the amounts of section 471 costs under paragraph (d)(2)(i) of this section, a taxpayer described in paragraph (d)(3)(ii)(B) of this section may determine the amounts of section 471 costs by using the amounts of such costs that are incurred in the taxable year in its financial statement using the taxpayer’s financial statement methods of accounting if the taxpayer’s financial statement is described in paragraph (d)(6)(i), (ii), or (iii) of this section. If the taxpayer’s financial statement is described only in paragraph (d)(6)(iv) of this section, the taxpayer may not use the alternative method described in this paragraph (d)(2)(iii) and must use the method described in paragraph (d)(2)(i) of this section to determine its amounts of section 471 costs. A taxpayer using the alternative method described in this paragraph (d)(2)(iii) must remove all section 471 costs described in paragraph (d)(2)(vi) of this section, if any, by including negative adjustments in additional section 263A costs. A taxpayer using the alternative method described in this paragraph (d)(2)(iii) applies the method to all of its section 471 costs, including costs described under paragraphs (d)(2)(ii), (iv), (v), and (vi) of this section.

(B) *Book-to-tax adjustments.* A taxpayer using the alternative method described in this paragraph (d)(2)(iii) must include as additional section 263A costs all negative and positive adjustments required to be made as a result of differences in the book and tax amounts of the taxpayer’s section 471 costs, including adjustments for direct costs required to be added to section 471 costs under paragraph (d)(2)(ii) of this section, and costs removed from section 471 costs under paragraphs (d)(2)(vi) and (d)(3)(ii)(B) of this section. In addition, the taxpayer must include as additional section 263A costs all negative and positive adjustments required to be made as a result of differences in the book and tax amounts of section 471 costs that are treated as additional section 263A costs (for example, de minimis direct costs

described in paragraph (d)(2)(iv) of this section and certain variances and under or over-applied burdens described in paragraph (d)(2)(v) of this section). For purposes of determining the negative and positive adjustments required to be made as a result of differences in book and tax amounts for a taxpayer using the burden rate or standard cost methods described in paragraph (f)(3) of this section, the taxpayer compares the actual amount of the cost incurred in the taxable year for federal income tax purposes to the actual amount of the cost incurred in the taxable year in its financial statement using the taxpayer’s financial statement methods of accounting, regardless of how the taxpayer treats its variances or under or over-applied burdens.

(C) *Exclusion of certain financial statement items.* A taxpayer that determines the amounts of section 471 costs under this paragraph (d)(2)(iii) may not include any financial statement write-downs, reserves, or other financial statement valuation adjustments when determining the amounts of its section 471 costs.

(D) *Changes in method of accounting.* The use of this method to determine the amounts of section 471 costs under this paragraph (d)(2)(iii) is the adoption of, or a change in, a method of accounting under section 446 of the Internal Revenue Code.

(E) *Examples.* The following examples illustrate this paragraph (d)(2)(iii):

(1) *Example 1—Alternative-method taxpayer using de minimis direct labor costs rule.* Taxpayer P uses the modified simplified production method described in § 1.263A–2(c) and determines its amounts of section 471 costs by using the alternative method under paragraph (d)(2)(iii) of this section. Additionally, P uses the de minimis direct labor costs rule under paragraph (d)(2)(iv)(B) of this section. P does not capitalize vacation pay or holiday pay to property produced or property acquired for resale in its financial statement but does capitalize all other direct labor costs to such property in its financial statement. On its 2018 financial statement, P incurs \$3,500,000 of total direct labor costs, including \$110,000 of vacation pay costs and \$10,000 of holiday pay costs. For federal income tax purposes, P incurs \$150,000 of vacation pay costs and \$18,000 of holiday pay costs in the taxable year. P’s uncapitalized direct labor costs are \$120,000 (\$110,000 of vacation pay plus \$10,000 of holiday pay). For purposes of the five percent test in paragraph (d)(2)(iv)(B) of this section, P’s uncapitalized direct labor costs are 3.43% of total direct labor costs (\$120,000 divided by \$3,500,000). Accordingly, under paragraph (d)(2)(iv)(B) of this section, P includes \$120,000 in its additional section 263A costs and excludes that amount from its section 471 costs in the taxable year. Additionally, pursuant to paragraph (d)(2)(iii)(B) of this section, P includes in

additional section 263A costs a positive book-to-tax adjustment of \$40,000 for vacation pay costs (\$150,000 tax amount – \$110,000 book amount) and a positive book-to-tax adjustment of \$8,000 for holiday pay costs (\$18,000 tax amount – \$10,000 book amount).

(2) *Example 2—Alternative-method taxpayer with under and over-applied burdens that uses safe harbor rule for certain variances and under or over-applied burdens.* Taxpayer X uses the modified simplified production method described in § 1.263A–2(c) and determines its amounts of section 471 costs by using the alternative method under paragraph (d)(2)(iii) of this section. In 2018, X uses a burden rate method for book purposes to allocate costs to Products A and B, and does not capitalize any under or over-applied burdens to property produced or property acquired for resale in its financial statement. X does not allocate costs to any other products using a burden rate method, and X does not allocate costs to any products using a standard cost method. On its 2018 financial statement, using X's burden rate, the total amount of predetermined indirect costs for Product A is \$545,000 and the total amount of actual indirect costs incurred for Product A is \$550,000; accordingly, X has an under-applied burden of \$5,000 for Product A. For federal income tax purposes, the actual indirect costs incurred in 2018 for Product A is \$560,000. Additionally, on its 2018 financial statement, using X's burden rate, the total amount of predetermined indirect costs for Product B is \$250,000 and the total amount of actual indirect costs incurred for Product B is \$225,000; accordingly, X has an over-applied burden of \$25,000 for Product B. For federal income tax purposes, the actual indirect costs incurred in 2018 for Product B is \$240,000. X uses the safe harbor rule for certain variances and under or over-applied burdens. Prior to the application of this safe harbor rule, X's total section 471 costs for 2018 for Products A and B (the only items to which X allocates costs using a standard cost method or burden rate method) are \$2,000,000, which includes \$550,000 actual indirect costs for Product A, \$225,000 actual indirect costs for Product B, and \$1,225,000 of other section 471 costs for Products A and B that are not allocated under X's burden rate method. For purposes of determining the amount of uncanceled variances and uncanceled under or over-applied burdens for the five percent test in paragraph (d)(2)(v)(A) of this section, X's under and over-applied burdens for Products A and B are treated as positive amounts. Consequently, the sum of X's uncanceled variances and uncanceled under or over-applied burdens is \$30,000 (\$5,000 under-applied burden for Product A plus \$25,000 over-applied burden for Product B). Accordingly, under paragraph (d)(2)(v)(A) of this section, the sum of X's uncanceled variances and uncanceled under or over-applied burdens is 1.5% of X's total section 471 costs for all items to which it allocates costs using a standard cost method or burden rate method (\$30,000 divided by \$2,000,000), and X includes a positive \$5,000 under-applied burden for Product A and a negative

\$25,000 over-applied burden for Product B in its additional section 263A costs, and excludes those amounts from its section 471 costs. Additionally, pursuant to paragraph (d)(2)(iii)(B) of this section, X includes in its additional section 263A costs a positive book-to-tax adjustment of \$10,000 for Product A (\$560,000 actual cost tax amount – \$550,000 actual cost book amount) and a positive book-to-tax adjustment of \$15,000 for Product B (\$240,000 actual tax amount cost – \$225,000 actual book amount cost) in the taxable year.

(iv) *De minimis rule exceptions for certain direct costs—(A) In general.* Notwithstanding paragraph (d)(2)(ii) of this section, a taxpayer that uses the simplified resale method, the simplified production method, or the modified simplified production method, and that does not capitalize certain direct costs to property produced or property acquired for resale in its financial statement (uncanceled direct labor costs or uncanceled direct material costs), may use either or both the de minimis direct labor costs rule or the de minimis direct material costs rule to include in additional section 263A costs, and exclude from section 471 costs, certain uncanceled direct labor costs or uncanceled direct material costs that are incurred in the taxable year as provided in paragraphs (d)(2)(iv)(B) and (C) of this section, respectively. The use of the de minimis rules described in paragraphs (d)(2)(iv)(B) and (C) of this section is the adoption of, or a change in, a method of accounting under section 446 of the Internal Revenue Code.

(B) *De minimis rule for certain direct labor costs.* A taxpayer described in paragraph (d)(2)(iv)(A) of this section that uses the de minimis rule described in this paragraph (d)(2)(iv)(B) includes in additional section 263A costs, and excludes from section 471 costs, the sum of the amounts of all of those uncanceled direct labor costs that are incurred in the taxable year, if that sum is less than five percent of total direct labor costs incurred in the taxable year (whether or not capitalized in the taxpayer's financial statement), or another amount specified in other published guidance (see § 601.601(d)(2) of this chapter). For purposes of determining the amount of uncanceled direct labor costs for this five percent test, any amounts that constitute a reduction to costs are treated as a positive amount. The amounts of uncanceled direct labor costs used for the five percent test, and the amounts of uncanceled direct labor costs included in additional section 263A costs under this paragraph (d)(2)(iv)(B), must not include amounts relating to basic compensation or

overtime, or the types of costs included in the taxpayer's standard cost or burden rate methods used for section 471 costs (but see paragraphs (d)(2)(v) and (f)(3)(i)(C) of this section for special rules for certain variances and under or over-applied burdens).

(C) *De minimis rule for certain direct material costs.* A taxpayer described in paragraph (d)(2)(iv)(A) of this section that uses the de minimis rule described in this paragraph (d)(2)(iv)(C) includes in additional section 263A costs, and excludes from section 471 costs, the sum of the amounts of all of those uncanceled direct material costs that are incurred in the taxable year, if that sum is less than five percent of total direct material costs incurred in the taxable year (whether or not capitalized in the taxpayer's financial statement), or another amount specified in other published guidance (see § 601.601(d)(2) of this chapter). For purposes of determining the amount of uncanceled direct material costs for this five percent test, any amounts that constitute a reduction to costs, such as cash and trade discounts, are treated as a positive amount. The amounts of uncanceled direct material costs used for the five percent test, and the amounts of uncanceled direct material costs included in additional section 263A costs under this paragraph (d)(2)(iv)(C), must not include the types of costs included in the taxpayer's standard cost method used for section 471 costs (but see paragraphs (d)(2)(v) and (f)(3)(ii)(B) of this section for special rules for certain variances).

(D) *Taxpayers using a historic absorption ratio.* A taxpayer that uses the historic absorption ratio provided in § 1.263A–2(b)(4) or (c)(4) or § 1.263A–3(d)(4), and that uses a de minimis rule described in paragraph (d)(2)(iv) of this section during its test period or updated test period, determines whether direct labor costs or direct material costs, as applicable, are included in any of its section 471 costs remaining on hand at year end during its qualifying period or extended qualifying period according to how those direct labor costs or direct material costs, respectively, are identified in at least two of the three years of the taxpayer's applicable test period or updated test period. If a taxpayer described in this paragraph (d)(2)(iv)(D) is required to revise any of its actual absorption ratios for its test period or updated test period as a result of a change in a method of accounting, the taxpayer determines whether direct labor costs or direct material costs, as applicable, are included in any of its section 471 costs on hand at year end during a qualifying period or extended

qualifying period according to how those direct labor costs or direct material costs, respectively, are identified in the taxpayer's revised actual absorption ratios during its applicable test period or updated test period.

(E) *Examples.* The following examples illustrate this paragraph (d)(2)(iv):

(1) *Example 1—Taxpayer using de minimis direct material costs rule.* Taxpayer R uses the modified simplified production method described in § 1.263A-2(c) and the de minimis method of accounting under paragraph (d)(2)(iv)(C) of this section. In 2018, R does not capitalize freight-in costs or trade discounts to property produced or property acquired for resale in its financial statement but does capitalize all other direct material costs to such property in its financial statement. R incurs total direct material costs of \$3,105,000, which represents invoice price of \$3,000,000 on goods purchased, plus \$120,000 of freight-in costs, less \$15,000 for trade discounts. For purposes of determining the amount of uncapitalized direct material costs for the five percent test in paragraph (d)(2)(iv)(C) of this section, R's trade discounts are treated as a positive amount. Consequently, R's uncapitalized direct material costs for purposes of the five percent test are \$135,000 (\$120,000 of freight-in plus \$15,000 of trade discounts). Accordingly, under paragraph (d)(2)(iv)(C) of this section, R's uncapitalized direct material costs are 4.35% of total direct material costs (\$135,000 divided by \$3,105,000), and R includes a positive \$120,000 of freight-in and a negative \$15,000 of trade discounts in its additional section 263A costs and excludes those amounts from its section 471 costs in the taxable year.

(2) *Example 2—Taxpayer using de minimis direct labor costs rule and historic absorption ratio.* Taxpayer S uses the historic absorption ratio provided in § 1.263A-2(c)(4). S uses the de minimis method of accounting under paragraph (d)(2)(iv)(B). S excludes certain uncapitalized direct labor costs from its section 471 costs (and includes them in additional section 263A costs) under paragraph (d)(2)(iv)(B) of this section in Years 1 and 3 of its applicable test period. Because S excluded direct labor costs from its section 471 costs in at least two of the three years of its applicable test period, S must exclude those same costs from its pre-production and production section 471 costs remaining on hand at year end during its qualifying period or extended qualifying period.

(v) *Safe harbor method for certain variances and under or over-applied burdens—(A) In general.* Notwithstanding paragraphs (d)(2)(i) and (ii), (f)(3)(i)(C), and (f)(3)(ii)(B) of this section, a taxpayer that uses the simplified resale method, the simplified production method, or the modified simplified production method, may use the safe harbor method described in this paragraph (d)(2)(v)(A) for all of its variances and under or over-applied

burdens that are not capitalized to property produced or property acquired for resale in its financial statement (uncapitalized variances and uncapitalized under or over-applied burdens). A taxpayer using this safe harbor method must include in additional section 263A costs, and exclude from section 471 costs, the sum of the amounts of all of those uncapitalized variances and uncapitalized under or over-applied burdens for the taxable year, if that sum is less than five percent of the taxpayer's total section 471 costs for all items to which it allocates costs using a standard cost method or burden rate method, or another percentage specified in other published guidance (see § 601.601(d)(2) of this chapter). If the sum of uncapitalized variances and uncapitalized under or over-applied burdens is not less than this five percent threshold, the taxpayer may not exclude such uncapitalized variances and uncapitalized under or over-applied burdens from section 471 costs, and must reallocate such uncapitalized variances and uncapitalized under or over-applied burdens to or among the units of property to which the costs are allocable in accordance with paragraphs (f)(3)(i)(C) and (f)(3)(ii)(B) of this section (but see paragraph (d)(2)(v)(B) of this section for a rule that a taxpayer using the safe harbor method described in this paragraph (d)(2)(v)(A) may not use the methods of accounting described in paragraphs (f)(3)(i)(C) and (f)(3)(ii)(B) of this section to treat certain uncapitalized variances and certain uncapitalized under or over-applied burdens as not allocable to property). For purposes of determining the amounts of uncapitalized variances and uncapitalized under or over-applied burdens for this five percent test, all variances and under or over-applied burdens are treated as positive amounts. Additionally, for purposes of this five percent test, a taxpayer's total section 471 costs for all items to which it allocates costs using a standard cost method or burden rate method are determined before application of the safe harbor method described in this paragraph (d)(2)(v)(A), and therefore this amount must reflect the actual amounts incurred by the taxpayer for those items during the taxable year, which includes variances and under or over-applied burdens. The variances described in this paragraph (d)(2)(v)(A) include any variances on cash or trade discounts, if those discounts are capitalized as part of the taxpayer's standard cost method used for section 471 costs.

(B) *Consistency requirement.* A taxpayer using the safe harbor method described in paragraph (d)(2)(v)(A) of this section must use the method consistently for all items to which it allocates costs using a standard cost method or burden rate method and may not use the methods of accounting described in paragraphs (f)(3)(i)(C) and (f)(3)(ii)(B) of this section to treat its uncapitalized variances and uncapitalized under or over-applied burdens that are not significant in amount relative to the taxpayer's total indirect costs incurred with respect to production and resale activities for the year as not allocable to property produced or property acquired for resale.

(C) *Allocation of variances and under or over-applied burdens between production and preproduction costs under the modified simplified production method.* In the case of a taxpayer using the modified simplified production method and the safe harbor method described in paragraph (d)(2)(v)(A) of this section, uncapitalized variances and uncapitalized under or over-applied burdens treated as additional section 263A costs under the safe harbor method must be allocated between production additional section 263A costs, as described in § 1.263A-2(c)(3)(ii)(D)(1), and pre-production additional section 263A costs, as described in § 1.263A-2(c)(3)(ii)(B)(1), using any reasonable method. In the case of a taxpayer using the modified simplified production method and the safe harbor method described in paragraph (d)(2)(v)(A) of this section, uncapitalized variances and uncapitalized under or over-applied burdens that are not excluded from section 471 costs must be allocated between production section 471 costs, as described in § 1.263A-2(c)(3)(ii)(D)(3), and pre-production section 471 costs, as described in § 1.263A-2(c)(3)(ii)(B)(2) based on the taxpayer's reallocation of such uncapitalized variances and uncapitalized under or over-applied burdens to or among the units of property to which the costs are allocable in accordance with paragraphs (f)(3)(i)(C) and (f)(3)(ii)(B) of this section, as described in paragraph (d)(2)(v)(A) of this section.

(D) *Allocation of variances and under or over-applied burdens between storage and handling costs absorption ratio and purchasing costs absorption ratio under the simplified resale method.* In the case of a taxpayer using the simplified resale method, any uncapitalized variances and uncapitalized under or over-applied

burdens treated as additional section 263A costs under the safe harbor method described in paragraph (d)(2)(v)(A) of this section must be allocated between storage and handling costs, as described in § 1.263A-3(d)(3)(i)(D)(2), and current year's purchasing costs, as described in § 1.263A-3(d)(3)(i)(E)(2), using any reasonable method.

(E) *Method of accounting.* The use of the safe harbor method described in this paragraph (d)(2)(v) is the adoption of, or a change in, a method of accounting under section 446 of the Internal Revenue Code.

(vi) *Removal of section 471 costs.* A taxpayer must remove those costs included in its section 471 costs that are not permitted to be capitalized under either paragraph (c)(2) or (j)(2)(ii) of this section and those costs included in its section 471 costs that are eligible for capitalization under paragraph (j)(2) of this section that the taxpayer does not elect to capitalize under section 263A. Except as otherwise provided in paragraph (d)(3)(ii)(B) of this section, a taxpayer must remove costs pursuant to this paragraph (d)(2)(vi) by adjusting its section 471 costs and may not remove the costs by including a negative adjustment in its additional section 263A costs. A taxpayer that removes costs pursuant to this paragraph (d)(2)(vi) by adjusting its section 471 costs must use a reasonable method that approximates the manner in which the taxpayer originally capitalized the costs to its property produced or property acquired for resale in its financial statement.

(vii) *Method changes.* A taxpayer using the simplified production method, simplified resale method, or the modified simplified production method and that changes its financial statement practices for a cost in a manner that would change its section 471 costs is required to change its method of accounting for federal income tax purposes. A taxpayer may change its method of accounting for determining section 471 costs only with the consent of the Commissioner as required under section 446(e) and the corresponding regulations.

(3) *Additional section 263A costs—(i) In general.* Additional section 263A costs are the costs, other than interest, that are not included in a taxpayer's section 471 costs but that are required to be capitalized under section 263A. Additional section 263A costs generally do not include the direct costs that are required to be included in a taxpayer's section 471 costs under paragraph (d)(2)(ii) of this section; however, additional section 263A costs must

include any direct costs excluded from section 471 costs under paragraphs (d)(2)(iv) and (v) of this section. For a taxpayer using the alternative method described in paragraph (d)(2)(iii) of this section, additional section 263A costs must also include any negative or positive adjustments required to be made as a result of differences in the book and tax amounts of the taxpayer's section 471 costs.

(ii) *Negative adjustments—(A) In general.* Except as otherwise provided by regulations or other published guidance (see § 601.601(d)(2) of this chapter), a taxpayer may not include negative adjustments in additional section 263A costs. However, for a taxpayer using the alternative method described in paragraph (d)(2)(iii) of this section, see paragraph (d)(2)(iii)(B) of this section for negative or positive adjustments required to be made as a result of differences in the book and tax amounts of the taxpayer's section 471 costs.

(B) *Exception for certain taxpayers removing costs from section 471 costs.* Notwithstanding paragraphs (d)(2)(vi) and (d)(3)(ii)(A) of this section, and except as otherwise provided in paragraphs (d)(3)(ii)(C) and (D) of this section, the following taxpayers may, but are not required to, include negative adjustments in additional section 263A costs to remove the taxpayer's section 471 costs that are described in paragraph (d)(2)(vi) of this section (costs that are not required to be, or are not permitted to be, capitalized under section 263A):

(1) A taxpayer using the simplified production method under § 1.263A-2(b) if the taxpayer's (or its predecessor's) average annual gross receipts for the three previous taxable years (test period) do not exceed \$50,000,000, or another amount specified in other published guidance (see § 601.601(d)(2) of this chapter). The rules of § 1.263A-3(b) apply for purposes of determining the amount of a taxpayer's gross receipts and the test period;

(2) A taxpayer using the modified simplified production method under § 1.263A-2(c); and

(3) A taxpayer using the simplified resale method under § 1.263A-3(d).

(C) *No negative adjustments for cash or trade discounts.* A taxpayer may not include negative adjustments in additional section 263A costs for cash or trade discounts described in § 1.471-3(b). However, see paragraph (d)(2)(iv)(C) of this section for a de minimis rule for certain direct material costs that may be included in additional section 263A costs and paragraph (d)(2)(v) of this section for certain

variance amounts that may be included in additional section 263A costs.

(D) *No negative adjustments for certain expenses.* A taxpayer may not include negative adjustments in additional section 263A costs for an amount which is of a type for which a deduction would be disallowed under section 162(c), (e), (f), or (g) and the regulations thereunder in the case of a business expense.

(E) *Consistency requirement for negative adjustments.* A taxpayer that is permitted to include negative adjustments in additional section 263A costs to remove section 471 costs under paragraph (d)(3)(ii)(B) of this section and that includes negative adjustments to remove section 471 costs must use that method of accounting to remove all section 471 costs required to be removed under paragraph (d)(2)(vi) of this section.

* * * * *

(5) *Classification of costs.* A taxpayer must classify section 471 costs, additional section 263A costs, and any permitted adjustments to section 471 or additional section 263A costs, using the narrower of the classifications of costs described in paragraphs (e)(2), (3), and (4) of this section, whether or not the taxpayer is required to maintain inventories, or the classifications of costs used by a taxpayer in its financial statement. If a cost is not described in paragraph (e)(2), (3), or (4) of this section, the cost is to be classified using the classification of costs used in the taxpayer's financial statement.

(6) *Financial statement.* For purposes of section 263A, financial statement means the taxpayer's financial statement listed in paragraphs (d)(6)(i) through (iv) of this section that has the highest priority, including within paragraphs (d)(6)(ii) and (iv) of this section. The financial statements are, in descending priority:

(i) A financial statement required to be filed with the Securities and Exchange Commission (SEC) (the 10-K or the Annual Statement to Shareholders);

(ii) A certified audited financial statement that is accompanied by the report of an independent certified public accountant (or in the case of a foreign entity, by the report of a similarly qualified independent professional) that is used for:

(A) Credit purposes;

(B) Reporting to shareholders, partners, or similar persons; or

(C) Any other substantial non-tax purpose;

(iii) A financial statement (other than a tax return) required to be provided to

the federal or a state government or any federal or state agency (other than the SEC or the Internal Revenue Service); or (iv) A financial statement that is used for:

- (A) Credit purposes;
- (B) Reporting to shareholders, partners, or similar persons; or
- (C) Any other substantial non-tax purpose.

* * * * *

(f) * * *
 (1) * * * In addition, in lieu of a facts-and-circumstances allocation method, taxpayers may use the simplified methods provided in §§ 1.263A-2(b) and (c) and 1.263A-3(d) to allocate direct and indirect costs to eligible property produced or eligible property acquired for resale; see those sections for definitions of eligible property. * * *

* * * * *

(h) * * *
 (9) *Separate election.* A taxpayer may elect the simplified service cost method in conjunction with any other allocation method used at the trade or business level, including the simplified methods described in §§ 1.263A-2(b) and (c) and 1.263A-3(d). However, the election of the simplified service cost method must be made independently of the election to use those other simplified methods.

* * * * *

(l) * * *
 (5) *Definitions of section 471 costs and additional section 263A costs.* Paragraphs (d)(2) and (3) of this section apply for taxable years beginning on or after November 20, 2018. For any taxable year that both begins before November 20, 2018 and ends after November 20, 2018, the IRS will not challenge return positions consistent with all of paragraphs (d)(2) and (3) of this section.

■ **Par. 4.** Section 1.263A-2 is amended by:

- 1. Revising paragraph (a)(5).
- 2. Designating the text of paragraph (b)(4)(v) as paragraph (b)(4)(v)(A) and adding a paragraph heading.
- 3. Adding paragraph (b)(4)(v)(B).
- 4. Redesignating paragraphs (c), (d), (e), and (f) as paragraphs (d), (e), (f), and (g).
- 5. Adding a new paragraph (c).
- 6. Adding paragraph (g)(3).

The revision and additions read as follows:

§ 1.263A-2 Rules relating to property produced by the taxpayer.

(a) * * *

(5) *Taxpayers required to capitalize costs under this section.* This section generally applies to taxpayers that produce property. If a taxpayer is engaged in both production activities and resale activities, the taxpayer applies the principles of this section as if it read production or resale activities, and by applying appropriate principles from § 1.263A-3. If a taxpayer is engaged in both production and resale activities, the taxpayer may elect the simplified production method or the modified simplified production method provided in this section, but generally may not elect the simplified resale method discussed in § 1.263A-3(d). If elected, the simplified production method or the modified simplified production method must be applied to all eligible property produced and all eligible property acquired for resale by the taxpayer.

(b) * * *

(4) * * *

(v) * * *

(A) *Transition to elect historic absorption ratio.* * * *

(B) *Transition to revoke historic absorption ratio.* Notwithstanding the requirements provided in paragraph (b)(4)(iii)(B) of this section regarding revocations of the historic absorption ratio during a qualifying period, a

taxpayer will be permitted to revoke the historic absorption ratio in their first, second, or third taxable year ending on or after *November 20, 2018*, under such administrative procedures and with terms and conditions prescribed by the Commissioner.

* * * * *

(c) *Modified simplified production method—(1) Introduction.* This paragraph (c) provides a simplified method for determining the additional section 263A costs properly allocable to ending inventories of property produced and other eligible property on hand at the end of the taxable year.

(2) *Eligible property—(i) In general.* Except as otherwise provided in paragraph (c)(2)(ii) of this section, the modified simplified production method, if elected for any trade or business of a producer, must be used for all production and resale activities associated with any of the categories of property to which section 263A applies as described in paragraph (b)(2)(i) of this section.

(ii) *Election to exclude self-constructed assets.* A taxpayer using the modified simplified production method may elect to exclude self-constructed assets from application of the modified simplified production method by following the same rules applicable to a taxpayer using the simplified production method provided in paragraph (b)(2)(ii) of this section.

(3) *Modified simplified production method without historic absorption ratio election—(i) General allocation formula—(A) In general.* Except as otherwise provided in paragraph (c)(3)(v) of this section, the additional section 263A costs allocable to eligible property remaining on hand at the close of the taxable year under the modified simplified production method are computed as follows:

$$\left(\begin{array}{l} \text{Pre-production} \\ \text{absorption ratio} \end{array} \times \begin{array}{l} \text{Pre-production} \\ \text{section 471 costs} \\ \text{remaining on hand} \\ \text{at year end} \end{array} \right) + \left(\begin{array}{l} \text{Production} \\ \text{absorption ratio} \end{array} \times \begin{array}{l} \text{Production} \\ \text{section 471 costs} \\ \text{remaining on hand} \\ \text{at year end} \end{array} \right)$$

(B) *Effect of allocation.* The pre-production and production absorption ratios generally are multiplied by the pre-production and production section 471 costs, respectively, remaining in ending inventory or otherwise on hand at the end of each taxable year in which the modified simplified production method is applied. The sum of the resulting products is the additional

section 263A costs that are added to the taxpayer's ending section 471 costs to determine the section 263A costs that are capitalized. See, however, paragraph (c)(3)(iv) of this section for special rules applicable to LIFO taxpayers. Except as otherwise provided in this section or in § 1.263A-1 or § 1.263A-3, additional section 263A costs that are allocated to inventories on hand at the close of the

taxable year under the modified simplified production method of this paragraph (c) are treated as inventory costs for all purposes of the Internal Revenue Code.

(ii) *Definitions—(A) Direct material costs.* For purposes of paragraph (c) of this section, direct material costs has the same meaning as described in § 1.263A-1(e)(2)(i)(A). For purposes of paragraph

(c) of this section, direct material costs include property produced for the taxpayer under a contract with another party that are direct material costs for

the taxpayer to be used in an additional production process of the taxpayer.

(B) *Pre-production absorption ratio.* Under the modified simplified

production method, the pre-production absorption ratio is determined as follows:

Pre-production additional section 263A costs Pre-production section 471 costs

(1) *Pre-production additional section 263A costs.* Pre-production additional section 263A costs are defined as the additional section 263A costs described in § 1.263A–1(d)(3) that are pre-production costs, as described in paragraph (a)(3)(ii) of this section, that a taxpayer incurs during its current taxable year, including capitalizable mixed service costs allocable to pre-production additional section 263A costs, as described in paragraph (c)(3)(iii) of this section, that a taxpayer incurs during its current taxable year:

(i) Plus additional section 263A costs properly allocable to property acquired for resale that a taxpayer incurs during its current taxable year; and

(ii) Plus additional section 263A costs properly allocable to property produced for the taxpayer under a contract with

another party that is treated as property produced by the taxpayer, as described in paragraph (a)(1)(ii)(B) of this section, that a taxpayer incurs during its current taxable year.

(2) *Pre-production section 471 costs.* Pre-production section 471 costs are defined as the section 471 costs described in § 1.263A–1(d)(2) that are direct material costs that a taxpayer incurs during its current taxable year plus the section 471 costs for property acquired for resale (see § 1.263A–1(e)(2)(ii)) that a taxpayer incurs during its current taxable year, including property produced for the taxpayer under a contract with another party that is acquired for resale.

(C) *Pre-production section 471 costs remaining on hand at year end.* Pre-production section 471 costs remaining

on hand at year end means the pre-production section 471 costs, as defined in paragraph (c)(3)(ii)(B)(2) of this section, that a taxpayer incurs during its current taxable year which remain in its ending inventory or are otherwise on hand at year end, excluding the section 471 costs that are direct material costs that have entered or completed production at year end (for example, direct material costs in ending work-in-process inventory and ending finished goods inventory). For LIFO inventories of a taxpayer, see paragraph (c)(3)(iv) of this section.

(D) *Production absorption ratio.* Under the modified simplified production method, the production absorption ratio is determined as follows:

(Production additional section 263A costs + Residual pre-production additional section 263A costs) (Production section 471 costs + Direct materials adjustment)

(1) *Production additional section 263A costs.* Production additional section 263A costs are defined as the additional section 263A costs described in § 1.263A–1(d)(3) that are not pre-production additional section 263A costs, as defined in paragraph (c)(3)(ii)(B)(1) of this section, that a taxpayer incurs during its current taxable year, including capitalizable mixed service costs not allocable to pre-production additional section 263A costs, as described in paragraph (c)(3)(iii) of this section, that a taxpayer incurs during its current taxable year. For example, production additional section 263A costs include post-production costs, other than post-production costs included in section 471 costs, as described in paragraph (a)(3)(iii) of this section.

(2) *Residual pre-production additional section 263A costs.* Residual pre-production additional section 263A costs are defined as the pre-production additional section 263A costs, as defined in paragraph (c)(3)(ii)(B)(1) of this section, that a taxpayer incurs during its current taxable year less the product of the pre-production absorption ratio, as determined in

paragraph (c)(3)(ii)(B) of this section, and the pre-production section 471 costs remaining on hand at year end, as defined in paragraph (c)(3)(ii)(C) of this section.

(3) *Production section 471 costs.* Production section 471 costs are defined as the section 471 costs described in § 1.263A–1(d)(2) that a taxpayer incurs during its current taxable year less pre-production section 471 costs, as defined in paragraph (c)(3)(ii)(B)(2) of this section, that a taxpayer incurs during its current taxable year.

(4) *Direct materials adjustment.* The direct materials adjustment is defined as the section 471 costs that are direct material costs, including property produced for a taxpayer under a contract with another party that are direct material costs for the taxpayer to be used in an additional production process of the taxpayer, that had not entered production at the beginning of the current taxable year:

(i) Plus the section 471 costs that are direct material costs incurred during the current taxable year (that is, direct material purchases); and

(ii) Less the section 471 costs that are direct material costs that have not

entered production at the end of the current taxable year.

(E) *Production section 471 costs remaining on hand at year end.* Production section 471 costs remaining on hand at year end means the section 471 costs, as defined in § 1.263A–1(d)(2), that a taxpayer incurs during its current taxable year which remain in its ending inventory or are otherwise on hand at year end, less the pre-production section 471 costs remaining on hand at year end, as described in paragraph (c)(3)(ii)(C) of this section. For LIFO inventories of a taxpayer, see paragraph (c)(3)(iv) of this section.

(F) *Costs allocated to property sold.* The terms defined in paragraph (c)(3)(ii) of this section do not include costs described in § 1.263A–1(e)(3)(ii) or cost reductions described in § 1.471–3(e) that a taxpayer properly allocates entirely to property that has been sold.

(iii) *Allocable mixed service costs—*
(A) *In general.* If a taxpayer using the modified simplified production method determines its capitalizable mixed service costs using a method described in § 1.263A–1(g)(4), the taxpayer must use a reasonable method to allocate the costs (for example, department or activity costs) between production and

pre-production additional section 263A costs. If the taxpayer's § 1.263A-1(g)(4) method allocates costs to a department or activity that is exclusively identified as production or pre-production, those costs must be allocated to production or pre-production additional section 263A costs, respectively.

(B) *Taxpayer using the simplified service cost method.* If a taxpayer using the modified simplified production method determines its capitalizable mixed service costs using the simplified service cost method described in § 1.263A-1(h), the amount of capitalizable mixed service costs, as computed using the general allocation formula in § 1.263A-1(h)(3)(i), allocated to and included in pre-production additional section 263A costs in the absorption ratio described in paragraph (c)(3)(ii)(B) of this section is determined based on either of the following: The proportion of direct material costs to total section 471 costs that a taxpayer incurs during its current taxable year or the proportion of pre-production labor costs to total labor costs that a taxpayer incurs during its current taxable year. The taxpayer must include the capitalizable mixed service costs that are not allocated to pre-production additional section 263A costs in production additional section 263A costs in the absorption ratio described in paragraph (c)(3)(ii)(D) of this section. A taxpayer that allocates capitalizable mixed service costs based on labor under this paragraph (c)(3)(iii)(B) must exclude mixed service labor costs from both pre-production labor costs and total labor costs.

(C) *De minimis rule.* Notwithstanding paragraphs (c)(3)(iii)(A) and (B) of this section, if 90 percent or more of a taxpayer's capitalizable mixed service costs determined under paragraph (c)(3)(iii)(A) or (B) of this section are allocated to pre-production additional section 263A costs or production additional section 263A costs, the taxpayer may elect to allocate 100 percent of its capitalizable mixed service costs to that amount. For example, if 90 percent of capitalizable mixed service costs are allocated to production additional section 263A

costs based on the labor costs that are pre-production costs in total labor costs incurred in the taxpayer's trade or business during the taxable year, then 100 percent of capitalizable mixed service costs may be allocated to production additional section 263A costs. An election to allocate capitalizable mixed service costs under this paragraph (c)(3)(iii)(C) is the adoption of, or a change in, a method of accounting under section 446 of the Internal Revenue Code.

(iv) *LIFO taxpayers electing the modified simplified production method—(A) In general.* Under the modified simplified production method, a taxpayer using a LIFO method must calculate a particular year's index (for example, under § 1.472-8(e)) without regard to its additional section 263A costs. Similarly, a taxpayer that adjusts current-year costs by applicable indexes to determine whether there has been an inventory increment or decrement in the current year for a particular LIFO pool must disregard the additional section 263A costs in making that determination.

(B) *LIFO increment—(1) In general.* If the taxpayer determines there has been an inventory increment, the taxpayer must state the amount of the increment in terms of section 471 costs in current-year dollars. The taxpayer then multiplies this amount by the combined absorption ratio, as defined in paragraph (c)(3)(iv)(B)(2) of this section. The resulting product is the additional section 263A costs that must be added to the taxpayer's increment in terms of section 471 costs in current-year dollars for the taxable year.

(2) *Combined absorption ratio defined.* For purposes of paragraph (c)(3)(iv)(B)(1) of this section, the combined absorption ratio is the additional section 263A costs allocable to eligible property remaining on hand at the close of the taxable year, as described in paragraph (c)(3)(i)(A) of this section, determined on a non-LIFO basis, divided by the pre-production and production section 471 costs remaining on hand at year end, determined on a non-LIFO basis.

(C) *LIFO decrement.* If the taxpayer determines there has been an inventory

decrement, the taxpayer must state the amount of the decrement in dollars applicable to the particular year for which the LIFO layer has been invaded. The additional section 263A costs incurred in prior years that are applicable to the decrement are charged to cost of goods sold. The additional section 263A costs that are applicable to the decrement are determined by multiplying the additional section 263A costs allocated to the layer of the pool in which the decrement occurred by the ratio of the decrement, excluding additional section 263A costs, to the section 471 costs in the layer of that pool.

(v) *De minimis rule for producers with total indirect costs of \$200,000 or less.* Paragraph (b)(3)(iv) of this section, which provides that the additional section 263A costs allocable to eligible property remaining on hand at the close of the taxable year are deemed to be zero for producers with total indirect costs of \$200,000 or less, applies to the modified simplified production method.

(vi) *Examples.* The provisions of this paragraph (c) are illustrated by the following examples:

(A) *Example 1—FIFO inventory method.*

(1) Taxpayer P uses the FIFO method of accounting for inventories valued at cost. P's beginning inventory for 2018 (all of which is sold during 2018) is \$2,500,000, consisting of \$500,000 of pre-production section 471 costs (including \$400,000 of direct material costs and \$100,000 of property acquired for resale), \$1,500,000 of production section 471 costs, and \$500,000 of additional section 263A costs. During 2018, P incurs \$2,500,000 of pre-production section 471 costs (including \$1,900,000 of direct material costs and \$600,000 of property acquired for resale), \$7,500,000 of production section 471 costs, \$200,000 of pre-production additional section 263A costs, and \$800,000 of production additional section 263A costs. P's additional section 263A costs include capitalizable mixed service costs under the simplified service cost method. P's pre-production and production section 471 costs remaining in ending inventory at the end of 2018 are \$1,000,000 (including \$800,000 of direct material costs and \$200,000 of property acquired for resale) and \$2,000,000, respectively. P computes its pre-production absorption ratio for 2018 under paragraph (c)(3)(ii)(B) of this section, as follows:

$$\frac{\text{Pre-production additional section 263A costs}}{\text{Pre-production section 471 costs}} = \frac{\$200,000}{\$2,500,000} = 8.00\%$$

(2) Under paragraph (c)(3)(ii)(D)(2) of this section, P's residual pre-production

additional section 263A costs for 2018 are \$120,000 (\$200,000 of pre-production

additional section 263A costs less \$80,000 (the product of the 8% pre-production

absorption ratio and the \$1,000,000 of pre-production section 471 costs remaining on hand at year end)).
 (3) Under paragraph (c)(3)(ii)(D)(4) of this section, P's direct materials adjustment for

2018 is \$1,500,000 (\$400,000 of direct material costs in beginning raw materials inventory, plus \$1,900,000 of direct material costs incurred to acquire raw materials during the taxable year, less \$800,000 direct

material costs in ending raw materials inventory).
 (4) P computes its production absorption ratio for 2018 under paragraph (c)(3)(ii)(D) of this section, as follows:

$$\frac{(\text{Production additional section 263A costs} + \text{Residual pre-production additional section 263A costs})}{(\text{Production section 471 costs} + \text{Direct materials adjustment})} = \frac{(\$800,000 + 120,000)}{(\$7,500,000 + 1,500,000)} = 10.22\%$$

(5) Under the modified simplified production method, P determines the additional section 263A costs allocable to its ending inventory under paragraph (c)(3)(i)(A) of this section by multiplying the pre-production absorption ratio by the pre-production section 471 costs remaining on hand at year end and the production

absorption ratio by the production section 471 costs remaining on hand at year end, as follows:
 Additional section 263A costs = (8% × \$1,000,000) + (10.22% × \$2,000,000) = \$284,400
 (6) P adds this \$284,400 to the \$3,000,000 of section 471 costs remaining on hand at

year end to calculate its total ending inventory of \$3,284,400. The balance of P's additional section 263A costs incurred during 2018, \$715,600 (\$1,000,000 less \$284,400), is taken into account in 2018 as part of P's cost of goods sold.
 (7) P's computation is summarized in the following table:

| | Reference | Amount |
|--|-----------------------------|------------|
| Beginning Inventory: | | |
| Direct material costs | a | \$ 400,000 |
| Property acquired for resale | b | 100,000 |
| Pre-production section 471 costs | c = a + b | 500,000 |
| Production section 471 costs | d | 1,500,000 |
| Additional section 263A costs | e | 500,000 |
| Total | f = c d + e | 2,500,000 |
| Incurred During 2018: | | |
| Direct material costs | g | 1,900,000 |
| Property acquired for resale | h | 600,000 |
| Pre-production section 471 costs | i = g + h | 2,500,000 |
| Production section 471 costs | j | 7,500,000 |
| Pre-production additional section 263A costs | k | 200,000 |
| Production additional section 263A costs | l | 800,000 |
| Total | m = i + j + k + l | 11,000,000 |
| Ending Inventory: | | |
| Direct material costs | n | 800,000 |
| Property acquired for resale | o | 200,000 |
| Pre-production section 471 costs | p = n + o | 1,000,000 |
| Production section 471 costs | q | 2,000,000 |
| Section 471 costs | r = p + q | 3,000,000 |
| Additional section 263A costs allocable to ending inventory | s = v + z | 284,400 |
| Total | t = r + s | 3,284,400 |
| Modified Simplified Production Method: | | |
| Pre-production additional section 263A costs | k | 200,000 |
| Pre-production section 471 costs | i | 2,500,000 |
| Pre-production absorption ratio | u = k / i | 8.00% |
| Pre-production section 471 costs remaining on hand at year end | p | 1,000,000 |
| Pre-production additional section 263A costs allocable to ending inventory | v = u * p | 80,000 |
| Production additional section 263A costs | l | 800,000 |
| Residual pre-production additional section 263A costs | w = k - (u * p) | 120,000 |
| Production section 471 costs | j | 7,500,000 |
| Direct materials adjustment | x = a + g - n | 1,500,000 |
| Production absorption ratio | y = (l + w) / (j + x) | 10.22% |
| Production section 471 costs remaining on hand at year end | q | 2,000,000 |
| Production additional section 263A costs allocable to ending inventory | z = y * q | 204,400 |
| Summary: | | |
| Pre-production additional section 263A costs allocable to ending inventory | v | 80,000 |
| Production additional section 263A costs allocable to ending inventory | z | 204,400 |
| Additional section 263A costs allocable to ending inventory | s | 284,400 |
| Section 471 costs | r | 3,000,000 |

| | Reference | Amount |
|------------------------------|-----------|-----------|
| Total Ending Inventory | t | 3,284,400 |

(B) Example 2—FIFO inventory method with alternative method to determine amounts of section 471 costs. (1) The facts are the same as in Example 1 of paragraph (c)(3)(vi)(A) of this section, except that P uses the alternative method to determine amounts of section 471 costs by using its financial statement under § 1.263A-1(d)(2)(iii) rather than tax amounts under § 1.263A-1(d)(2)(i).

In 2018, P's production section 471 costs exclude \$40,000 of tax depreciation in excess of financial statement depreciation and include \$50,000 of financial statement direct labor in excess of tax direct labor. These are P's only differences in its book and tax amounts.

(2) Under § 1.263A-1(d)(2)(iii)(B), the positive \$40,000 depreciation adjustment and

the negative \$50,000 direct labor adjustment must be included in additional section 263A costs. Accordingly, P's production additional section 263A costs are \$790,000 (\$800,000 plus \$40,000 less \$50,000).

(3) P computes its production absorption ratio for 2018 under paragraph (c)(3)(ii)(D) of this section, as follows:

$$\frac{\text{(Production additional section 263A costs + Residual pre-production additional section 263A costs)}}{\text{(Production section 471 costs + Direct materials adjustment)}} = \frac{\text{(\$790,000 + 120,000)}}{\text{(\$7,500,000 + 1,500,000)}} = 10.11\%$$

(4) Under the modified simplified production method, P determines the additional section 263A costs allocable to its ending inventory under paragraph (c)(3)(i)(A) of this section by multiplying the pre-production absorption ratio by the pre-production section 471 costs remaining on hand at year end and the production absorption ratio by the production section 471 costs remaining on hand at year end, as follows:

$$\text{Additional section 263A costs} = (8.00\% \times \$1,000,000) + (10.11\% \times \$2,000,000) = \$282,200$$

(5) P adds this \$282,200 to the \$3,000,000 of section 471 costs remaining on hand at year end to calculate its total ending inventory of \$3,282,200. The balance of P's additional section 263A costs incurred during 2018, \$717,800 (\$1,000,000 less \$282,200), is taken into account in 2018 as part of P's cost of goods sold.

(C) Example 3—LIFO inventory method. (1) The facts are the same as in Example 1 of paragraph (c)(3)(vi)(A) of this section, except that P uses a dollar-value LIFO inventory method rather than the FIFO method. P's 2018 LIFO increment is \$1,500,000.

(2) Under paragraph (c)(3)(iv)(B)(1) of this section, to determine the additional section 263A costs allocable to its ending inventory, P multiplies the combined absorption ratio by the \$1,500,000 of LIFO increment. Under paragraph (c)(3)(iv)(B)(2) of this section, the combined absorption ratio is 9.48% (\$284,400 additional section 263A costs allocable to ending inventory, determined on a non-LIFO basis, divided by \$3,000,000 of section 471 costs on hand at year end, determined on a non-LIFO basis). Thus, P's additional section 263A costs allocable to its ending inventory are \$142,200 (\$1,500,000 multiplied by 9.48%). This \$142,200 is added to the \$1,500,000 to determine a total 2018 LIFO increment of \$1,642,200. The balance of P's additional section 263A costs incurred during 2018, \$857,800 (\$1,000,000 less \$142,200), is taken into account in 2018 as part of P's cost of goods sold.

(3) In 2019, P sells one-half of the inventory in its 2018 increment. P must include in its cost of goods sold for 2019 the

amount of additional section 263A costs relating to this inventory, \$71,100 (one-half of the \$142,200 additional section 263A costs capitalized in 2018 ending inventory).

(D) Example 4—Direct materials-based allocation of mixed service costs. (1) Taxpayer R computes its capitalizable mixed service costs using the simplified service cost method described in § 1.263A-1(h). During 2018, R incurs \$200,000 of capitalizable mixed service costs, computed using the general allocation formula in § 1.263A-1(h). During 2018, R also incurs \$8,000,000 of total section 471 costs, including \$2,000,000 of direct material costs.

(2) Under paragraph (c)(3)(iii)(B) of this section, R determines its capitalizable mixed service costs allocable to pre-production additional section 263A costs based on the proportion of direct material costs in total section 471 costs. R's direct material costs are 25% of total section 471 costs (\$2,000,000 of direct material costs incurred during the year divided by \$8,000,000 of total section 471 costs incurred during the year). Thus, R allocates \$50,000 (25% × \$200,000) of mixed service costs to pre-production additional section 263A costs. R includes the remaining \$150,000 (\$200,000 less \$50,000) of capitalizable mixed service costs as production additional section 263A costs.

(E) Example 5—Labor-based allocation of mixed service costs. (1) Taxpayer S computes its capitalizable mixed service costs using the simplified service cost method described in § 1.263A-1(h). During 2018, S incurs \$200,000 of capitalizable mixed service costs, computed using the general allocation formula in § 1.263A-1(h). During 2018, S also incurs \$10,000,000 of total labor costs (excluding any labor costs included in mixed service costs), including \$1,000,000 of labor costs that are pre-production costs as described in paragraph (a)(3)(ii) of this section (excluding any labor costs included in mixed service costs).

(2) Under paragraph (c)(3)(iii)(B) of this section, S determines its capitalizable mixed service costs allocable to pre-production additional section 263A costs based on the proportion of labor costs that are pre-production costs in labor costs. S's pre-

production labor costs are 10% of labor costs (\$1,000,000 of labor costs incurred during the year that are pre-production costs (excluding any labor costs included in mixed service costs), divided by \$10,000,000 of total labor costs incurred during the year (excluding any labor costs included in mixed service costs)). Thus, S allocates \$20,000 (10% × \$200,000) of mixed service costs to pre-production additional section 263A costs. S includes the remaining \$180,000 (\$200,000 less \$20,000) of capitalizable mixed service costs as production additional section 263A costs.

(F) Example 6—De minimis rule for allocation of mixed service costs. The facts are the same as in Example 5 in paragraph (c)(3)(vi)(E) of this section, except that S uses the de minimis rule for mixed service costs in paragraph (c)(3)(iii)(C) of this section. Because 90% or more of S's capitalizable mixed service costs are allocated to production additional section 263A costs, under the de minimis rule, S allocates all \$200,000 of capitalizable mixed service costs to production additional section 263A costs. None of the capitalizable mixed service costs are allocated to pre-production additional section 263A costs.

(4) Modified simplified production method with historic absorption ratio election—(i) In general. This paragraph (c)(4) generally permits taxpayers using the modified simplified production method to elect a historic absorption ratio in determining additional section 263A costs allocable to eligible property remaining on hand at the close of their taxable years. A taxpayer may only make a historic absorption ratio election under this paragraph (c)(4) if it has used the modified simplified production method for three or more consecutive taxable years immediately prior to the year of election and has capitalized additional section 263A costs using an actual pre-production absorption ratio, as defined in paragraph (c)(3)(ii)(B) of this section, and an actual production absorption ratio, as defined in paragraph

(c)(3)(ii)(D) of this section, or an actual combined absorption ratio, as defined in paragraph (c)(3)(iv)(B)(2) of this section, for its three most recent consecutive taxable years. This method is not available to a taxpayer that is deemed to have zero additional section 263A costs under paragraph (c)(3)(v) of this section. The historic absorption ratio is used in lieu of the actual absorption ratios

computed under paragraph (c)(3)(ii) of this section or the actual combined absorption ratio computed under paragraph (c)(3)(iv) and is based on costs capitalized by a taxpayer during its test period. If elected, the historic absorption ratio must be used for each taxable year within the qualifying period described in paragraph (b)(4)(ii)(C) of this section. Except as

otherwise provided in this paragraph (c)(4), paragraph (b)(4) of this section applies to the historic absorption ratio election under the modified simplified production method.

(ii) *Operating rules and definitions—*
 (A) *Pre-production historic absorption ratio.* The pre-production historic absorption ratio is computed as follows:

Pre-production additional section 263A costs incurred during the test period
Pre-production section 471 costs incurred during the test period

(1) Pre-production additional section 263A costs incurred during the test period are defined as the pre-production additional section 263A costs described in paragraph (c)(3)(ii)(B)(1) of this section that the taxpayer incurs during

the test period described in paragraph (b)(4)(ii)(B) of this section.

(2) Pre-production section 471 costs incurred during the test period are defined as the pre-production section 471 costs described in paragraph (c)(3)(ii)(B)(2) of this section that the

taxpayer incurs during the test period described in paragraph (b)(4)(ii)(B) of this section.

(B) *Production historic absorption ratio.* The production historic absorption ratio is computed as follows:

$$\begin{array}{r}
 \left(\begin{array}{l} \text{Production additional section 263A} \\ \text{costs incurred during the test period} \end{array} + \begin{array}{l} \text{Residual pre-production additional section} \\ \text{263A costs incurred during the test period} \end{array} \right) \\
 \left(\begin{array}{l} \text{Production section 471 costs} \\ \text{incurred during the test period} \end{array} + \begin{array}{l} \text{Direct materials adjustments made during} \\ \text{the test period} \end{array} \right)
 \end{array}$$

(1) Production additional section 263A costs incurred during the test period are defined as the production additional section 263A costs described in paragraph (c)(3)(ii)(D)(1) of this section that the taxpayer incurs during the test period described in paragraph (b)(4)(ii)(B) of this section.

period described in paragraph (b)(4)(ii)(B) of this section.

(3) Production section 471 costs incurred during the test period are defined as the production section 471 costs described in paragraph (c)(3)(ii)(D)(3) of this section that the taxpayer incurs during the test period described in paragraph (b)(4)(ii)(B) of this section.

(iii) *LIFO taxpayers making the historic absorption ratio election—*(A) *In general.* Instead of the pre-production and production historic absorption ratios defined in paragraph (c)(4)(ii) of this section, a LIFO taxpayer making the historic absorption ratio election under the modified simplified production method calculates a combined historic absorption ratio based on costs the taxpayer capitalizes during its test period.

(2) Residual pre-production additional section 263A costs incurred during the test period are defined as the residual pre-production additional section 263A costs described in paragraph (c)(3)(ii)(D)(2) of this section that the taxpayer incurs during the test

(4) Direct materials adjustments made during the test period are defined as the direct materials adjustments described in paragraph (c)(3)(ii)(D)(4) of this section that the taxpayer incurs during the test period described in paragraph (b)(4)(ii)(B) of this section.

(B) *Combined historic absorption ratio.* The combined historic absorption ratio is computed as follows:

Total allocable additional section 263A costs incurred during the test period
Total section 471 costs remaining on hand at each year end of the test period

(1) *Total allocable additional section 263A costs incurred during the test period.* Total allocable additional section 263A costs incurred during the test period are the sum of the total additional section 263A costs allocable to eligible property on hand at year end as described in paragraph (c)(3)(i)(A) of this section, determined on a non-LIFO basis, for all taxable years in the test period.

period. Total section 471 costs remaining on hand at each year end of the test period are the sum of the total pre-production section 471 costs remaining on hand at year end as described in paragraph (c)(3)(ii)(C) of this section and the total production section 471 costs remaining on hand at year end as described in paragraph (c)(3)(ii)(E) of this section, determined on a non-LIFO basis, for all taxable years in the test period.

(iv) *Extension of qualifying period.* In the first taxable year following the close of each qualifying period (for example, the sixth taxable year following the test period), a taxpayer must compute the actual absorption ratios under paragraph (c)(3) of this section (pre-production and production absorption ratios or, for LIFO taxpayers, the combined absorption ratio). If the actual combined absorption ratio or both the actual pre-production and production absorption ratios, as applicable, computed for this

(2) *Total section 471 costs remaining on hand at each year end of the test*

taxable year (the recomputation year) is within one-half of one percentage point, plus or minus, of the corresponding historic absorption ratio or ratios used in determining capitalizable costs for the qualifying period (the previous five taxable years), the qualifying period is extended to include the recomputation year and the following five taxable years, and the taxpayer must continue to use the historic absorption ratio or ratios throughout the extended qualifying period. If, however, the actual combined

historic absorption ratio or either the actual pre-production absorption ratio or production absorption ratio, as applicable, is not within one-half of one percentage point, plus or minus, of the corresponding historic absorption ratio, the taxpayer must use the actual combined absorption ratio or ratios beginning with the recomputation year and throughout the updated test period. The taxpayer must resume using the historic absorption ratio or ratios based on the updated test period in the third

taxable year following the recomputation year.

(v) *Examples.* The provisions of this paragraph (c)(4) are illustrated by the following examples:

(A) *Example 1—HAR and FIFO inventory method.* (1) Taxpayer S uses the FIFO method of accounting for inventories valued at cost and for 2021 elects to use the historic absorption ratio with the modified simplified production method. S identifies the following costs incurred during the test period:

| | 2018 | 2019 | 2020 |
|---|-------|-------|-------|
| Pre-production additional section 263A costs | \$100 | \$200 | \$300 |
| Production additional section 263A costs | 200 | 350 | 450 |
| Pre-production section 471 costs | 2,000 | 2,500 | 3,000 |
| Production section 471 costs | 2,500 | 3,500 | 4,000 |
| Residual pre-production additional section 263A costs | 60 | 136 | 220 |
| Direct materials adjustments | 2,700 | 3,200 | 3,700 |

(2) Under paragraph (c)(4)(ii)(A) of this section, S computes the pre-production historic absorption ratio as follows:

$$\frac{\text{Pre-production additional section 263A costs incurred during the test period}}{\text{Pre-production section 471 costs incurred during the test period}} = \frac{\$100 + 200 + 300}{\$2,000 + 2,500 + 3,000} = \frac{\$600}{\$7,500} = 8.00\%$$

(3) Under paragraph (c)(4)(ii)(B) of this section, S computes the production historic absorption ratio as follows:

$$\frac{\left(\begin{array}{l} \text{Production additional section 263A} \\ \text{costs incurred during the test period} \end{array} + \begin{array}{l} \text{Residual pre-production additional section} \\ \text{263A costs incurred during the test period} \end{array} \right)}{\left(\begin{array}{l} \text{Production section 471 costs} \\ \text{incurred during the test period} \end{array} + \begin{array}{l} \text{Direct materials adjustments made during} \\ \text{the test period} \end{array} \right)} = \frac{((\$200+350+450)+(\$60+136+220))}{((\$2,500+3,500+4,000)+(2,700+3,200+3,700))} = \frac{\$1,416}{\$19,600} = 7.22\%$$

(4) In 2021, S incurs \$10,000 of section 471 costs of which \$1,000 pre-production section 471 costs and \$2,000 production 471 costs remain in ending inventory. Under the modified simplified production method using a historic absorption ratio, S determines the pre-production additional section 263A costs allocable to its ending inventory by multiplying its pre-production historic absorption ratio (8.00%) by the pre-production section 471 costs remaining on hand at year end (\$1,000). Thus, S allocates \$80 of pre-production additional section 263A costs to its ending inventory (8.00% ×

\$1,000). S determines the production additional section 263A costs allocable to its ending inventory by multiplying its production historic absorption ratio (7.22%) by the production section 471 costs remaining on hand at year end (\$2,000). Thus, S allocates \$144 of production additional section 263A costs to its ending inventory (7.22% × \$2,000).

(5) Under paragraph (c)(4)(i) of this section, S's total additional section 263A costs allocable to ending inventory in 2021 are \$224, which is the sum of the allocable pre-production additional section 263A costs

(\$80) and the allocable production additional section 263A costs (\$144). S's ending inventory in 2021 is \$3,224, which is the sum of S's additional section 263A costs allocable to ending inventory and S's section 471 costs remaining in ending inventory (\$224 + \$3,000). The balance of S's additional section 263A costs incurred during 2021 is taken into account in 2021 as part of S's cost of goods sold.

(B) *Example 2—HAR and LIFO inventory method.* (1)(i) The facts are the same as in *Example 1* in paragraph (c)(4)(v)(A) of this section, except that S uses a dollar-value

LIFO inventory method rather than the FIFO method. S calculates additional section 263A costs incurred during the taxable year and allocable to ending inventory under paragraph (c)(4)(iii) of this section and identifies the following costs incurred during the test period:

| | 2018 | 2019 | 2020 |
|--|-------|-------|-------|
| Additional section 263A costs incurred during the taxable year allocable to ending inventory | \$90 | \$137 | \$167 |
| Section 471 costs incurred during the taxable year that remain in ending inventory | 1,000 | 1,400 | 2,100 |

(ii) In 2021, the LIFO value of S's increment is \$1,500.

(2) Under paragraph (c)(4)(iii) of this section, S computes a combined historic absorption ratio as follows:

$$\frac{\text{Total allocable additional section 263A costs incurred during the test period}}{\text{Total section 471 costs remaining on hand at each year end of the test period}} = \frac{\$90 + 137 + 167}{\$1,000 + 1,400 + 2,100} = \frac{\$394}{\$4,500} = 8.76\%$$

(3) S's additional section 263A costs allocable to its 2021 LIFO increment are \$131 (\$1,500 beginning LIFO increment × 8.76% combined historic absorption ratio). S adds the \$131 to the \$1,500 LIFO increment to determine a total 2021 LIFO increment of \$1,631.

* * * * *

(g) * * *

(3) Paragraph (c) of this section applies for taxable years beginning on or after November 20, 2018. For any taxable year that both begins before November 20, 2018 and ends after November 20, 2018, the IRS will not challenge return positions consistent with all of paragraphs (c) of this section.

■ **Par. 5.** Section 1.263A-3 is amended by:

- 1. Revising paragraph (a)(4)(i).
- 2. Designating the text of paragraph (d)(4)(v) as paragraph (d)(4)(v)(A) and adding a paragraph heading.
- 3. Adding paragraph (d)(4)(v)(B).

The revision and additions read as follows:

§ 1.263A-3 Rules relating to property acquired for resale.

- (a) * * *
- (4) * * *

(i) *In general.* Except as provided in paragraphs (a)(4)(ii) and (iii) of this section, a taxpayer may elect the simplified production method, as described in § 1.263A-2(b), or the modified simplified production method, as described in § 1.263A-2(c), but may not elect the simplified resale method, as described in paragraph (d) of this section, if the taxpayer is engaged in both production and resale activities

with respect to the items of eligible property listed in § 1.263A-2(b)(2).

- * * * * *
- (d) * * *
- (4) * * *
- (v) * * *

(A) *Transition to elect historic absorption ratio.* * * *

(B) *Transition to revoke historic absorption ratio.* Notwithstanding the requirements provided in paragraph (d)(4)(iii)(B) of this section regarding revocations of the historic absorption ratio during a qualifying period, a taxpayer will be permitted to revoke the historic absorption ratio in their first, second, or third taxable year ending on or after *November 20, 2018*, under such administrative procedures and with terms and conditions prescribed by the Commissioner.

* * * * *

■ **Par. 6.** In § 1.263A-7, paragraph (b)(2)(iii)(A)(2)(ii) is revised to read as follows:

§ 1.263A-7 Changing a method of accounting under section 263A.

- * * * * *
- (b) * * *
- (2) * * *
- (iii) * * *
- (A) * * *
- (2) * * *

(ii) *Simplified method used.* A dollar-value LIFO taxpayer using the 3-year average method and the simplified production method, the modified simplified production method, or the simplified resale method to revalue its inventory is permitted, but not required, to establish a new base year.

* * * * *

■ **Par. 7.** In § 1.471-3, paragraph (b) is revised to read as follows:

§ 1.471-3 Inventories at cost.

* * * * *

(b) In the case of merchandise purchased since the beginning of the taxable year, the invoice price less trade or other discounts, except strictly cash discounts approximating a fair interest rate, which may be deducted or not at the option of the taxpayer, provided a consistent course is followed. To this net invoice price should be added transportation or other necessary charges incurred in acquiring possession of the goods. But see § 1.263A-1(d)(2)(iv)(C) for special rules for certain direct material costs that in certain cases are permitted to be capitalized as additional section 263A costs by taxpayers using a simplified method under § 1.263A-2(b) or (c) or § 1.263A-3(d). For taxpayers acquiring merchandise for resale that are subject to the provisions of section 263A, see §§ 1.263A-1 and 1.263A-3 for additional amounts that must be included in inventory costs.

* * * * *

Kirsten Wielobob,
Deputy Commissioner for Services and Enforcement.

Approved: July 23, 2018.

David J. Kautter,
Assistant Secretary of the Treasury (Tax Policy).

Note: This document was received for publication by the Office of the Federal Register on November 6, 2018.

[FR Doc. 2018-24545 Filed 11-19-18; 8:45 am]

DEPARTMENT OF JUSTICE**Parole Commission****28 CFR Part 2**

[Docket No. USPC–2018–01]

Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the United States and District of Columbia Codes**AGENCY:** United States Parole Commission, Justice.**ACTION:** Final rule.**SUMMARY:** The United States Parole Commission is revising its regulations to account for a membership of fewer than three Commissioners.**DATES:** This regulation is effective November 20, 2018.**FOR FURTHER INFORMATION CONTACT:** Helen H. Krapels, General Counsel, U.S. Parole Commission, 90 K Street NE, Third Floor, Washington, DC 20530, telephone (202) 346–7030. Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.**SUPPLEMENTARY INFORMATION:** The Parole Commission is modifying its voting procedures to account for commissioner unavailability. The recommended modifications retain a second Commissioner review procedure in cases where the first Commissioner voting on the case has a significant disagreement with the panel recommendation. The Commission is making these changes permanent even though its membership may be increased in the future.

With regard to the problem of resolving a tie vote, the rule revisions incorporate the principle that the consensus of all agency decision-makers in a given case, Commissioners and examiners, is best represented by the Commissioner's vote that is in agreement with the hearing examiner panel. If no Commissioner vote is in agreement with the hearing examiner panel, the vote that is the most favorable to the offender will be the Commission's decision.

The revision of § 2.63 resolves split decisions for the variety of decisions found in the Commission's rules, including original jurisdiction cases, NAB appeals, and reopenings.

The revisions at §§ 2.68, 2.74, and 2.76, modify the present two-vote requirements in Transfer Treaty Determinations, D.C. parole decisions, and decisions to reduce the minimum term for D.C. Code offenders sentenced

to parolable sentences by providing that these may be made by one Commissioner, with a second vote required only if the first Commissioner disagrees with the panel recommendation. A conforming amendment to the rule on miscellaneous provisions at 28 CFR 2.89 is also made. The Commission is publishing the revisions as final rules without seeking public comment because they are procedural in nature and do not establish any new substantive criteria for making parole or release decisions.

Executive Orders 12866 and 13563

These regulations have been drafted and reviewed in accordance with Executive Order 12866, "Regulation Planning and Review," section 1(b), Principles of Regulation, and in accordance with Executive Order 13565, "Improving Regulation and Regulatory Review," section 1(b), General Principles of Regulation. The Commission has determined that these rules are not a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly these rules have not been reviewed by the Office of Management and Budget.

Executive Order 13132

These rules will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, these rules do not have sufficient federalism implications requiring a Federalism Assessment.

Regulatory Flexibility Act

These rules will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

Unfunded Mandates Reform Act of 1995

These rules will not cause State, local, or tribal governments, or the private sector, to spend \$100,000,000 or more in any one year, and they will not significantly or uniquely affect small governments. No action under the Unfunded Mandates Reform Act of 1995 is necessary.

Small Business Regulatory Enforcement Fairness Act of 1996 (Subtitle E—Congressional Review Act)

None of these rules are a "major rule" as defined by Section 804 of the Small

Business Regulatory Enforcement Fairness Act of 1996 Subtitle E—Congressional Review Act, now codified at 5 U.S.C. 804(2). These rules will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on the ability of United States-based companies to compete with foreign-based companies. Moreover, these are rules of agency practice or procedure that do not substantially affect the rights or obligations of non-agency parties, and does not come within the meaning of the term "rule" as used in Section 804(3)(C), now codified at 5 U.S.C. 804(3)(C). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

The Final Rule

Accordingly, the U.S. Parole Commission adopts the following revisions to 28 CFR part 2:

PART 2—[AMENDED]

■ 1. The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

■ 2. Revise § 2.63 to read as follows:

§ 2.63 Quorum and voting requirements.

(a) A quorum of the Commission consists of the majority of those Commissioners holding office at the time an action is under consideration. Any action authorized by law may be decided by the majority vote of the Commissioners holding office at the time the action is taken. Voting requirements in parole decision-making are established in other provisions of this part, including paragraphs (b) and (c) of this section.

(b)(1) In the event of a tie vote of the Commission's membership on an issue that requires the vote or authorization of the Commission, the issue that is the subject of the vote is not adopted by the Commission.

(2) If the matter that is the subject of the tie vote is whether to reopen or reconsider a previous decision of the Commission, the previous decision shall remain in effect. This includes decisions as to whether to rescind a parole date, to revoke parole or supervised release, or to grant parole after parole has been denied under 18 U.S.C. 4206(d).

(3) If the matter that is the subject of a tie vote is whether to grant parole at

any initial hearing, 15-year reconsideration hearing, or D.C. Code rehearing, that decision shall be the Commissioner vote that is in agreement with the hearing examiner panel. If there is a tie vote and no commissioner agrees with the hearing examiner panel, then the decision will be the Commissioner's vote most favorable to the prisoner.

(4) If the matter that is the subject of the tie vote is whether to grant or deny release at the two-thirds date of the sentence per 18 U.S.C. 4206(d), or to terminate parole after the parolee has been on parole for 5 years per 18 U.S.C. 4211(c) and D.C. Code sec. 24-404(a-1)(3), the prisoner must be granted release under the statute or parole must be terminated respectively.

(5) If the matter that is the subject of a tie vote is a decision under appellate review per § 2.26, if no concurrence is reached, the decision under appellate review shall be considered affirmed. This rule also applies to decisions under § 2.17 to remove a case from the original jurisdiction of the Commission.

(6) The Commission may re-vote on a case disposition to resolve a tie vote or other impasse in satisfying a voting requirement of these rules.

(c) If there is only one Commissioner holding office, all provisions in these rules requiring concurring votes or resolving split decisions are suspended until the membership of the Commission is increased, and any action may be taken by one Commissioner.

■ 3. Revise § 2.68(i)(1) to read as follows:

§ 2.68 Prisoners transferred pursuant to treaty.

* * * * *

(i) * * *

(1) The Commission shall render a decision as soon as practicable and without unnecessary delay. Upon review of the examiner panel recommendation, the Commissioner may make the decision by concurring with the panel recommendation. If the Commissioner does not concur, the Commissioner shall refer the case to another Commissioner and the decision shall be made on the concurring votes of two Commissioners. The decision shall set a release date and a period and conditions of supervised release. If the Commission determines that the appropriate release date under 18 U.S.C. 4106A is the full term date of the foreign sentence, the Commission will order the transferee to "continue to expiration."

* * * * *

■ 4. Revise § 2.74(c) to read as follows:

§ 2.74 Decision of the Commission.

* * * * *

(c) All decisions may be made by one Commissioner, except that if the Commissioner does not concur with a panel recommendation, the case shall be referred to another Commissioner for a vote and the decision shall be based on the concurring votes of two Commissioners.

■ 5. Revise § 2.76(b) to read as follows:

§ 2.76 Reduction in minimum sentence.

* * * * *

(b) A prisoner's request under this section may be approved on the vote of one Commissioner.

* * * * *

■ 6. Amend § 2.89 by adding an entry for "2.63" in numerical order to read as follows:

§ 2.89 Miscellaneous provisions.

* * * * *

2.63 (Quorum)

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Patricia K. Cushwa,
Chairman (Acting), U.S. Parole Commission.

[FR Doc. 2018-25103 Filed 11-19-18; 8:45 am]

BILLING CODE 4410-31-P

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

[Docket No. USPC-2018-02]

Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the United States and District of Columbia Codes

AGENCY: United States Parole Commission, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: The United States Parole Commission is amending its rule allowing hearings by videoconference to include parole termination hearings.

DATES: This regulation is effective November 20, 2018. Comments due on or before January 22, 2019.

ADDRESSES: Submit your comments, identified by docket identification number USPC-2018-02 by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

2. *Mail:* Office of the General Counsel, U.S. Parole Commission, attention: USPC Rules Group, 90 K Street NE, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Helen H. Krapels, General Counsel, U.S. Parole Commission, 90 K Street NE, Third Floor, Washington, DC 20530, telephone (202) 346-7030. Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.

SUPPLEMENTARY INFORMATION: Since early 2004, the Parole Commission has been conducting some parole proceedings by videoconference to reduce travel costs and conserve the time and effort of its hearing examiners, and cut down on delays in scheduling in-person hearings. The Commission originally initiated the use of videoconference in parole release hearings as a pilot project and then extended the use of videoconferencing to institutional revocation hearings and probable cause hearings. Using videoconference for termination hearings is a natural progression in the use of this technology. The hearings are informal administrative proceedings and there is little value in having the hearing examiner and the offender appear in person.

There are several benefits to using videoconferencing for parole termination hearings, which are conducted pursuant to 28 CFR 2.43(c) and 2.95(c). Videoconferencing will save time and expense for travel, which will allow the hearing examiner to make the best use of his or her time in the office. The examiner will have access to documents in the parolee's file and can quickly resolve problems or answer questions. Videoconference may offer the possibility of more expeditious hearings and decisions regarding the disposition of the case.

The Commission is promulgating this rule as an interim rule in order to determine the utility of the videoconference procedure for parole termination hearings and is providing a 60-day period for the public to comment on the use of the procedure for such hearings.

The amended rule will take effect upon publication in the **Federal Register** and will apply to termination hearings conducted on or after the effective date.

Executive Orders 12866 and 13563

This regulation has been drafted and reviewed in accordance with Executive Order 12866, "Regulation Planning and Review," section 1(b), Principles of Regulation, and in accordance with Executive Order 13565, "Improving Regulation and Regulatory Review," section 1(b), General Principles of Regulation. The Commission has determined that this rule is not a

“significant regulatory action” under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications requiring a Federalism Assessment.

Regulatory Flexibility Act

This rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

Unfunded Mandates Reform Act of 1995

This rule will not cause State, local, or tribal governments, or the private sector, to spend \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. No action under the Unfunded Mandates Reform Act of 1995 is necessary.

Small Business Regulatory Enforcement Fairness Act of 1996 (Subtitle E—Congressional Review Act)

This rule is not a “major rule” as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 Subtitle E—Congressional Review Act, now codified at 5 U.S.C. 804(2). The rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on the ability of United States-based companies to compete with foreign-based companies. Moreover, this is a rule of agency practice or procedure that does not substantially affect the rights or obligations of non-agency parties, and does not come within the meaning of the term “rule” as used in Section 804(3)(C), now codified at 5 U.S.C. 804(3)(C). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

The Interim Rule

Accordingly, the U.S. Parole Commission is adopting the following amendment to 28 CFR part 2:

PART 2—[AMENDED]

■ 1. The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

■ 2. Revise § 2.25 to read as follows:

§ 2.25 Hearings by videoconference.

The Commission may conduct a parole determination hearing (including a rescission hearing), a probable cause hearing, an institutional revocation hearing, and a parole termination hearing by videoconference between the hearing examiner and the prisoner or releasee.

Patricia K. Cushwa,

Chairman (Acting), U.S. Parole Commission.

[FR Doc. 2018–25104 Filed 11–19–18; 8:45 am]

BILLING CODE 4410–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0962]

RIN 1625–AA00

Safety Zone; NASA Activities, Gulf of Mexico, Galveston, TX

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary, moving safety zone for all navigable waters within a 1,000-yard radius of the National Aeronautics and Space Administration’s (NASA’s) crew module uprighting system test article while it is being tested in the territorial waters of the Gulf of Mexico off the coast of Galveston, TX. The safety zone is necessary to protect persons, vessels, and the marine environment from potential hazards created by vessels and equipment engaged in the crew capsule’s at-sea testing. This rulemaking prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port Sector Houston-Galveston or a designated representative

DATES: This rule is effective from November 28, 2018 through December 6, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2018–0962 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 Collin Sykes, Eighth Coast Guard District, Waterways Management Division, U.S. Coast Guard; telephone 504–671–2119, email Collin.T.Sykes@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Sector Houston-Galveston
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 National Aeronautics and Space Administration’s (NASA’s) Orion program is evaluating an updated design to the crew module uprighting system (CMUS), the system of five airbags on top of the crew capsule that inflate upon splashdown. NASA tested the CMUS at the Neutral Buoyancy Lab at NASA’s Johnson Space Center in Houston, and requested Coast Guard support for the at-sea uprighting tests. On October 19, 2018, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; NASA Activities, Gulf of Mexico, Galveston, TX (83 FR 53023). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this at-sea test. During the comment period that ended November 5, 2018, we received 3 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**. Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because it is contrary to the public interest. The Coast Guard must make this rule effective soon enough to allow for immediate action to respond to the potential safety hazards associated with the at-sea testing and that it does not compromise publish safety.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The

at-sea testing of the CMUS will involve numerous surface vessels, divers, and remote-operated submarine vehicles, and feature a rapid rotation of the Orion test article in a confined area and partially controlled environment. The Captain of the Port Sector Houston-Galveston (COTP) has determined that due to the complexity of the test and proximity of the participants, unauthorized access by persons or vessels outside the scope of the test present a significant hazard to human life, vessels, and government property. The purpose of this rule to protect persons, vessels, and the marine environment from potential hazards created by vessels and equipment engaged in the crew capsule's at-sea testing.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received 03 comments on our NPRM published October 19, 2018. Two of the comments supported the rule for establishing the described safety measures to protect scientists as they search for solutions to complex problems in potentially hazardous environments.

One comment expressed concerns regarding the impact the safety zone would have on local anglers and requested a more precise location of the test. The planned location of the test is between 9 and 12 nautical miles (NMs) offshore of Galveston, TX, to the south and west of the Galveston Bay Entrance Channel. However, due to the drifting nature of the test, the Coast Guard cannot provide a specific geographical position at this time. Mariners in the vicinity will be notified of the test location via Broadcast Notices to Mariners (BNMs) no less than 3 hours prior to the commencement of testing. The BNMs, paired with the relatively small area encompassed by the 1,000-yd radius safety zone, will provide anglers an ample opportunity to seek alternative fishing grounds during the limited duration test. This same commenter also requested reasons that the NPRM was issued with a 15-day comment period. The Coast Guard published the NPRM with a 15-day comment period because it was impracticable to provide a 30-day comment period. It was impracticable to publish an NPRM with a 30-day comment period because we needed to establish this temporary safety zone by November 28, 2018. A 15-day comment period allowed the Coast Guard to provide for public notice and comment, but also publish a rule, if adopted, soon enough that the length of the notice and comment period does not compromise public safety. Finally, this commenter

requested justification for the non-retaliation statement in the Impact on Small Entities section of the NPRM. This statement is required to be included in all Coast Guard Rulemakings by the Coast Guard Non-Retaliation Policy outlined in 69 FR 12864 (March 18, 2004). Based on the public comments received, we have edited the regulatory text to clarify that that the test would occur between 9 and 12 NM offshore of Galveston, TX, to the south and west of the Galveston Bay Entrance Channel. There are no other changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a temporary, moving safety zone that covers all navigable waters within 1,000 yards of NASA's CMUS test article, which will be located in the territorial waters of the Gulf of Mexico off the coast of Galveston, TX. NASA anticipates that the testing activities will take place on approximately three days during the effective period, during daylight hours only. The effective period of this rule covers a nine-day window from November 28, 2018 through December 6, 2018, to allow for scheduling delays due to inclement weather or technical difficulties. On each of the approximately three days that the rule will be enforced, the enforcement periods will begin approximately 2 hours before testing activities and last until approximately 2 hours after the testing activities. The COTP or a designated representative will inform the public through BNMs, Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs), and/or other means of public notice, as appropriate, at least 3 hours in advance of each enforcement period. Such notice of enforcement will also include more specific information regarding the location of the CMUS test article.

The duration of the zone is intended to protect persons, vessels, and the marine environment on these navigable waters during the NASA testing activities. No vessel or person is permitted to enter or remain in the safety zone without obtaining permission from the COTP or a designated representative. A designated representative is a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel, and a Federal, State, and local officer designated by or assisting the COTP in the enforcement of the safety zone. The Patrol Commander may be contacted on Channel 16 VHF-FM (156.8 MHz) by the call sign "PATCOM". Vessels requiring entry into this safety zone

must request permission from the COTP or a designated representative. They may be contacted on VHF-FM Channel 16. All persons and vessels permitted to enter this safety zone must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative. The COTP or a designated representative will inform the public of the enforcement times, dates, and locations, for this safety zone through BNMs, LNMs, and/or 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 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, and duration of the safety zone. Vessel traffic will be able to safely transit around this safety zone, which will affect a small, designated area off the coast of Galveston, TX, outside of the Houston Ship Channel and safety fairway during daylight hours on approximately three days. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions

with populations of less than 50,000. The Coast Guard 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 safety zone may be small entities, for the reasons stated in section IV.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.

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 temporary, moving safety zone that prohibit entry within 1,000 yards of the CMUS test article during daylight hours on approximately nine days in the Gulf of Mexico. 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 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.T08–0962 to read as follows:

§ 165.T08–0962 Safety Zone; NASA Activities, Gulf of Mexico, Galveston, TX.

(a) *Location.* The following area is a safety zone: All navigable waters within 1000 yards of the National Aeronautics and Space Administration's (NASA's) crew module uprighting system test article. The test will occur between 9 and 12 nautical miles (NM) offshore of Galveston, TX, to the south and west of the Galveston Bay Entrance Channel.

(b) *Effective period.* This section will be effective from November 28, 2018 through December 6, 2018.

(c) *Enforcement periods.* This section will be enforced on approximately 3 days during the effective period, during daylight hours. Each period of enforcement will begin approximately 2 hours before testing activities and end approximately 2 hours after testing activities. The Captain of the Port Sector Houston-Galveston (COTP) or a designated representative will inform the public of the enforcement through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) or other means of public notice at least 3 hours in advance of the enforcement of this safety zone. Such notice of enforcement will also include more specific information regarding the location of the CMUS test article.

(d) *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 a designated representative. A designated representative is a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel, and a Federal, State, and local officer designated by or assisting the COTP) in the enforcement of the safety zone. The Patrol Commander may be contacted on Channel 16 VHF–FM (156.8 MHz) by the call sign “PATCOM”.

(2) To seek permission to enter, contact the COTP or a designated representative by VHF Channel 16.

(3) If granted permission to enter, all vessels must transit at their slowest safe speed and comply with all lawful orders or directions of the COTP or a designated representative.

(e) *Informational broadcasts.* The COTP or a designated representative will inform the public through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) or other means of public notice of the enforcement period for the temporary safety zone as well as any changes in the dates and times of enforcement.

Dated: November 14, 2018.

Kevin D. Oditt,

Captain, U.S. Coast Guard, Captain of the Port Sector Houston-Galveston.

[FR Doc. 2018-25242 Filed 11-19-18; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2018-1014]

RIN 1625-AA87

Security Zone; Corpus Christi Ship Channel, Corpus Christi, TX

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone for navigable waters within a 500-yard radius of LNG GOLAR TUNDRA while the vessel transits within the Corpus Christi Ship Channel and La Quinta Channel. A temporary security zone of the receiving facility's mooring basin will also remain in effect while LNG GOLAR TUNDRA is moored at the facility. The security zones are needed to protect personnel, vessels, and the marine environment from potential hazards created by LNG cargo aboard the vessel. Entry of vessels or persons into these zones is prohibited unless specifically authorized by the Captain of the Port Corpus Christi.

DATES: This rule is effective without actual notice from November 20, 2018 through November 21, 2018. For the purposes of enforcement, actual notice will be used from November 11, 2018 through November 20, 2018.

ADDRESSES: To view documents mentioned in this preamble as being

available in the docket, go to <https://www.regulations.gov>, type USCG-2018-1014 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 LCDR Margaret Brown, Sector Corpus Christi Waterways Management Division, U.S. Coast Guard; telephone 361-939-5130, email Margaret.A.Brown@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Sector Corpus Christi
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 doing so would be impracticable. LNG GOLAR TUNDRA is scheduled to be transit inbound on November 11, 2018 and anticipated to depart on November 21, 2018, and it is impracticable to publish an NPRM because we must establish this security zone by November 11, 2018. The security zone must be in effect through those dates in order to serve its purpose of ensuring the safety and security of the public and marine environment from hazards associated with the LNG cargo.

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 establish the security zone to ensure the safety and security of the public and marine environment from hazards associated with the LNG cargo.

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 Sector Corpus Christi (COTP) has determined that potential hazards associated with the transit and mooring of LNG GOLAR TUNDRA from November 11, 2018 through November 21, 2018, will be a safety concern for anyone within a 500-yard radius of the vessel, and while LNG GOLAR TUNDRA is moored within the mooring basin, bound by 27°52'53.38" N, 097°16'20.66" W on the northern shoreline; thence to 27°52'45.58" N, 097°16'19.60" W; thence to 27°52'38.55" N, 097°15'45.56" W; thence to 27°52'49.30" N, 097°15'45.44" W; thence west along the shoreline to 27°52'53.38" N, 097°16'20.66" W. This rule is needed to protect the public and marine environment while the vessel is transiting and moored within the COTP zone.

IV. Discussion of the Rule

This rule establishes a security zone from the time LNG GOLAR TUNDRA enters the Corpus Christi Ship Channel on November 11, 2018 until departure on or about November 21, 2018. The moving security zone will cover all navigable waters within a 500-yard radius of LNG GOLAR TUNDRA while transiting inbound and outbound through the Corpus Christi Ship Channel and La Quinta Channel, and the fixed security zone will cover all waters bound by 27°52'53.38" N, 097°16'20.66" W; on the northern shoreline; thence to 27°52'45.58" N, 097°16'19.60" W; thence to 27°52'38.55" N, 097°15'45.56" W; thence to 27°52'49.30" N, 097°15'45.44" W; thence west along the shoreline to 27°52'53.38" N, 097°16'20.66" W, while LNG GOLAR TUNDRA is moored at the facility. No vessel or person will be permitted to enter the security zones without obtaining permission from the COTP or a designated representative.

Entry into the security zones is prohibited unless authorized by 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 Corpus Christi. Persons or vessels desiring to enter or pass through the zones must request permission from the COTP or a designated representative on VHF-FM channel 16 or by telephone at 361-939-0450. If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative. The COTP or a designated representative

will inform the public through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate of the enforcement times and dates for the security zones.

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, and duration of the security zones. Vessel traffic will only be impacted for a short duration of time in the immediate area of the LNG GOLAR TUNDRA during its transit and in the area of the facility while the vessel is moored. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zones and the rule allows vessels to seek permission to enter the 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 security 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.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 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 security zones around navigable waters within a 500-foot radius of the transiting LNG GOLAR TUNDRA and within the mooring basin. 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 supporting this determination is available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protestors. 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.T08–1014 to read as follows:

§ 165.T08–1014 Security Zone; Corpus Christi Ship Channel. Corpus Christi, TX.

(a) *Location.* The following area is a security zone:

(1) For LNG GOLAR TUNDRA transiting shoreward of the seaward extremity of the Aransas Pass Jetties in the Corpus Christi Ship Channel and La Quinta Channel, the waters within a 500 yards of LNG GOLAR TUNDRA while transiting until moored.

(2) The mooring basin bound by 27°52'53.38" N, 097°16'20.66" W on the northern shoreline; thence to 27°52'45.58" N, 097°16'19.60" W; thence to 27°52'38.55" N, 097°15'45.56" W; thence to 27°52'49.30" N, 097°15'45.44" W; thence west along the shoreline to 27°52'53.38" N, 097°16'20.66" W, while LNG GOLAR TUNDRA is moored.

(b) *Effective/enforcement period.* This section is effective without actual notice from November 20, 2018 until November 21, 2018. For the purposes of enforcement, actual notice will be used from November 11, 2018 through November 20, 2018. Enforcement of this section began from the time LNG GOLAR TUNDRA entered the Corpus Christi Ship Channel on November 11, 2018 and will continue until LNG

GOLAR TUNDRA's departure on or about November 21, 2018.

(c) *Regulations.* (1) The general regulations in § 165.33 of this part apply. Entry into these zones are prohibited unless authorized by the Captain of the Port Sector Corpus Christi (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 Corpus Christi.

(2) Persons or vessels desiring to enter or pass through the zones must request permission from the COTP Sector Corpus Christi on VHF–FM channel 16 or by telephone at 361–939–0450.

(3) If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative.

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

Dated: November 9, 2018.

J.E. Smith,
Captain, U.S. Coast Guard, Acting Captain of the Port Sector Corpus Christi.

[FR Doc. 2018–25251 Filed 11–19–18; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51, 60, and 63

[EPA–HQ–OAR–2016–0510; FRL–9986–42–OAR]

RIN 2060–AS95

Revisions to Testing Regulations for Air Emission Sources

Correction

In rule document 2018–24747, appearing on pages 56713 through 56734 in the issue of Wednesday, November 14, 2018 make the following correction:

■ On page 56732, the asterisks directly above Eq. 323–8 were printed in error and those after were omitted. The equation is corrected to appear as set forth below:

Appendix A to Part 63 [Corrected]

Method 323-Measurement of Formaldehyde Emissions From Natural Gas-Fired Stationary Sources-Acetyl Acetone Derivatization Method

* * * * *

$$C_{form@15\%O_2} = C_{form} \frac{(20.9-15)}{(20.9-O_{2d})}$$

Eq. 323-8

* * * * *

[FR Doc. C1–2018–24747 Filed 11–19–18; 8:45 am]

BILLING CODE 1301–00–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2017–0460; FRL–9985–98]

Bacillus amyloliquefaciens strain ENV503; 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 *Bacillus amyloliquefaciens* strain ENV503 in or on all food commodities when this pesticide chemical is used in

accordance with label directions and good agricultural practices. Envera, LLC submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Bacillus amyloliquefaciens* strain ENV503 in or on all food commodities under FFDCA.

DATES: This regulation is effective November 20, 2018. Objections and requests for hearings must be received on or before January 22, 2019, 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–2017–0460, 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: Robert McNally, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: BPPDFRNotices@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-id?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.

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

Under FFDC section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2017-0460 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 January 22, 2019. 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-2017-0460, 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. Background

In the **Federal Register** of December 15, 2017 (82 FR 59604) (FRL-9970-50), EPA issued a document pursuant to FFDC section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 7F8546) by Envera, LLC, 220 Garfield Ave., West Chester, PA 19380. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of the bactericide and fungicide *Bacillus amyloliquefaciens* strain ENV503 in or on all food commodities. That document referenced a summary of the petition prepared by the petitioner Envera, LLC and available in the docket via <http://www.regulations.gov>. Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit III.C.

III. Final Rule**A. EPA's Safety Determination**

Section 408(c)(2)(A)(i) of FFDC allows EPA to establish an exemption from the requirement of a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is "safe." Section 408(c)(2)(A)(ii) of FFDC 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. Pursuant to FFDC section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account

the factors set forth in FFDC section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance or tolerance exemption and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ." Additionally, FFDC section 408(b)(2)(D) requires that EPA consider "available information concerning the cumulative effects of [a particular pesticide's] . . . residues and other substances that have a common mechanism of toxicity."

EPA evaluated the available toxicological and exposure data on *Bacillus amyloliquefaciens* strain ENV503 and the available toxicological data on *Bacillus subtilis* strain GB03, a microorganism that is genetically identical to *Bacillus amyloliquefaciens* strain ENV503, and considered their validity, completeness, and reliability, as well as the relationship of this information to human risk. A full explanation of the data upon which EPA relied and its risk assessment based on those data can be found within the document entitled "Federal Food, Drug, and Cosmetic Act (FFDCA) Safety Determination for *Bacillus amyloliquefaciens* strain ENV503" (Safety Determination). This document, as well as other relevant information, is available in the docket for this action as described under **ADDRESSES**.

The available data demonstrated that, with regard to humans, *Bacillus amyloliquefaciens* strain ENV503 is not toxic, pathogenic, or infective via any route of exposure. Although there may be some exposure to residues when *Bacillus amyloliquefaciens* strain ENV503 is used on all food commodities in accordance with label directions and good agricultural practices, such exposure is unlikely to significantly increase exposure above the background levels of *Bacillus amyloliquefaciens* organisms naturally present on food commodities. EPA also determined in the Safety Determination that retention of the Food Quality Protection Act (FQPA) safety factor was not necessary as part of the qualitative assessment conducted for *Bacillus amyloliquefaciens* strain ENV503.

Based upon its evaluation in the Safety Determination, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of *Bacillus amyloliquefaciens* strain ENV503. Therefore, an exemption from the requirement of a tolerance is

established for residues of *Bacillus amyloliquefaciens* strain ENV503 in or on all food commodities when this pesticide chemical is used in accordance with label directions and good agricultural practices.

B. Analytical Enforcement Methodology

An analytical method is not required because EPA is establishing an exemption from the requirement of a tolerance without any numerical limitation.

C. Response to Comments

Four comments were received in response to the notice of filing. EPA reviewed the comments and determined that they are irrelevant to the tolerance exemption in this action.

IV. Statutory and Executive Order Reviews

This action establishes a tolerance exemption under FFDCA section 408(d) in response to a petition submitted to EPA. 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 (44

U.S.C. 3501 *et seq.*) nor does it require any special considerations under Executive Order 12898, entitled “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance exemption in this action, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (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. As a result, this action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, EPA 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, EPA 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 (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require EPA’s consideration of voluntary consensus standards pursuant to section

12(d) of the National Technology Transfer and Advancement Act (15 U.S.C. 272 note).

V. 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: November 5, 2018.

Richard P. Keigwin, Jr.,
Director, Office of Pesticide Programs.

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. Add § 180.1363 to subpart D to read as follows:

§ 180.1363 *Bacillus amyloliquefaciens* strain ENV503; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of *Bacillus amyloliquefaciens* strain ENV503 in or on all food commodities when used in accordance with label directions and good agricultural practices.

[FR Doc. 2018–25313 Filed 11–19–18; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register

Vol. 83, No. 224

Tuesday, November 20, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM-50-116; NRC-2018-0201]

Elimination of Immediate Notification Requirements for Non-Emergency Events

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of docketing and request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has received a petition for rulemaking from Bill Pitesa, of the Nuclear Energy Institute (NEI), dated August 2, 2018, requesting that the NRC amend its regulations regarding the immediate notification requirements for operating nuclear power reactors. The petition was docketed by the NRC on September 4, 2018, and has been assigned Docket No. PRM-50-116. The NRC is examining the issues raised in PRM-50-116 to determine whether they should be considered in rulemaking. The NRC is requesting public comment on this petition.

DATES: Submit comments by February 4, 2019. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

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

- *Federal Rulemaking Website:* Go to <http://www.regulations.gov> and search for Docket ID NRC-2018-0201. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; email: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Email comments to:* Rulemaking.Comments@nrc.gov. If you do not receive an automatic email reply confirming receipt, then contact us at 301-415-1677.

- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301-415-1101.

- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemaking and Adjudications Staff.

- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301-415-1677.

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: Daniel Doyle, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-3748; email: Daniel.Doyle@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2018-0201 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-2018-0201.

- *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 incoming petition for rulemaking is available in ADAMS under Accession No. ML18247A204.

- *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-2018-0201 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <https://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. The Petitioner

The petition was submitted by Bill Pitesa on behalf of NEI members. Members of NEI include entities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, nuclear materials licensees, and other organizations and entities involved in the nuclear energy industry.

III. The Petition

The petitioner is requesting that the NRC revise part 50 of title 10 of the *Code of Federal Regulations* (10 CFR) to remove non-emergency notification requirements from the current regulations. The petitioner contends that the elimination of non-emergency notification requirements would eliminate duplicative notifications to the NRC and reduce unnecessary burden to licensees without presenting any incremental risk to public health and safety.

IV. Discussion of the Petition

The petitioner requests that the NRC revise its regulations in 10 CFR part 50 to remove the current requirement for licensees to immediately report non-emergency events that occur at operating nuclear power reactors. The petitioner believes the regulations should be revised because licensees currently have procedures for responding to non-emergency events

and ensuring that NRC resident inspectors are notified of non-emergency events independent of the requirements in § 50.72. The petitioner states that “duplicative notifications under 10 CFR 50.72 serve no safety function and are not needed to prevent or minimize possible injury to the public or to allow the NRC to take necessary action.”

The petitioner suggests that in lieu of the currently required notifications, the NRC should establish guidance for the resident inspectors that provides consistent and standard expectations for using the existing communication protocols that have proven effective from the site to the resident inspectors and, from there, on to NRC management.

The petitioner discusses the NRC’s stated purpose in promulgating the non-emergency event notification requirements in § 50.72 by referring to final rules published in the **Federal Register**. The basis and purpose of the current requirements are primarily discussed in final rules published in the **Federal Register** on February 29, 1980 (45 FR 13434); August 29, 1983 (48 FR 39039); September 10, 1992 (57 FR 41378); and October 25, 2000 (65 FR 63769).¹

V. Request for Comment

The NRC staff is requesting the public to consider the following specific questions when commenting on this petition:

1. The NRC publishes the event notifications it receives from licensees on the NRC’s public website every weekday. Do you or does your organization regularly review these event notifications? If so, please describe your use of this information and explain how the elimination of all non-emergency event notification requirements would affect you or your organization.

2. If all non-emergency event notification requirements were removed from § 50.72, the NRC would still receive licensee event reports within 60 days of discovery of the event as required by § 50.73 unless there is no corresponding § 50.73 report. These reports typically contain a more detailed account of the event and are released to the public in ADAMS after receipt. There is no corresponding § 50.73 report for § 50.72(b)(2)(xi) for a news release or notification to other government agencies, § 50.72(b)(3)(xii) for

transportation of a radioactively contaminated person, and § 50.72(b)(3)(xiii) for major loss of emergency assessment capability. Would the public release of licensee event reports alone meet your needs? Please explain why or why not.

3. The petitioner asserts that the non-emergency notifications under § 50.72 “create unnecessary burdens for both the licensee and the NRC staff, and should be eliminated.” What specific provisions in § 50.72, if any, do you consider to be especially burdensome (e.g., the timing requirements for submittal of event notifications, certain types of event notifications)? Please provide a supporting justification, as appropriate.

4. The petitioner asserts that § 50.72 non-emergency notifications are contrary to the best interests of the public and are contrary to the stated purpose of the regulation. Do you agree with this assertion? Please explain why or why not.

5. Are there alternatives to the petitioner’s proposed changes that would address the concerns raised in the petition while still providing timely event information to the NRC and the public? Please provide a detailed discussion of any suggested alternatives.

Dated at Rockville, Maryland, this 14th day of November, 2018.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,
Secretary of the Commission.

[FR Doc. 2018–25273 Filed 11–19–18; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 61

[WC Docket Nos. 17–308, 18–276; FCC 18–142]

Elimination of Outdated Tariff-Related Requirements

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to eliminate outdated tariff-related requirements that provide little benefit while imposing burdens on carriers.

DATES: Comments are due on or before December 20, 2018. Reply comments are due on or before January 4, 2019.

ADDRESSES: Interested parties may file comments and reply comments on or before the dates indicated in the **DATES** section this document. Comments may be filed using the Commission’s

Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.

- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission’s Secretary must be delivered to FCC Headquarters at 445 12th St. SW, Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington DC 20554.

- *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

FOR FURTHER INFORMATION CONTACT: Robin Cohn, Wireline Competition Bureau, Pricing Policy Division at 202–418–1540 or at robin.cohn@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission’s Notice of Proposed Rulemaking released October 18, 2018. A full text copy of the Notice of Proposed Rulemaking may be obtained at the following internet address: <https://www.fcc.gov/document/fcc-waives-and-seeks-comment-eliminating-obsolete-tariff-rules>.

¹ These final rules are publicly available in the **Federal Register** section of the U.S. Government Publishing Office’s govinfo website: <https://www.govinfo.gov/app/collection/fr>.

I. Discussion

A. Amending the Cross-Referencing Rule

1. In light of the public's ability to access online all tariffs filed with the Commission through the Electronic Tariff Filing System (ETFS) on our website, we propose to amend our cross-referencing rule to allow a carrier to refer to its own tariff and the tariffs of its affiliated companies in its tariff publications. We seek comment on this proposal.

2. The cross-referencing rule provides that, subject to certain exceptions, no tariff publication filed with the Commission may make reference to any other tariff publication or to any other document or instrument. The rule was adopted more than 75 years ago when tariffs were filed in hard copy with the Commission and reviewing them was time consuming and expensive. As the Commission explained in 1984, "[c]onfusion may result if references to other tariffs are allowed since all important information will not be consolidated in one place and references may be incomplete. In addition, referenced documents may not be easily accessible to the public." We seek comment on whether those concerns are as legitimate today, as they were in past decades. Does the fact that all interstate tariffs are now filed electronically and are available to the public on our website alleviate concerns about the confusion that may result from a carrier cross-referencing its own or an affiliate's tariffs? Does the nature of the cross-referencing rule as essentially a procedural requirement adopted decades ago counsel in favor of its modification at this juncture, given the passage of time since its adoption and the changed circumstances due to technological advances that make tariff information more publicly and readily accessible?

3. We also seek comment on the burden to a carrier of complying with the prohibition on cross-referencing its own and its affiliates' tariffs. Currently, a carrier seeking to cross-reference its own tariffs can use the "special permission" procedures set forth in our rules, which require submission of an application requesting a one-time waiver of the rule. The Wireline Competition Bureau (the Bureau) routinely grants such waivers and as a practical matter those waivers do not appear to have resulted in any negative consequences. In their waiver requests, both Verizon and AT&T argue that the current process requiring a carrier to obtain special permission each time it seeks to refer to its own tariffs is unduly

burdensome. Do other commenters agree? What are the costs and benefits of requiring a carrier to follow the procedural rule of getting special permission to refer to its own or an affiliate's tariff in a tariff publication?

4. We invite commenters to identify any other costs and benefits of amending the cross-referencing rule to allow a carrier to refer to its own or an affiliate's tariff publications in its tariffs. Are there any disadvantages to permitting carriers' tariffs to include cross-references to their own or an affiliate's tariffs? Are there any different approaches we should take to this issue?

5. Consistent with the general approach of the cross-referencing rule and with the approach recommended by some stakeholders, our proposed amendments to the cross-referencing rule would apply to all carriers that file tariffs. We seek comment on this approach. Are there reasons to exclude particular types of carriers from application of the proposed rule revision?

B. Eliminating Advance Filing of Materials That Support Interstate Access Tariffs

6. We propose to eliminate, as no longer necessary and unduly burdensome, the provision in our rules requiring price cap incumbent LECs to file short form tariff review plans 90 days before their access tariffs are due. We seek comment on this proposal.

7. Eliminating the short form tariff review plan requirement is consistent with the Commission's past efforts to reduce the burden of tariff filings on price cap LECs while ensuring Commission staff and the public have sufficient information about such tariffs in advance of their effective date. Before 1997, the Commission required LECs to file their interstate access tariff revisions 90 days before the effective date of those tariffs, which gave the Commission staff and stakeholders a substantial amount of time to review those tariffs before they became effective. Pursuant to section 204(a)(3) of the Communications Act of 1934, as amended (Act), the Commission modified its rules to permit tariff filings on a streamlined basis on either seven days' notice (for rate reductions) or 15 days' notice (for rate increases). At the same time, in light of the shortened time for review and the high volume and complexity of tariff filings it was receiving, the Commission adopted a requirement that price cap carriers file supporting information, without rate data, 90 days in advance of the annual access tariff filing to allow the public and Commission staff the opportunity to review that information

well in advance of the actual tariff filing.

8. Typically, price cap carriers have satisfied the requirement to file material supporting their interstate access tariffs 90 days in advance of their tariff filings by filing standardized short form tariff review plans. The standardized short form tariff review plans are spreadsheets that detail exogenous cost adjustments that price cap LECs intend to make to their price cap indices. For example, price cap carriers make exogenous cost adjustments related to: (1) Regulatory fees; (2) Telecommunications Relay Service (TRS) expenses; (3) excess deferred taxes; and (4) North American Numbering Plan Administration (NANPA) expenses.

9. Over the last few years, the Bureau has found that the information needed to populate the short form tariff review plans is often not available when the short form tariff review plans are due. To address the insufficiency of available information, by waiver the Bureau reduced the time period for filing short form tariff review plans: first to 60 days prior to the annual access charge tariff filing and then to 45 days prior to the annual access charge tariff filing. For the 2017 and 2018 tariff filing years, the Bureau waived the short form tariff review plan filing requirement altogether because some of the factors needed to calculate exogenous cost adjustments for regulatory fees and TRS and NANPA expenses were not going to be available prior to the short form tariff review plan filing deadline. The Bureau found that absent such information the short form tariff review plans would provide little value to the Commission, industry, and consumers. Also, over the last decade, the Commission has taken a variety of deregulatory actions, including access charge reform and the grant of forbearance to price cap LECs from dominant carrier regulation for their newer packet-based and higher bandwidth services, that have resulted in a decline in the number of interstate access tariff filings as the scope of services subject to price cap regulation has narrowed.

10. We seek comment on our proposal to stop requiring the filing of materials supporting price cap LECs' interstate access tariffs 90 days in advance of their tariff filings. In both 2017 and 2018, this requirement was waived by the Bureau and it does not appear that the Bureau waivers have interfered with the ability of interested stakeholders to review the price cap LECs' more extensive tariff review plans filed with their annual access charge tariff filings in advance of the July 1 effective date. However, we seek comment on whether in previous

years there was a benefit to stakeholders of the short form tariff review plan filings that we should consider? Were there any negative effects of either shortening the filing deadline for short form tariff review plans or waiving the short form tariff review plan requirement entirely? Does the decline in the number of interstate access tariff filings due to regulatory changes provide an additional basis for eliminating the short form tariff review plan requirement?

11. We also seek comment on the burden of filing the short form tariff review plans. What were the costs to filers that had to file short form tariff review plans in previous years? The same exogenous cost information collected in the short form tariff review plans is also required in the long form tariff review plans submitted 15 days before the annual access tariff filing. Is submission of the same information twice unduly burdensome? Are there benefits to price cap carriers from filing the short form tariff review plans? What would be the practical consequences of eliminating the short form tariff review plan requirement? Should carriers be given the option to file the short form tariff review plan or should the rule be completely eliminated? Finally, we seek comment on whether there are alternatives to eliminating the rule that the Commission should consider.

C. Implementing the Proposed Rule Changes

12. We seek comment on the timing for making the changes to our part 61 rules proposed herein. We propose an effective date that is thirty (30) days following publication of any revised rules in the **Federal Register**, which will effectuate application of any such rules in a timely manner. We invite parties to comment on this proposal and to explain the implications of different effective dates for any changes we make to our part 61 rules. We further note that none of the rule modifications proposed herein would affect either the Commission's authority to reject, suspend, and investigate particular tariff filings or parties' ability to challenge a tariff filing on the grounds that it is unjust and unreasonable. Do commenters have input on these or other issues related to the legal ramifications or implementation of the proposed rule amendments?

II. Procedural Matters

13. *Comment Filing Procedures.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or

before the dates indicated in the **DATES** section of this document.

14. *Ex Parte Presentations.* The proceeding this *NPRM* initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b). In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

15. *Paperwork Reduction Act.* This document eliminates, and thus does not contain new or revised, information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified "information burden for small business concerns with fewer than 25 employees" pursuant to the Small Business Paperwork Relief Act of 2002.

16. *Initial Regulatory Flexibility Certification.* The Regulatory Flexibility Act of 1980 (RFA), as amended, requires agencies to prepare a regulatory

flexibility analysis for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities." The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

17. In this *NPRM*, we propose to amend two of the Commission's rules applicable to tariffs, §§ 61.49(k) and 61.74(a), in order to minimize burdens associated with such rules and as part of the Commission's efforts to reduce unnecessary regulations that no longer serve the public interest. These proposed revisions to § 61.49(k) only impact price cap LECs for the services that continue to be tariffed and any impact of these rule changes is minor, while the proposed revisions to § 61.74(a) are procedural in nature and the impact is likewise minor. Therefore, we certify that the proposals in this *NPRM*, if adopted, will not have a significant economic impact on a substantial number of small entities.

18. The Commission will send a copy of this *NPRM*, including a copy of this Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA. The initial certification will also be published in the **Federal Register**.

19. *Contact Person.* For further information regarding this proceeding, contact Robin Cohn, Pricing Policy Division, Wireline Competition Bureau, at (202) 418–1540, or robin.cohn@fcc.gov.

III. Ordering Clauses

20. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 2, 4(i), 201–205, 215, 218, and 220 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 201–05, 215, 218, 220, this Notice of Proposed Rulemaking *is adopted*.

21. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Certification, to the Chief

Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR part 61

Communications common carriers, Reporting and record keeping requirements, Tariffs, Telecommunications, Telephone.

Federal Communications Commission

Cecilia Sigmund,

Federal Register Liaison Officer.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend part 61 of title 47 of the Code of Federal Regulations as follows:

PART 61—TARIFFS

■ 1. The authority citation for part 61 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 201–205, 403, unless otherwise noted.

§ 61.49 [Amended]

- 2. Amend § 61.49 by removing and reserving paragraph (k).
- 3. Amend § 61.74 by redesignating paragraphs (b) through (e) as paragraphs (c) through (f) and adding a new paragraph (b) to read as follows:

§ 61.74 References to other instruments.

* * * * *

(b) Tariff publications filed by a carrier may reference other tariff publications filed by that carrier or its affiliates.

* * * * *

[FR Doc. 2018–25324 Filed 11–19–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 13–249; FCC 18–139]

Revitalization of the AM Radio Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission adopted a Second Further Notice of Proposed Rulemaking (*Second FNPRM*), in which it sought comment on alternative revised proposals to change the interference protection given to Class A AM radio broadcast stations. These proposals were revised based on responses to the Further Notice of Proposed Rule Making in this proceeding.

DATES: Comments may be filed on or before January 22, 2019 and reply

comments may be filed on or before February 19, 2019.

ADDRESSES: You may submit comments, identified by MB Docket No. 13–249, by any of the following methods:

- *Federal Communications Commission's Website:* <http://apps.fcc.gov/ecfs/>. Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: FCC504@fcc.gov or phone: 202–418–0530 or TTY: 888–835–5322.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Albert Shuldiner, Chief, Media Bureau, Audio Division, (202) 418–2700; Thomas Nessinger, Senior Counsel, Media Bureau, Audio Division, (202) 418–2700. For additional information concerning the Paperwork Reduction Act (PRA) information collection requirements contained in this document, contact Cathy Williams at 202–418–2918, or via the internet at Cathy.Williams@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Further Notice of Proposed Rulemaking (*Second FNPRM*), MB Docket No. 13–249; FCC 18–139, adopted and released on October 5, 2018. The full text of this document will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554. The full text of this document can also be downloaded in Word or Portable Document Format (PDF) at <http://www.fcc.gov/ndbedp>.

Synopsis

1. The 73 Class A AM stations in the United States are authorized to broadcast at up to 50 kW both day and night and, by current rule, are designed to render primary and secondary service over extended areas and are afforded extensive daytime and nighttime protection from interference by co- and adjacent-channel AM stations. Currently, Class A AM stations in the continental United States are protected during the day to their 0.1 mV/m groundwave contour from co-channel stations, and to their 0.5 mV/m groundwave contour from adjacent-channel stations. At night, such Class A stations are protected to their 0.5 mV/

m-50 percent skywave contour from co-channel stations and to their 0.5 mV/m groundwave contour from adjacent-channel stations.

2. In the Further Notice of Proposed Rulemaking (*AMR FNPRM*), FCC 15–142, 30 FCC Rcd 12145, 81 FR 2818, Jan. 19, 2016, in this AM Revitalization proceeding, the Commission recognized that many of the areas previously receiving only Class A secondary service are now served by FM stations and smaller, more local AM stations. 30 FCC Rcd at 12168, 12170, paras. 51, 55. In the latter case, local AM service is often curtailed by the need for a local AM station to protect a (sometimes distant) Class A station's service. The Commission therefore tentatively concluded in the *AMR FNPRM* (1) that all Class A stations should be protected, both day and night, to their 0.1 mV/m groundwave contour, from co-channel stations, thus maintaining daytime protection but reducing protection to secondary coverage service areas at night; (2) that all Class A stations should continue to be protected to the 0.5 mV/m groundwave contour, both day and night, from first adjacent channel stations; and (3) that the critical hours protection of Class A stations should be eliminated completely. The Commission sought comment on these proposals.

3. The *AMR FNPRM* proposals attracted voluminous and diverse comments. The licensees of Class A stations, represented primarily by the AM Radio Preservation Alliance (AMRPA), argue against the proposals and in favor of retaining the current protection rules. AMRPA argues that the Commission's proposal would do "significant harm" to the AM band by creating new interference, and point out the vital role that Class A stations have played in prior emergencies, such as Hurricane Katrina, noting further that 25 such stations are Primary Entry Points (PEPs) for the Integrated Public Alert and Warning System (IPAWS), 22 of which have been outfitted by the Federal Emergency Management Agency (FEMA) to improve operating capability in national emergencies. A number of other commenters joining AMRPA in opposing the *AMR FNPRM* proposal agree that the proposal would reduce those stations' utility during national emergencies. Others contend that the proposal will increase nighttime interference in exchange for little in the way of increased nighttime coverage for less-powerful stations, while still others object to losing the ability to listen to distant signals for extended time periods.

4. On the other hand, a number of commenters supported the

Commission's proposal. Many believe that Class A AM stations' current protected status may be an anachronism with little relevance to a world with more FM stations, the internet, and other forms of communications. Some licensees of AM stations that must reduce nighttime power to protect Class A stations wish to improve their local nighttime service. Some point out that the extended skywave service that Class A licensees seek to protect has become increasingly unreliable and prone to interference, particularly given high environmental noise floors caused by various sources of radiofrequency noise. Many also criticize some of the opponents' calculations of potential signal losses due to the proposed rule changes, questioning opponents' technical showings. As for emergency communications, some commenters note that Class A stations seldom broadcast weather or other alerts for distant areas beyond their immediate communities of license, and thus contend that it is more valuable for local stations to have the ability to broadcast emergency alerts and other locally relevant emergency information at night.

5. A third category of commenters believe that changes to Class A protections are necessary, but do not believe the Commission's proposals to be the correct approach. Most share certain premises: That a 0.1 mV/m signal is not listenable under most circumstances; that nighttime skywave service is sporadic and unreliable; and that the wide-area coverage of Class A stations written into the rules should be preserved to at least some extent. At the same time, these commenters propose solutions that they believe will offer some relief to AM broadcasters currently protecting Class A stations that are sometimes many hundreds of miles away.

6. The majority of these commenters propose instead that Class A stations be protected to their 0.5 mV/m groundwave contour, both day and night, from co-channel stations and, in some cases, first-adjacent channel stations as well. They differ in how they believe Class A stations should be protected from nighttime skywave interference from other stations. Some propose nighttime protection of a Class A station's 0.5 mV/m groundwave contour based on the RSS values calculated for Class A stations in the continental United States, and further propose that the interfering contour should be the 0.025 mV/m-10 percent skywave contour based on single signal calculations. Others propose that Class A stations be protected to their

nighttime 0.5 mV/m groundwave contours in a similar fashion to the way that Class B stations are currently protected to their 2.0 mV/m nighttime groundwave contours; they state that other stations making facility changes would have to show that they do not increase interference above the 0.5 mV/m groundwave contour, or the 50 percent exclusion RSS nighttime interference-free (NIF) level, if higher, of any Class A station; believing that this more fairly protects the actual interference-free service enjoyed by Class A AM stations, rather than the theoretical service being protected by the current rules or the Commission's proposed rules. These commenters, however, do not all agree with the Commission's proposal to eliminate critical hours protection to Class A AM stations, favoring instead protection to the Class A stations' 0.5 mV/m groundwave contours during those hours.

7. In the *Second FNPRM*, the Commission now seeks further comment on revised proposals for amending protections to Class A AM stations. Some commenters purport to demonstrate that protection of the 0.1 mV/m contour as proposed in the *AMR FNPRM* would be excessive because a 0.1 mV/m signal cannot be heard under current noise conditions and suggest that it is only necessary to protect Class A stations to their 0.5 mV/m groundwave contour. However, other commenters disagree. The Commission seeks further comment on this determination.

8. Moreover, commenters argue that some skywave protection of Class A stations is desirable. The Commission therefore seeks comment on revised proposals for amending protections to Class A AM stations, which include alternative protection standards for critical hours and nighttime hours. These alternative protection standards are proposed as revisions to the proposed rules set forth at 81 FR 2818, Jan. 19, 2016. The following proposals all provide Class A stations with less protection than they currently enjoy; in the case of the critical hours proposals, Alternative 1 provides Class A stations with less protection than does Alternative 2, and in the case of the nighttime protection proposals, Alternative 2 in some cases provides Class A stations with less protection than does Alternative 1:

Daytime Hours Proposal

- During daytime hours, Class A AM stations are protected to their 0.5 mV/m daytime groundwave contour, from

both co-channel and first-adjacent channel stations;

Critical Hours Proposals

- *Alternative 1:* During critical hours, Class A AM stations are afforded no protection from other AM stations, as proposed in the *AMR NPRM* (no change to current 47 CFR 73.99), or

- *Alternative 2:* During critical hours, Class A AM stations are protected to their 0.5 mV/m groundwave contour (revise 47 CFR 73.99);

Nighttime Hours Proposals

- *Alternative 1:* During nighttime hours, there may be no overlap between a Class A AM station's 0.5 mV/m nighttime groundwave contour and any interfering AM station's 0.025 mV/m 10 percent skywave contour (calculated using the single station method); or

- *Alternative 2:* During nighttime hours, Class A AM stations are protected from other AM stations in the same manner as Class B AM stations are protected, that is, interference may not be increased above the greater of the 0.5 mV/m nighttime groundwave contour or the 50 percent exclusion RSS NIF level (calculated using the multiple station method).

9. The Commission seeks comment on these alternative proposals and asks once again for the comments to address those issues set forth in the *AMR FNPRM* concerning the effects on licensees and listeners of each type of station that could result from the combination of reduced protection to Class A stations and power increases by co- and adjacent-channel stations that this proposal would allow. The Commission also asks that commenters be mindful of the engineering comments already submitted concerning the calculation of listener interference, and, with this in mind, requests realistic estimates of the numbers of listeners that may lose primary service, as opposed to secondary or sporadic service, under each of the alternatives. Is there common agreement that protection of the 0.1 mV/m contour is excessive because a 0.1 mV/m signal cannot be heard under current noise conditions or are there studies to the contrary? Is the appropriate level of protection to the 0.5 mV/m groundwave contour? Likewise, the Commission seeks realistic estimates of the populations that could receive new primary local service, especially nighttime service, under each of these alternatives. It also seeks comment on whether its statutory authority imposes any limitations on implementation of these proposals, and whether such implementation is consistent with the

public interest. Finally, the Commission asks for comment on the effect of these proposals on AM broadcasters that are small entities and seek comment as to alternatives that would minimize burdens on such small entities.

10. The Commission also asked for specific comments addressing the effect of these proposals, if any, on the functioning of the Emergency Alert System (EAS) and IPAWS. FEMA's IPAWS Office noted in comments that twenty-five Class A stations are Primary Entry Point (PEP) stations, and stated that under certain circumstances, the Commission's original proposal would diminish the reach of EAS alerts from these stations. The Commission sought comment as to the effect of its alternative proposals on emergency communications. In particular, it requested that any such evaluation include specifics as to what effect, if any, our proposals would have on the ability of other radio stations to receive EAS alerts from Class A stations that function as PEPs. It asked commenters to identify the affected stations and the populations covered by such stations to the extent possible. Such comments should also include an evaluation of the current reliability of Class A nighttime skywave service in providing emergency communications to distant listeners and to other radio stations that are not PEPs, compared to the expected reliability and reach of such communications if any of the alternative proposals are adopted. Commenters were also asked to address the potential benefits during emergencies of having more local service on the AM band available to listeners.

11. The *AMR FNPRM* also included a tentative conclusion to roll back 1991 rule changes pertaining to calculation of nighttime RSS values of interfering field strengths and nighttime interference-free service. 30 FCC Rcd at 12170–73. It also proposed a return to predicting the nighttime interference-free coverage area using only the interference contributions from co-channel stations and the 50 percent exclusion method. *Id.* at 12172. The *AMR FNPRM* also included a proposed revision to daytime protection to Class B, C, and D AM stations, to return to the pre-1991 0 dB daytime 1:1 protection ratio for first adjacent channels; change second adjacent channel groundwave protection to match the current levels for third adjacent channel protection; and eliminate third adjacent channel groundwave protection. Additionally, the *AMR FNPRM* included a proposal to change the daytime protected contour for Class B, C, and D stations to the 2.0 mV/m contour. These proposals were

intended to allow AM broadcasters greater flexibility to make station modifications designed to increase signal strength to their primary service areas.

12. While not revising these proposals at this time, the Commission requested that in light of the alternative Class A protection proposals set forth above, commenters state whether they would revise their previously submitted comments regarding calculation of RSS values and changes to Class B, C, and D daytime protection and, if so, in what way and for what reasons. Commenters should consider the proposed revisions to AM station protection in terms of a new system designed to maximize local radio service without unduly jeopardizing wide-area service.

13. The Commission thus sought comment on the rule changes proposed above, including the costs and benefits associated with the various proposals. It also sought comment on the costs and benefits of any other alternative approaches to addressing the issues raised in the record. To the extent possible, commenters should quantify the claimed costs and benefits and provide supporting information.

Comments and Reply Comments

14. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street SW, Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
- Commercial Mail sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street SW, Washington, DC 20554.

Procedural Matters

Ex Parte Rules

15. This proceeding shall be treated as a “permit-but-disclose” proceeding in

accordance with the Commission's *ex parte* rules. 47 CFR 1.1200 *et seq.* Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with 47 CFR 1.1206(b). In proceedings governed by 47 CFR 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Initial Regulatory Flexibility Analysis

16. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice and comment rule making proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A “small

business concern” is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

17. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies proposed in the *Second FNPRM*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Second FNPRM* provided in paragraph 18. The Commission will send a copy of this entire *Second FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). 5 U.S.C. 603(a). In addition, the *Second FNPRM* and the IRFA (or summaries thereof) will be published in the **Federal Register**. *Id.*

Need For, and Objectives of, the Proposed Rules

18. This rulemaking proceeding is initiated to obtain further comments concerning certain proposals designed to revitalize the AM broadcast radio service. It is based in substantial part on proposals raised by commenters in this rulemaking proceeding, in response to the Commission’s call in the original *NPRM* in this proceeding for further ideas and proposals.

19. Specifically, the Commission seeks comment on the following: (1) Whether to change the nighttime and critical hours signal protection to Class A AM stations, based on new alternative proposals; (2) whether to change the methodology for calculating nighttime root sum square (RSS) values, based on the new alternative proposals for protection to Class A AM stations; and (3) whether to change daytime signal protection to Class B, C, and D stations, based on the new alternative proposals for protection to Class A AM stations.

Legal Basis

20. The authority for this proposed rulemaking is contained in sections 1, 2, 4(i), 301, 303(r), 307, 316, and 403 of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 301, 303(r), 307, 316, and 403.

¹ See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

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

21. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. 5 U.S.C. 603(b)(3). The RFA generally defines the term “small entity” as encompassing the terms “small business,” “small organization,” and “small governmental entity.” *Id.* section 601(6). In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. *Id.* section 601(3). A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632.

Radio Stations

22. The proposed rules and policies could apply to AM radio broadcast licensees, and potential licensees of the AM radio service. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. *Id.* Included in this industry are commercial, religious, educational, and other radio stations. *Id.* Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included. *Id.* However, radio stations that are separate establishments and are primarily engaged in producing radio program material are classified under another NAICS number. *Id.* The SBA has established a small business size standard for this category, which is: Firms having \$38.5 million or less in annual receipts. 13 CFR 121.201, NAICS Code 515112 (updated for inflation in 2008). According to the BIA/Kelsey, MEDIA Access Pro Database on May 14, 2018, 4,630 (99.94%) of 4,633 AM radio stations have revenues of \$38.5 million or less. Therefore, the majority of such entities are small entities. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

23. In addition, an element of the definition of “small business” is that the entity not be dominant in its field of operation. We are unable at this time to

define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any radio station from the definition of a small business on this basis and therefore may be over-inclusive to that extent. Also as noted, an additional element of the definition of “small business” is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

24. The proposed rule and procedural changes may, in some cases, impose different reporting, recordkeeping, or other requirements on existing and potential AM radio licensees and permittees. In the case of proposed changes to the technical rules regarding calculation of daytime and nighttime interfering contours, and changes to daytime, nighttime, and critical hours protection to some stations, there would be changes in the calculation of inter-station interference and reporting of same. However, the information to be filed is already familiar to broadcasters, and the nature of the interference calculations would not change, only the values that are acceptable, so any additional burdens would be minimal.

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

25. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.² In the *Second FNPRM*, the Commission seeks to assist AM broadcasters by changing certain daytime, nighttime, and critical hours interference protection standards as they apply to certain classes of AM

² 5 U.S.C. 603(b).

stations. The Commission seeks comment as to whether its goal of revitalizing the AM service could be effectively accomplished through these means. The Commission is open to consideration of alternatives to the proposals under consideration, as set forth herein, including but not limited to alternatives that will minimize the burden on AM broadcasters, most of which are small businesses. There may be unique circumstances these entities may face, and we will consider appropriate action for small broadcasters when preparing a Fourth Report and Order in this matter.

Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission's Proposals

26. None.

27. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

Ordering Clause

28. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 2, 4(i), 301, 303(r), 307, 316, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 301, 303(r), 307, 316, and 403, this Second Further Notice of Proposed Rule Making *is adopted*.

List of Subjects

47 CFR Part 73

Communications equipment, Radio, Reporting and recordkeeping requirements.

47 CFR Part 74

Communications equipment, Radio, Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison, Office of the Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. Amend § 73.21 by revising the last two sentences of paragraph (a) introductory text and paragraph (a)(1) to read as follows:

§ 73.21 Classes of AM broadcast channels and stations.

(a) * * * These stations are protected from objectionable interference within their primary service areas. Stations operating on these channels are classified as follows:

(1) *Class A Station.* A Class A station is an unlimited time station that operates on a clear channel and is

designed to render primary service over an extended area at relatively long distances from its transmitter. Its primary service area is protected from objectionable interference from other stations on the same and adjacent channels. (See § 73.182). The operating power shall not be less than 10 kW nor more than 50 kW. (Also see § 73.25(a)).

* * * * *

§ 73.24 [Amended]

■ 3. Amend § 73.24 as follows:

■ Option 1: Amend § 73.24 by removing paragraph (h) and redesignating paragraphs (i) and (j) as paragraphs (h) and (i).

■ Option 2: Amend § 73.24 by revising paragraph (h) to read as follows:

§ 73.24 Broadcast facilities; showing required.

* * * * *

(h) That, in the case of an application for a Class B or Class D station on a clear channel, the proposed station would radiate, during two hours following local sunrise and two hours preceding local sunset, in any direction toward the 0.5 mV/m groundwave contour of a co-channel United States Class A station, no more than the maximum value permitted under the provisions of § 73.187.

* * * * *

■ 4. Amend § 73.37 by revising the table in paragraph (a) to read as follows:

§ 73.37 Applications for broadcast facilities, showing required.

(a) * * *

| Frequency separation (kHz) | Contour of proposed station (classes B, C and D) (mV/m) | Contour of any other station (mV/m) |
|----------------------------|---|--|
| 0 | 0.025 0.5 0.100 2.0 | 0.500 (Class A). 0.025 (Class A). 2.0 (Other classes). 0.100 (Other classes). |
| 10 | 0.500 2.0 | 0.500 (Class A). 2.0 (Other classes). |
| 20 | 25.0 | 25.0 (All classes). |

* * * * *

■ 5. Amend § 73.99 by revising paragraphs (b)(2) and (3), (c)(1)(ii) and (iii), (d)(2) and (3), (f)(1) and (3) to read as follows:

§ 73.99 Presunrise service authorization (PSRA) and postsunset service authorization (PSSA).

* * * * *

(b) * * *

(2) Class D stations situated outside the 0.5 mV/m nighttime groundwave

contours of co-channel U.S. Class A stations to commence PSRA operation at 6 a.m. local time and to continue such operation until sunrise times specified in their basic instruments of authorization.

(3) Class D stations located within the co-channel 0.5 mV/m groundwave contours of U.S. Class A stations, to commence PSRA operation either at 6 a.m. local time, or at sunrise at the nearest Class A station located east of

the Class D station (whichever is later), and to continue such operation until the sunrise times specified in their basic instruments of authorization.

* * * * *

(c) * * *

(1) * * *

(ii) Protection is to be provided to the 0.5 mV/m groundwave contours of co-channel U.S. Class A stations or the NIF groundwave contour based on the 50

percent RSS exclusion method, whichever is greater.

(iii) In determining the protection to be provided, the effect of each interfering signal will be evaluated such that interference may not be increased above the 0.5 mV/m nighttime groundwave contour or the NIF groundwave contour based on the 50 percent RSS exclusion method, whichever is greater.

* * * * *

(d) * * *

(2) Class D stations situated outside the 0.5 mV/m groundwave contours of co-channel U.S. Class A stations to commence PSSA operations at sunset times specified in their basic instruments of authorization and to continue for two hours after such specified times.

(3) Class D stations located within the co-channel 0.5 mV/m groundwave contours of U.S. Class A stations to commence PSSA operation at sunset times specified in their basic instruments of authorization and to continue such operation until two hours past such specified times, or until sunset at the nearest Class A station located west of the Class D station, whichever is earlier. Class D stations located west of the Class A station do not qualify for PSSA operation.

* * * * *

(f) * * *

(1) Class D stations operating in accordance with paragraphs (b)(1) and (2), (d)(1) and (2) of this section are required to protect the 0.5 mV/m groundwave contours or the NIF groundwave contour of co-channel Class A stations based on the 50 percent RSS exclusion method, whichever is greater.

* * * * *

(3) Class D stations operating in accordance with paragraphs (d)(2) and (3) of this section are required to limit the extent of the 0.025 mV/m skywave 10% contour to the co-channel Class A 0.5 mV/m ground wave or the NIF groundwave contour based on the 50%-RSS exclusion method, whichever is greater. The location of the 0.5 mV/m contour or the NIF contour of a Class A station will be determined by use of Figure M3, *Estimated Ground Conductivity in the United States*. When the 0.5 mV/m contour extends beyond the national boundary, the international boundary shall be considered the 0.5 mV/m contour.

* * * * *

§ 73.182 [Amended]

■ 6. Amend § 73.182 as follows:

■ Option 1: Amend § 73.182 by:

■ a. Revising paragraphs (a)(1) through (3), (c) and (d);

■ b. Removing paragraphs (g) and (h);

■ c. Redesignating paragraphs (i) through (t) as paragraphs (g) through (r); and

■ d. Revising newly redesignated paragraphs (i) and (j), (m)(1), and the tables in paragraphs (o) and (p).

The revisions read as follows:

§ 73.182 Engineering standards of allocation.

(a) * * *

(1) Class A stations operate on clear channels with powers between 10 kW and 50 kW. These stations are designed to render primary service over a large area protected from objectionable interference from other stations on the same and adjacent channels. Class A stations may be divided into two groups: those located in any of the conterminous United States and those located in Alaska.

(i) Class A stations in the conterminous United States operate on the channels assigned by § 73.25 with minimum power of 10 kW, maximum power of 50 kW, and minimum antenna efficiency of 275 mV/m/kW at 1 kilometer. The Class A stations in this group are afforded protection as follows:

(A) Daytime. To the 0.5 mV/m groundwave contour from stations on the same or adjacent channels.

(B) Nighttime. There shall be no overlap between the Class A station's 0.5 mV/m nighttime groundwave contour and any interfering AM station's 0.025 mV/m-10% skywave contour, calculated based on a single station method.

(ii) Class A stations in Alaska operate on the channels assigned by § 73.25 with minimum power of 10 kW, maximum power of 50 kW, and minimum antenna efficiency of 215 mV/m/kW at 1 kilometer. The Class A stations in this group are afforded protection, both daytime and nighttime, to the 0.1 mV/m groundwave contour from other co-channel stations and to the 0.5 mV/m groundwave contour from other stations on first adjacent channels.

(2) Class B stations are stations which operate on clear and regional channels with powers not less than 0.25 kW or greater than 50 kW. These stations render primary service, the area of which depends on their geographic location, power, and frequency. It is recommended that Class B stations be located so that the interference received from other stations will not limit the service area to a groundwave contour value greater than 2.0 mV/m groundwave contour both daytime and nighttime, which are the values for the mutual protection between this class of

stations and other stations of the same class.

Note: * * *

(3) Class C stations operate on local channels, normally rendering primary service to a community and the suburban or rural areas immediately contiguous thereto, with powers not less than 0.25 kW or greater than 1 kW, except as provided in § 73.21(c)(1). Such stations are normally protected to the daytime 2.0 mV/m contour. On local channels the separation required for the daytime protection shall also determine the nighttime separation. Where directional antennas are employed daytime by Class C stations operating with power equal to or greater than 0.25 kW, the separations required shall in no case be less than those necessary to afford protection assuming nondirectional operation with power of 0.25 kW. In no case will nighttime power of 0.25 kW or greater be authorized to a station unable to operate nondirectionally with power of 0.25 kW during daytime hours. The actual nighttime limitation will be calculated. For nighttime protection purposes, Class C stations in the 48 conterminous United States may assume that stations in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands operating on 1230, 1240, 1340, 1400, 1450, and 1490 kHz are Class C stations.

* * * * *

(c) All classes of AM broadcast stations have in general three types of service areas, *i.e.*, primary, secondary and intermittent. (See § 73.14 for the definitions of primary, secondary and intermittent service areas.) All classes of AM stations render service to a primary area but the secondary and intermittent service areas may be materially limited or destroyed due to interference from other stations, depending on the station assignments involved.

(d) The groundwave signal strength required to render primary service is 2 mV/m for communities with populations of 2,500 or more and 0.5 mV/m for communities with populations of less than 2,500. Because only Class A stations have protected primary service extending beyond the 2 mV/m contour, the groundwave signal strength constituting primary service for Class A stations is that set forth in paragraphs (a)(1)(i) and (ii) of this section. See § 73.184 for curves showing distance to various groundwave field strength contours for different frequencies and ground conductivities, and also see § 73.183, "Groundwave signals."

* * * * *

(i) Objectionable nighttime interference from a broadcast station occurs when, at a specified field strength contour with respect to the desired station, the field strength of an undesired co-channel station exceeds for 10% or more of the time the values set forth in these standards. The value derived from the root-sum-square of all interference contributions represents the extent of a station's interference-free coverage.

(1) With respect to the root-sum-square (RSS) values of interfering field strengths referred to in this section, calculation of nighttime interference-free service is accomplished by considering co-channel signals in order of decreasing magnitude, adding the squares of the values and extracting the square root of the sum, excluding those signals which are less than 50% of the RSS values of the higher signals already included. This is known as the "50% Exclusion Method."

(2) The RSS value will not be considered to be increased when a new interfering signal is added which is less than the appropriate exclusion percentage as applied to the RSS value of the interference from existing stations, and which at the same time is not greater than the smallest signal included in the RSS value of interference from existing stations.

(3) It is recognized that application of the 50% Exclusion Method for calculating the RSS interference may result in some cases in anomalies wherein the addition of a new interfering signal or the increase in value of an existing interfering signal will cause the exclusion of a previously included signal and may cause a decrease in the calculated RSS value of interference. In order to provide the Commission with more realistic information regarding gains and losses in service (as a basis for determination of the relative merits of a proposed operation) the following alternate method for calculating the proposed

RSS values of interference will be employed wherever applicable.

(4) In cases where it is proposed to add a new interfering signal which is not less than 50% of the RSS value of interference from existing stations or which is greater than the smallest signal already included to obtain this RSS value, the RSS limitation after addition of the new signal shall be calculated without excluding any signal previously included. Similarly, in cases where it is proposed to increase the value of one of the existing interfering signals which has been included in the RSS value, the RSS limitation after the increase shall be calculated without excluding the interference from any source previously included.

(5) If the new or increased signal proposed in such cases is ultimately authorized, the RSS values of interference to other stations affected will thereafter be calculated by the 50% Exclusion Method without regard to this alternate method of calculation.

(6) Examples of RSS interference calculations:

(i) Existing interferences:

- Station No. 1—1.00 mV/m.
- Station No. 2—0.60 mV/m.
- Station No. 3—0.59 mV/m.
- Station No. 4—0.58 mV/m.

The RSS value from Nos. 1, 2 and 3 is 1.31 mV/m; therefore interference from No. 4 is excluded for it is less than 50% of 1.31 mV/m.

(ii) Station A receives interferences from:

- Station No. 1—1.00 mV/m.
- Station No. 2—0.60 mV/m.
- Station No. 3—0.59 mV/m.

It is proposed to add a new limitation, 0.68 mV/m. This is more than 50% of 1.31 mV/m, the RSS value from Nos. 1, 2 and 3. The RSS value of Station No. 1 and of the proposed station would be 1.21 mV/m which is more than twice as large as the limitation from Station No. 2 or No. 3. However, under the above provision the new signal and the three existing interferences are nevertheless calculated for purposes of comparative

studies, resulting in an RSS value of 1.47 mV/m. However, if the proposed station is ultimately authorized, only No. 1 and the new signal are included in all subsequent calculations for the reason that Nos. 2 and 3 are less than 50% of 1.21 mV/m, the RSS value of the new signal and No. 1.

(iii) Station A receives interferences from:

- Station No. 1—1.00 mV/m.
- Station No. 2—0.60 mV/m.
- Station No. 3—0.59 mV/m.

No. 1 proposes to increase the limitation it imposes on Station A to 1.21 mV/m. Although the limitations from stations Nos. 2 and 3 are less than 50% of the 1.21 mV/m limitation, under the above provision they are nevertheless included for comparative studies, and the RSS limitation is calculated to be 1.47 mV/m. However, if the increase proposed by Station No. 1 is authorized, the RSS value then calculated is 1.21 mV/m because Stations Nos. 2 and 3 are excluded in view of the fact that the limitations they impose are less than 50% of 1.21 mV/m.

(j) Objectionable nighttime interference from a station shall be considered to exist to a station when, at the field strength contour specified in paragraph (o) of this section with respect to the class to which the station belongs, the field strength of an interfering station operating on the same channel exceeds for 10% or more of the time the value of the permissible interfering signal set forth opposite such class in paragraph (o) of this section.

* * * * *

(m) *Computation of skywave field strength values:—(1) Fifty percent skywave field strength values.* To compute fifty percent skywave field strength values, Formula 1 of § 73.190, entitled "Skywave field strength, 50% of the time (at SS+6)" shall be used.

* * * * *

(o) * * *

| Class of station | Class of channel used | Signal strength contour of area protected from objectionable interference (µV/m) | | Permissible interfering signal (µV/m) | |
|------------------|-----------------------|--|------------------------------|---------------------------------------|--------------------|
| | | Day ¹ | Night ¹ | Day ¹ | Night ² |
| A | Clear | SC 500 | SC 500 | SC 25 | SC 25 |
| | | AC 500 | AC 500 | AC 500 | AC 500 |
| B | Regional | SC 2000 | SC 2000 | SC 100 | Not presc. |
| | | AC 2000 | AC 2000 | AC 2000 | Not presc. |
| C | Local | 2000 | Not presc ³ | SC 100 | Not presc. |
| D | Regional | 2000 | Not presc | SC 100 | Not presc. |
| | | | | AC 2000 | Not presc. |

¹ Groundwave.

² Skywave field strength for 10 percent or more of the time.

³ During nighttime hours, Class C stations in the contiguous 48 States may treat all Class B stations assigned to 1230, 1240, 1340, 1400, 1450, and 1490 kHz in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands as if they were Class C stations.

Note: SC = Same channel; AC = Adjacent channel; SW = Skywave; GW = Groundwave.

(p) * * *

| Frequency separation of desired to undesired signals (kHz) | Desired groundwave to: | |
|--|---------------------------|----------------------------|
| | Undesired groundwave (dB) | Undesired 10% skywave (dB) |
| 0 | 26 | 26 |
| 10 | 0 | 0 |

* * * * *

- Option 2: Amend § 73.182 by:
 - a. Revising paragraphs (a)(1) through (3), (c) and (d);
 - b. Removing paragraphs (g) and (h);
 - c. Redesignating paragraphs (i) through (t) as paragraphs (g) through (r); and
 - d. Revising newly redesignated paragraphs (i) and (j), (m)(1), and the tables in paragraphs (o) and (p).
- The revisions read as follows:

§ 73.182 Engineering standards of allocation.

(a) * * *

(1) Class A stations operate on clear channels with powers between 10 kW and 50 kW. These stations are designed to render primary service over a large area protected from objectionable interference from other stations on the same and adjacent channels. Class A stations may be divided into two groups: Those located in any of the conterminous United States and those located in Alaska.

(i) Class A stations in the conterminous United States operate on the channels assigned by § 73.25 with minimum power of 10 kW, maximum power of 50 kW, and minimum antenna efficiency of 275 mV/m/kW at 1 kilometer. The Class A stations in this group are afforded protection as follows:

- (A) Daytime. To the 0.5 mV/m groundwave contour from stations on the same or adjacent channels.
- (B) Nighttime. Interference may not be increased above the 0.5 mV/m nighttime groundwave contour or the NIF groundwave contour based on the 50 percent RSS exclusion method, whichever is greater.

(ii) Class A stations in Alaska operate on the channels assigned by § 73.25 with minimum power of 10 kW, maximum power of 50 kW, and minimum antenna efficiency of 215 mV/m/kW at 1 kilometer. The Class A stations in this group are afforded protection, both daytime and nighttime, to the 0.1 mV/m groundwave contour from other stations on the same channel and to the 0.5 mV/m groundwave contour from other stations on first adjacent channels.

(2) Class B stations are stations which operate on clear and regional channels with powers not less than 0.25 kW or greater than 50 kW. These stations render primary service, the area of which depends on their geographic location, power, and frequency. It is recommended that Class B stations be located so that the interference received from other stations will not limit the service area to a groundwave contour value greater than 2.0 mV/m groundwave contour both daytime and nighttime, which are the values for the mutual protection between this class of stations and other stations of the same class.

Note: * * *

(3) Class C stations operate on local channels, normally rendering primary service to a community and the suburban or rural areas immediately contiguous thereto, with powers not less than 0.25 kW or greater than 1 kW, except as provided in § 73.21(c)(1). Such stations are normally protected to the daytime 2.0 mV/m contour. On local channels the separation required for the daytime protection shall also determine the nighttime separation. Where directional antennas are employed daytime by Class C stations operating with power equal to or greater than 0.25 kW, the separations required shall in no case be less than those necessary to afford protection assuming nondirectional operation with power of 0.25 kW. In no case will nighttime power of 0.25 kW or greater be authorized to a station unable to operate nondirectionally with power of 0.25 kW during daytime hours. The actual nighttime limitation will be calculated. For nighttime protection purposes, Class C stations in the 48 conterminous United States may assume that stations in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands operating on 1230, 1240, 1340, 1400, 1450, and 1490 kHz are Class C stations.

* * * * *

(c) All classes of AM broadcast stations have in general three types of service areas, *i.e.*, primary, secondary and intermittent. (See § 73.14 for the definitions of primary, secondary and intermittent service areas.) All classes of

AM stations render service to a primary area but the secondary and intermittent service areas may be materially limited or destroyed due to interference from other stations, depending on the station assignments involved.

(d) The groundwave signal strength required to render primary service is 2 mV/m for communities with populations of 2,500 or more and 0.5 mV/m for communities with populations of less than 2,500. Because only Class A stations have protected primary service extending beyond the 2 mV/m contour, the groundwave signal strength constituting primary service for Class A stations is that set forth in paragraphs (a)(1)(i) and (ii) of this section. See § 73.184 for curves showing distance to various groundwave field strength contours for different frequencies and ground conductivities, and also see § 73.183, "Groundwave signals."

* * * * *

(i) Objectionable nighttime interference from a broadcast station occurs when, at a specified field strength contour with respect to the desired station, the field strength of an undesired co-channel station exceeds for 10% or more of the time the values set forth in these standards. The value derived from the root-sum-square of all interference contributions represents the extent of a station's interference-free coverage.

(1) With respect to the root-sum-square (RSS) values of interfering field strengths referred to in this section, calculation of nighttime interference-free service is accomplished by considering co-channel signals in order of decreasing magnitude, adding the squares of the values and extracting the square root of the sum, excluding those signals which are less than 50% of the RSS values of the higher signals already included. This is known as the "50% Exclusion Method."

(2) The RSS value will not be considered to be increased when a new interfering signal is added which is less than the appropriate exclusion percentage as applied to the RSS value of the interference from existing stations, and which at the same time is

not greater than the smallest signal included in the RSS value of interference from existing stations.

(3) It is recognized that application of the 50% Exclusion Method for calculating the RSS interference may result in some cases in anomalies wherein the addition of a new interfering signal or the increase in value of an existing interfering signal will cause the exclusion of a previously included signal and may cause a decrease in the calculated RSS value of interference. In order to provide the Commission with more realistic information regarding gains and losses in service (as a basis for determination of the relative merits of a proposed operation) the following alternate method for calculating the proposed RSS values of interference will be employed wherever applicable.

(4) In cases where it is proposed to add a new interfering signal which is not less than 50% of the RSS value of interference from existing stations or which is greater than the smallest signal already included to obtain this RSS value, the RSS limitation after addition of the new signal shall be calculated without excluding any signal previously included. Similarly, in cases where it is proposed to increase the value of one of the existing interfering signals which has been included in the RSS value, the RSS limitation after the increase shall be calculated without excluding the interference from any source previously included.

(5) If the new or increased signal proposed in such cases is ultimately authorized, the RSS values of

interference to other stations affected will thereafter be calculated by the 50% Exclusion Method without regard to this alternate method of calculation.

(6) Examples of RSS interference calculations:

(i) Existing interferences:

Station No. 1—1.00 mV/m.

Station No. 2—0.60 mV/m.

Station No. 3—0.59 mV/m.

Station No. 4—0.58 mV/m.

The RSS value from Nos. 1, 2 and 3 is 1.31 mV/m; therefore interference from No. 4 is excluded for it is less than 50% of 1.31 mV/m.

(ii) Station A receives interferences from:

Station No. 1—1.00 mV/m.

Station No. 2—0.60 mV/m.

Station No. 3—0.59 mV/m.

It is proposed to add a new limitation, 0.68 mV/m. This is more than 50% of 1.31 mV/m, the RSS value from Nos. 1, 2 and 3. The RSS value of Station No. 1 and of the proposed station would be 1.21 mV/m which is more than twice as large as the limitation from Station No. 2 or No. 3. However, under the above provision the new signal and the three existing interferences are nevertheless calculated for purposes of comparative studies, resulting in an RSS value of 1.47 mV/m. However, if the proposed station is ultimately authorized, only No. 1 and the new signal are included in all subsequent calculations for the reason that Nos. 2 and 3 are less than 50% of 1.21 mV/m, the RSS value of the new signal and No. 1.

(iii) Station A receives interferences from:

Station No. 1—1.00 mV/m.

Station No. 2—0.60 mV/m.

Station No. 3—0.59 mV/m.

No. 1 proposes to increase the limitation it imposes on Station A to 1.21 mV/m. Although the limitations from stations Nos. 2 and 3 are less than 50% of the 1.21 mV/m limitation, under the above provision they are nevertheless included for comparative studies, and the RSS limitation is calculated to be 1.47 mV/m. However, if the increase proposed by Station No. 1 is authorized, the RSS value then calculated is 1.21 mV/m because Stations Nos. 2 and 3 are excluded in view of the fact that the limitations they impose are less than 50% of 1.21 mV/m.

(j) Objectionable nighttime interference from a station shall be considered to exist to a station when, at the field strength contour specified in paragraph (o) of this section with respect to the class to which the station belongs, the field strength of an interfering station operating on the same channel exceeds for 10% or more of the time the value of the permissible interfering signal set forth opposite such class in paragraph (o) of this section.

* * * * *

(m) *Computation of skywave field strength values:—(1) Fifty percent skywave field strength values.* To compute fifty percent skywave field strength values, Formula 1 of § 73.190, entitled “Skywave field strength, 50% of the time (at SS+6)” shall be used.

* * * * *

(o) * * *

| Class of station | Class of channel used | Signal strength contour of area protected from objectionable interference (μV/m) | | Permissible interfering signal (μV/m) | |
|------------------|-----------------------|--|------------------------------|---------------------------------------|--------------------|
| | | Day ¹ | Night ¹ | Day ¹ | Night ² |
| A | Clear | SC 500 | SC 500 ³ | SC 25 | SC 25 |
| | | AC 500 | AC 500 | AC 500 | AC 500 |
| B | Regional | SC 2000 | SC 2000 | SC 100 | Not presc. |
| | | AC 2000 | AC 2000 | AC 2000 | Not presc. |
| C | Local | 2000 | Not presc ³ | SC 100 | Not presc. |
| D | Regional | 2000 | Not presc | SC 100 | Not presc. |
| | | | | AC 2000 | Not presc. |

¹ Groundwave.

² Skywave field strength for 10 percent or more of the time.

³ Class A AMs are protected such that interference may not be increased above the greater of the 0.5 mV/m nighttime ground wave contour or the 50% exclusion RSS NIF level.

⁴ During nighttime hours, Class C stations in the contiguous 48 States may treat all Class B stations assigned to 1230, 1240, 1340, 1400, 1450, and 1490 kHz in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands as if they were Class C stations.

Note: SC = Same channel; AC = Adjacent channel; SW = Skywave; GW = Groundwave.

(p) * * *

| Frequency separation of desired to undesired signals (kHz) | Desired groundwave to: | |
|--|---------------------------|----------------------------|
| | Undesired groundwave (dB) | Undesired 10% skywave (dB) |
| 0 | 26 | 26 |
| 10 | 0 | 0 |

* * * * *

§ 73.187 [Amended]

■ 7. In paragraphs (a)(1), (2)(ii), and (3) remove all references to “0.1 mV/m” and add in their place “0.5 mV/m”.

§ 73.190 [Amended]

■ 8. In paragraph (e), on right-hand side of Figures 9, 10, and 11, remove the axis label “Distance from 0.1 mV/m Contour in Miles” and add in its place “Distance from 0.5 mV/m Contour in Miles.”

[FR Doc. 2018–25101 Filed 11–19–18; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 180212157–8897–01]

RIN 0648–BH72

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Electronic Reporting for Federally Permitted Charter Vessels and Headboats in Gulf of Mexico Fisheries

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

ACTION: Proposed rule; extension of comment period.

SUMMARY: NMFS extends the comment period on the proposed rule to implement management measures described in the Gulf For-hire Electronic Reporting Amendment, as prepared and submitted by the Gulf of Mexico (Gulf) Fishery Management Council (Gulf Council) and the South Atlantic Fishery Management Council (South Atlantic Council). The Gulf For-hire Reporting Amendment includes amendments to the Fishery Management Plan (FMP) for Reef Fish Resources of the Gulf of Mexico (Reef Fish FMP) and the FMP for Coastal Migratory Pelagic (CMP) Resources of the Gulf of Mexico and Atlantic Region (CMP FMP). On October 26, 2018, NMFS published a proposed rule to revise reporting requirements for charter vessels and headboats (for-hire

vessels) with a Federal charter vessel/headboat permit for Gulf Reef Fish or Gulf CMP species. The purpose of the proposed rule is to increase and improve fisheries information collected from federally permitted for-hire vessels in the Gulf. The information is expected to improve recreational fisheries management of the for-hire component in the Gulf. The comment period on the proposed rule is extended through January 9, 2019. NMFS is extending the comment period to provide additional opportunities for interested parties to comment on the proposed rule.

DATES: The deadline for written comments on the proposed rule published on October 26, 2018 (83 FR 54069), is extended from November 26, 2018, to January 9, 2019.

ADDRESSES: You may submit comments on the proposed rule, identified by “NOAA–NMFS–2018–0111,” by either of the following methods:

- *Electronic submission:* Submit all electronic comments via the Federal e-Rulemaking Portal. Go to <http://www.regulations.gov/docket?D=NOAA-NMFS-2018-0111>, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit all written comments to Rich Malinowski, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701.

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

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Adam Bailey, NMFS Southeast Regional Office,

adam.bailey@noaa.gov, or by email to OIRA_Submission@omb.eop.gov, or fax to 202–395–5806.

Electronic copies of the Gulf For-hire Reporting Amendment may be obtained from www.regulations.gov or the Southeast Regional Office website at http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/For-HireElectronicReporting/index.html.

The Gulf For-hire Reporting Amendment includes an environmental assessment, regulatory impact review, Regulatory Flexibility Act analysis, and fishery impact statement.

FOR FURTHER INFORMATION CONTACT: Rich Malinowski, NMFS Southeast Regional Office, telephone: 727–824–5305, or email: rich.malinowski@noaa.gov.

SUPPLEMENTARY INFORMATION: The CMP fishery in the Gulf is managed jointly under the CMP FMP by the Gulf Council and South Atlantic Council. The Gulf Council manages the reef fish fishery under the Reef Fish FMP. These FMPs are implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On October 26, 2018, NMFS published a proposed rule in the **Federal Register** that would implement management measures described in the Gulf For-hire Electronic Reporting Amendment (83 FR 54069). The proposed rule would revise reporting requirements for an owner or operator of a for-hire vessel with a Federal charter vessel/headboat permit for Gulf Reef Fish or Gulf CMP species to submit an electronic fishing report for each fishing trip before offloading fish from the vessel, using NMFS-approved hardware and software. The proposed rule would also require that a for-hire vessel owner or operator use NMFS-approved hardware and software with global positioning system capabilities that, at a minimum, archive vessel position data during a trip. Lastly, prior to departing for any trip, this proposed rule would require the owner or operator of a federally permitted charter vessel or headboat to notify NMFS and declare whether they are departing on a for-hire trip, or on another trip type. The purpose of the proposed rule is to increase and improve fisheries

information collected from federally permitted for-hire vessels in the Gulf. The information is expected to improve recreational fisheries management of the for-hire component in the Gulf. The comment period on the proposed rule was previously announced to end on November 26, 2018.

On October 10, 2018, Hurricane Michael made landfall in the Florida

panhandle. As a result of the substantial impacts that this hurricane caused to Gulf residents that may be interested in providing public comment on the proposed rule, NMFS is extending the proposed rule comment period to provide additional opportunities to comment on the proposed rule. Therefore, the comment period for the proposed rule published on October 26,

2018, is extended through January 9, 2019.

Dated: November 14, 2018.

Samuel D. Rauch III,

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

[FR Doc. 2018-25205 Filed 11-19-18; 8:45 am]

BILLING CODE 3510-22-P

Notices

Federal Register

Vol. 83, No. 224

Tuesday, November 20, 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

November 15, 2018.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13 on or after the date of publication of this notice. Comments are requested regarding: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; New Executive Office Building, 725 17th Street NW, Washington, DC 20503. Commenters are encouraged to submit their comments to OMB via email to: OIRA_Submission@omb.eop.gov or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602.

Comments regarding these information collections are best assured of having their full effect if received by December 26, 2018. 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.

Agricultural Marketing Service

Title: Reporting Requirements Under Regulations Governing Inspection and Grading Services of Manufactured or Processed Dairy Products and the Certification of Sanitary Design & Fabrication of Equipment used in the Slaughter, Processing, and Packaging of Livestock and Poultry Products.

OMB Control Number: 0581-0126.

Summary of Collection: The Agricultural Marketing Act (AMA) of 1946 (7 U.S.C. 1621-1627), directs the Department to develop programs which will provide for and facilitate the marketing of agricultural products. The regulations governing the voluntary inspection and grading program for dairy products is contained in 7 CFR part 58. The certification regulations for livestock and poultry products are contained in 7 CFR part 54. The Government, industry and consumer will be well served if the Government can help insure that dairy products are produced under sanitary conditions and that buyers have the choice of purchasing the quality of the product they desire. The dairy grading program is a voluntary user fee program. For a voluntary inspection program to perform satisfactorily with a minimum of confusion, information must be collected to determine what services are requested.

Need and Use of the Information: The information collected is used to identify the product offered for grading; to identify and contact the individuals responsible for payment of the grading or equipment evaluation fee and expense; and to identify the person responsible for administering the grade label program. The Agriculture Marketing service will use several forms to collect essential information to carry out and administer the inspection and grading program.

Description of Respondents: Business or other for profit.

Number of Respondents: 240.

Frequency of Responses: Reporting: On occasion; Other (when forms are requested).

Total Burden Hours: 1,027.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2018-25295 Filed 11-19-18; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Information Collection Request; Measurement Service (MS) Records

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) is requesting comments from all interested individuals and organizations on a revision and an extension of a currently approved information collection associated with the MS Records.

DATES: We will consider comments that we receive by January 22, 2019.

ADDRESSES: We invite you to submit comments on this notice. In your comments, include date, volume and page number, the OMB Control Number, and the title of the information collection of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Mail:* Clay Lagasse, Common Provisions Section, Production Emergencies and Compliance Division, USDA, FSA, Farm Programs 1400 Independence Avenue SW, Mail Stop 0517, Washington, DC 20250-0517.

You may also send comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Copies of the information collection may be requested by contacting Clay Lagasse at the above address.

FOR FURTHER INFORMATION CONTACT:

Clay Lagasse, (202) 205-9893. Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720-2600 (voice).

SUPPLEMENTARY INFORMATION:**Description of Information Collection**

Title: Measurement Service (MS) Records.

OMB Control Number: 0560–0260.

Expiration Date: 03/31/2019.

Type of Request: Revision.

Abstract: When a producer requests a measurement of acreage or production from FSA, the producer uses the form FSA–409 (Measurement Service (MS) Record) to make the request, which requires that the producer pays a measurement fee to FSA.

The form is manual. The types of MS being performed are currently at the Land (Office or Field) and Commodity Bin. Using the FSA–409 to make a request, the producer provides FSA: The farm serial number, program year, farm location, contact person, and type of service request (acreage or production). The MS procedure is done in accordance with 7 CFR part 718. FSA is using the collected information to fulfill producers' measurement request and to ensure that measurements are accurate.

A producer will use the FSA–409 to request and receive certain MS information from FSA and provide it to FSA at the time of applying for certain program benefits. The MS information includes, but is not limited to, measuring land and crop areas, quantities of farm-stored commodities, and appraising the yields of crops in the field. There is a reduction of the burden hours by 135,000 because travel time was removed from the information collection. The respondents go to the county offices to do regular and customary business with FSA; therefore, the travel time is not required to be included in the burden hours in this request.

For the following estimated total annual burden on respondents, the formula used to calculate the total burden hour is the estimated average time per responses hours multiplied by the estimated total annual responses.

Estimate of Annual Burden: Public reporting burden for the collection of information is estimated to average 15 minutes per response.

Type of Respondents: Producers.

Estimated Number of Respondents: 135,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual of Responses: 135,000.

Estimated Average Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 33,750 hours.

We are requesting comments on all aspects of this information collection to help us:

(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 collection of information including the validity of the methodology and assumptions used;

(3) Evaluate the quality, utility, and clarity of the information technology; and

(4) Minimize the burden of the information collection on those who respond through the use of appropriate 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 where provided, will be made a matter of public record. Comments will be summarized and included in the request for OMB approval of the information collection.

Richard Fordyce,

Administrator, Farm Service Agency.

[FR Doc. 2018–25253 Filed 11–19–18; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE**Food Safety and Inspection Service**

[Docket No. FSIS–2018–0040]

Notice of Request for a New Information Collection: Stakeholder Input on Federal Outreach To Control *Listeria monocytogenes* at Retail

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations, the Food Safety and Inspection Service (FSIS) is announcing its intention to collect information from stakeholders from industry, State and public health and agriculture departments with responsibilities for retail food safety, local health departments, and grocers to gather information on FSIS outreach efforts related to retail best practices to control *Listeria monocytogenes* (*Lm*) in retail delicatessens. The purpose of this information collection is to enhance Federal outreach and interagency coordination to control *Lm* at retail.

DATES: Submit comments on or before January 22, 2019.

ADDRESSES: FSIS invites interested persons to submit comments on this **Federal Register** notice. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field on this web page or to attach a file for lengthier comments. Go to <http://www.regulations.gov>. Follow the on-line instructions at that site for submitting comments.

- *Mail, including CD-ROMs, etc.:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Room 6065, Washington, DC 20250–3700.

- *Hand- or courier-delivered submittals:* Deliver to 1400 Independence Avenue SW, Room 6065, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2018–0040. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to <http://www.regulations.gov>.

Docket: For access to background documents or comments received, call (202) 720–5627 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Room 6065, Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT:

Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Room 6065, South Building, Washington, DC 20250–3700; (202) 720–5627.

SUPPLEMENTARY INFORMATION:

Title: Stakeholder Input on Federal Outreach to Control *Listeria monocytogenes* at Retail.

Type of Request: New information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary (7 CFR 2.18, 2.53) as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*) and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). These statutes mandate that FSIS protect the public by verifying that meat, poultry, and egg products are safe, wholesome, unadulterated, and properly labeled and packaged.

In 2016, the National Advisory Committee for Meat and Poultry Inspection (NACMPI) made

recommendations to FSIS on best practices for the control of *Listeria monocytogenes (Lm)* in retail delicatessens. Several of the committee’s key recommendations focused on messaging and outreach. Specifically, the Committee recommended that FSIS’s *Lm* related guidance and messaging for retail be clear, understandable, practical, and available to all audiences. The committee asked that FSIS get input from stakeholders regarding their information needs, how they currently get or would prefer to get information, and to provide input on FSIS’s current outreach materials (e.g., brochure—“Guidance for Controlling *Listeria monocytogenes (Lm)* in Retail Delicatessens”, *Lm* Deli Self-Assessment Tool, etc.). This stakeholder input will be used to guide FSIS’s outreach efforts to retail delicatessens.

In response to the NACMPI recommendations, FSIS, in collaboration with the Food and Drug Administration (FDA) and the Centers for Disease Control and Prevention (CDC), will conduct focus groups with a sample of stakeholders from industry, state and local public health and agriculture departments, and retail delicatessens to gather feedback. In the focus groups, a sample of stakeholders will be invited to provide input on the awareness and usefulness of existing outreach materials and tools related to

best practices for controlling *Lm* in delicatessens, how they currently receive this type of information (e.g., from FSIS, FDA, CDC, State Health department, Cooperative Extension), and how those channels of communication could be improved. FSIS’s Office of Planning, Analysis, and Risk Management will analyze and summarize the data, and provide it to the interagency team (FSIS, FDA, and CDC) for further consideration to enhance Federal outreach and interagency coordination to control *Lm* at retail. This feedback will help FSIS, FDA and CDC better understand the information needs of State public health and agriculture departments with retail food safety responsibilities, local health departments, and retail delicatessens, how these stakeholders currently get information used to guide retail food safety efforts, and provide feedback on the usefulness and practicality of current FSIS outreach (e.g., tools and communication) to support control of *Lm* in retail delicatessens. The feedback collected from participants may also include practical recommendations for improving Federal communications and outreach efforts to support the control of *Lm* at retail moving forward.

The focus group participants will be selected from State and local health or agriculture departments with responsibilities for food safety in retail delicatessens, supermarket chains,

independent grocers with retail delis, and the Cooperative Research and Extension Services. Within those groups, FSIS seeks to include participants representative of specific selection criteria, which was determined based on input from several national associations representing State public health and agriculture departments, local health departments, and grocers. The selection criteria include (but are not limited to) geographic diversity (and within that, urban and rural location), whether retail food safety falls under a State health or agricultural departments, whether the retail deli in a grocery store of a national versus regional supermarket chain or an independent grocery store, and whether English is a second language. These criteria were developed based on input from several associations, including: Association for Food and Drug Officials (AFDO), Association of State and Territorial Health Officials (ASTHO), Association for Frozen Food Institute (AFFI), Federal Marketing Institute (FMI), National Grocers Association (NGA), National Environmental Health Association (NEHA), National Association of County and City Health Officials (NACCHO), and National Association of State Departments of Agriculture (NASDA).

Estimate of Burden:

| Respondents | Number of respondents | Participation time (hours) | Burden (hours) |
|--|-----------------------|----------------------------|----------------|
| Stakeholders—Industry/Large Retailers | 80 | 1.75 | 140 |
| Stakeholders—Independent/Small Retailers and Deli Owners | 80 | 1.75 | 140 |
| Stakeholders—State/Local Organizations | 80 | 1.75 | 140 |
| Totals | 240 | 1.75 | 420 |

Respondents: Stakeholders.
Estimated No. of Respondents: 240.
Estimated No. of Annual Responses per Respondent: 1.
Estimated Total Burden on Respondents: 420 hours.

Copies of this information collection assessment can be obtained from Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Room 6065, South Building, Washington, DC 20250-3700; (202) 720-5627.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS’s functions, including whether the information will have practical utility; (b) the accuracy of FSIS’s estimate of the burden of the proposed

collection of information, including the validity of the method and assumptions used; (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, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

Responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: <http://www.fsis.usda.gov/federal-register>.

FSIS also will make copies of this publication available through the FSIS *Constituent Update*, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS is able to provide information to a much broader, more diverse

audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: <http://www.fsis.usda.gov/subscribe>. Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How to File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf, or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email: *Mail:* U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250-9410, *Fax:* (202) 690-7442, *Email:* program.intake@usda.gov.

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

Paul Kiecker,

Acting Administrator.

[FR Doc. 2018-25265 Filed 11-19-18; 8:45 am]

BILLING CODE 3410-DM-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 p.m. (EST) on Wednesday, December 7, 2018. The purpose of the meeting is project planning and to finalize the speaker list for a briefing on prosecutorial appointments at the State House in Hartford on January 15, 2019.

DATES: Wednesday, December 7, 2018 at 12 p.m. (EST).

Public Call-In Information:

Conference call-in number: 1-877-260-1479 and conference call 5899893.

FOR FURTHER INFORMATION CONTACT:

Evelyn Bohor at ero@usccr.gov or by phone at 202-376-7533.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1-877-260-1479 and conference call 5899893. 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 5899893.

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://gsageo.force.com/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzlqAAA>; 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, December 7, 2018 at 12 p.m. (EST)

- Roll Call
- Project Planning
- Finalize Speaker List for Jan 2019 Briefing
- Open Comment
- Adjourn

Dated: November 15, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018-25258 Filed 11-19-18; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Colorado Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of planning 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 Colorado Advisory Committee to the Commission will convene by conference call at 12 p.m. (MST) on Friday, December 7, 2018. The purpose of the meeting is to work on the implementation stage for the immigration naturalization project.

DATES: Friday, December 7, 2018, at 12 p.m. (MST).

Public Call-In Information:

Conference call number: 1-888-395-3237 and conference call ID: 1659256.

FOR FURTHER INFORMATION CONTACT:

Evelyn Bohor, ebohor@usccr.gov or by phone at 303-866-1040.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call number: 1-888-395-3237 and conference call ID: 1659256.

Please be advised that, before being placed 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 telephone number provided.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1-800-877-8339 and providing the operator with the toll-free conference call number: 1-888-395-3237 and conference call 1659256.

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 Rocky Mountain Regional Office, U.S. Commission on Civil Rights, 1961 Stout Street, Suite 13-201, Denver, CO 80294, faxed to (303) 866-1040, or emailed to Evelyn Bohor at ebohor@usccr.gov. Persons who desire additional information may contact the Rocky Mountain Regional Office at (303) 866-1040.

Records and documents discussed during the meeting will be available for public viewing as they become available at <https://gsageo.force.com/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzksAAA>; click the "Meeting Details" and "Documents" links. Records generated from this meeting may also be inspected and reproduced at the Rocky Mountain Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's website, www.usccr.gov, or to contact the Rocky Mountain Regional Office at the above phone number, email or street address.

Agenda

Friday, December 7, 2018; 12 p.m. (MST)

- I. Roll Call
- II. Project Planning
- III. Other Business
- IV. Adjournment

Dated: November 15, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.
[FR Doc. 2018-25259 Filed 11-19-18; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Industry and Security.

Title: Procedures for Submitting Requests for Expedited Relief from Quantitative Limits—Existing Contract: Section 232 National Security Investigations of Steel Imports.

Form Number(s): OMB 0694-0140.

OMB Control Number: 0694-0140.

Type of Review: Regular submission.

Estimated Total Annual Burden

Hours: 17,170.

Estimated Number of Respondents: 1,717.

Estimated Time per Response: 10 hours.

Needs and Uses: In the Proclamation of August 29, President Trump directed that as soon as practicable, the Secretary of Commerce shall issue procedures for requests for exclusions described in clause 2 to allow for exclusion requests for countries subject to quantitative limitations. The U.S. Department of Commerce will create an exclusion process for clause 2 by posting the newly created form on the Commerce website. Requesters will complete this form and send the form, the required certification, and any needed attachments to the U.S. Department of Commerce at the email address steel232-exp@bis.doc.gov. The posting of this exclusion procedure on the Commerce website will fulfill the Presidential directive included in the most recent Proclamation, as well as the earlier Proclamations that directed the Secretary of Commerce to create an exclusion process to ensure users of steel in the United States would continue to have access to the steel that they may need.

Affected Public: Business or other for-profit organizations.

Frequency: On Occasion.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this

notice to OIRA_Submission@omb.eop.gov.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer.

[FR Doc. 2018-25260 Filed 11-19-18; 8:45 am]

BILLING CODE 3510-33-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Industry and Security.

Title: License Transfer and Duplicate License Services.

Form Number(s): N/A.

OMB Control Number: 0694-0126.

Type of Review: Regular submission.

Estimated Total Annual Burden

Hours: 31.

Estimated Number of Respondents: 110.

Estimated Time per Response: 1 to 30 minutes.

Needs and Uses: The collection is necessary under Section 750.9 of the Export Administration Regulation (EAR) which outlines the process for obtaining a duplicate license when a license is lost or destroyed. Section 750.10 of the EAR explains the procedure for transfer of ownership of validated export licenses. Both activities are services provided after the license approval process. The supporting statement will use the terms "transfer" and "duplicate" to distinguish the unique activities of each. When no distinction is made, the response supports both activities.

Affected Public: Business or other for-profit organizations.

Frequency: On Occasion.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this

notice to *OIRA_Submission@omb.eop.gov*.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer.

[FR Doc. 2018–25261 Filed 11–19–18; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–508–813]

Magnesium From Israel: Initiation of Countervailing Duty Investigation

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

DATES: Applicable November 13, 2018.

FOR FURTHER INFORMATION CONTACT: Lana Nigro at (202) 482–1779 or Ethan Talbott at (202) 482–1030, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petition

On October 24, 2018, the U.S. Department of Commerce (Commerce) received a countervailing duty (CVD) petition concerning imports of magnesium from Israel, filed in proper form on behalf of US Magnesium LLC (the petitioner), a domestic producer of magnesium.¹ The CVD Petition was accompanied by an antidumping (AD) Petition concerning imports of magnesium imports from Israel.

On October 26 and 29, 2018, and November 5 and 7, 2018, Commerce requested supplemental information pertaining to certain aspects of the Petition in four separate supplemental questionnaires, two addressing Volume I of the Petition and two addressing Volume II of the Petition (*i.e.*, the CVD allegation).² The petitioner filed

¹ See the petitioner's Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Magnesium from Israel," dated October 24, 2018 (Petition).

² See Commerce Letters, "Petition for the Imposition of Countervailing Duties on Imports of Magnesium from Israel: Supplemental Questions," dated October 26, 2018, "Petition for the Imposition of Countervailing Duties on Imports of Magnesium from Israel: Supplemental Questions," dated October 29, 2018, Memorandum, "RE: Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Magnesium from Israel—Phone Call with Counsel to the Petitioner," dated November 5, 2018, and "Petition for the Imposition of Countervailing Duties on Imports of Magnesium from Israel: Supplemental Questions," dated November 7, 2018.

responses to these requests on October 30 and 31, 2018, and November 6 and 9, 2018.³

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that the Government of Israel (GOI) is providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to producers of magnesium in Israel and that imports of such products are materially injuring, or threatening material injury to, the domestic industry producing magnesium in the United States. Consistent with section 702(b)(1) of the Act and 19 CFR 351.202(b), for those alleged programs on which we are initiating a CVD investigation, the Petition is accompanied by information reasonably available to the petitioner supporting their allegations.

Commerce finds that the petitioner filed the Petition on behalf of the domestic industry because the petitioner is an interested party as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support with respect to the initiation of the requested CVD investigation.⁴

Period of Investigation

Because the Petition was filed on October 24, 2018, the period of investigation is January 1, 2017, through December 31, 2017.

Scope of the Investigation

The product covered by this investigation is magnesium from Israel. For a full description of the scope of this investigation, *see* the Appendix to this notice.

Scope Comments

During our review of the Petition, Commerce contacted the petitioner regarding the proposed scope language to ensure that the scope language in the Petition is an accurate reflection of the products for which the domestic

³ See the petitioner's letters, "Magnesium from Israel/Responses to Supplemental Questions on the Countervailing Duty Volume of the Petition" dated October 30, 2018 (CVD Supplement), "Magnesium from Israel/Petitioner's Response to the Department's Questions Regarding the General Issues Volume of the Petition" dated October 31, 2018 (General Issues Supplement), "Magnesium from Israel/Petitioner's Response to the Department's November 5, 2018 Request," dated November 6, 2018 (Second General Issues Supplement), and "Magnesium from Israel/Responses to Second Supplemental Questions on the Countervailing Duty Volume of the Petition," dated November 9, 2018 (Second CVD Supplemental).

⁴ See the "Determination of Industry Support for the Petition" section, *infra*.

industry is seeking relief.⁵ As a result of the petitioner's submission, the scope of the Petition was modified to clarify the description of merchandise covered by the Petition. The description of the merchandise covered by this initiation, as described in the Appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (scope).⁶ Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information,⁷ all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit scope comments by 5:00 p.m. Eastern Time (ET) on December 3, 2018, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on December 13, 2018.⁸

Commerce requests that any factual information parties consider relevant to the scope of the investigation be submitted during this period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact Commerce and request permission to submit the additional information. All such submissions must be filed on the records of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically using Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS).⁹

⁵ See General Issues Supplement, at 1–4 and Exhibit I–S–8; *see also* Second General Issues Supplement at, 2 and Exhibit I–S14.

⁶ See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

⁷ See 19 CFR 351.102(b)(21) (defining "factual information").

⁸ See 19 CFR 351.303(b). Rebuttal comments are normally due 10 days after the comment deadline.

⁹ See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance: Change of Electronic Filing System Name*, 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at <https://access.trade.gov/help.aspx> and a handbook can be found at <https://access.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf>.

An electronically filed document must be received successfully in its entirety by the time and date it is due. Documents exempted from the electronic submission requirements must be filed manually (*i.e.*, in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Consultations

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, Commerce notified representatives of the GOI of the receipt of the Petition and provided them the opportunity for consultations with respect to the CVD Petition.¹⁰ Commerce held consultations with the GOI on November 9, 2018.¹¹

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the "industry."

Section 771(4)(A) of the Act defines the "industry" as the producers, as a whole, of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic

industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,¹² they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.¹³

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation" (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation.¹⁴ Based on our analysis of the information submitted on the record, we have determined that magnesium, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.¹⁵

In determining whether the petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the "Scope of the Investigation," in the Appendix to this notice. To establish industry support, the petitioner provided its own production of the domestic like product

¹² See section 771(10) of the Act.

¹³ See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

¹⁴ See Volume I of the Petition, at 11–17; see also General Issues Supplement, at 1 and Exhibits S–1 through S–7.

¹⁵ For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, see Countervailing Duty Investigation Initiation Checklist: Magnesium from Israel (Israel CVD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Magnesium from Israel (Attachment II). This checklist is dated concurrently with this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

in 2017.¹⁶ The petitioner also provided letters of support from MagPro LLC and Advanced Magnesium Alloys Corporation, providing each company's 2017 production of the domestic like product and stating each company's support for the Petition.¹⁷ In addition, the petitioner provided a letter of support from the United Steel, Paper & Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, which represents workers employed in the production of the domestic like product at the petitioner's plant in Rowley, UT (Local 8319).¹⁸ The petitioner compared the production of the supporters of the Petition to the estimated total production of the domestic like product for the entire domestic industry.¹⁹ We relied on data provided by the petitioner for purposes of measuring industry support.²⁰

Our review of the data provided in the Petition, the General Issues Supplement, the Second General Issues Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petition.²¹ First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.*, polling).²² Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.²³ Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry

¹⁶ See Volume I of the Petition, at 2 and Exhibits I–5 and I–6; see also General Issues Supplement, at 7–8 and Exhibit I–S13.

¹⁷ See Volume I of the Petition, at 1–2 and Exhibits I–3 and I–4.

¹⁸ *Id.* at 1 and Exhibit I–2.

¹⁹ *Id.* at 2–3 and Exhibits I–5 and I–6; see also General Issues Supplement, at 6–8 and Exhibits I–S12 and I–S13.

²⁰ *Id.* For further discussion, see Israel CVD Initiation Checklist, at Attachment II.

²¹ *Id.*

²² *Id.*; see also section 702(c)(4)(D) of the Act.

²³ See Israel CVD Initiation Checklist, at Attachment II.

¹⁰ See Commerce letter, "Countervailing Duty Petition on Magnesium from Israel," dated October 25, 2018.

¹¹ See Memorandum, "Consultations with Officials from the Government of Israel Regarding the Countervailing Duty Petition Concerning Magnesium from Israel," dated November 9, 2018.

expressing support for, or opposition to, the Petition.²⁴

Commerce finds that the petitioner filed the Petition on behalf of the domestic industry because it is an interested party as defined in sections 732(b)(1) and 771(9)(C) of the Act, and it has demonstrated sufficient industry support with respect to the CVD investigation that it is requesting that Commerce initiate.²⁵

Injury Test

Because Israel is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from Israel materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.²⁶

The petitioner contends that the industry’s injured condition is illustrated by the significant volume and increasing market share of subject imports; reduced market share; underselling and price depression or suppression; declines in capacity, production, U.S. shipments, and capacity utilization; decline in employment variables; decline in the domestic industry’s financial performance; and lost sales and revenues.²⁷ We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.²⁸

Initiation of CVD Investigation

Based on the examination of the Petition, we find that the Petition meets

the requirements of section 702 of the Act. Therefore, we are initiating a CVD investigation to determine whether imports of magnesium from Israel benefit from countervailable subsidies conferred by the GOI. In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 65 days after the date of this initiation.

Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation on each of the subsidy programs alleged in the Petition, with certain limitations. For a full discussion of the basis for our decision to initiate on each program, see Israel CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

Respondent Selection

Although Commerce normally relies on import data from using United States Customs and Border Protection (CBP) import statistics to determine whether to select a limited number of producers/exporters for individual examination in CVD investigations, the petitioner identified only one company in Israel, *i.e.*, Dead Sea Magnesium, Ltd., as a producer/exporter of magnesium and provided independent, third-party information as support.²⁹ The petitioner developed this list using ship manifest data published by CBP’s Automated Manifest System and supported it with independent, third-party information.³⁰ We currently know of no additional producers/exporters of magnesium from Israel. Accordingly, Commerce intends to examine all known producers/exporters (*i.e.*, DSM). We invite interested parties to comment on this issue. Such comments may include factual information within the meaning of 19 CFR 351.102(b)(21). Parties wishing to comment must do so within three business days of the publication of this notice in the **Federal Register**. Comments must be filed electronically using ACCESS. An electronically-filed document must be received successfully in its entirety by Commerce’s electronic records system, ACCESS, by 5 p.m. ET by the specified deadline.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), copies of the public versions

of the Petition have been provided to the GOI *via* ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of magnesium from Israel are materially injuring, or threatening material injury to, a U.S. industry.³¹ A negative ITC determination will result in the investigation being terminated.³² Otherwise, this investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). 19 CFR 351.301(b) requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted³³ and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.³⁴ Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in this investigation.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR

²⁴ *Id.*

²⁵ *Id.*

²⁶ See Volume I of the Petition, at 21 and Exhibit I–13.

²⁷ *Id.* at 18–30 and Exhibits I–5, I–6, I–10, I–12, I–14, and I–15.

²⁸ See Israel CVD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Magnesium from Israel (Attachment III).

²⁹ See Volume I of the Petition, at Exhibits I–8 and I–12, Volume III of the Petition, at Exhibit III–2 (ship manifest data published by CBP’s Automated Manifest System), and General Issues Supplement at 1.

³⁰ *Id.*

³¹ See section 703(a)(2) of the Act.

³² See section 703(a)(1) of the Act.

³³ See 19 CFR 351.301(b).

³⁴ See 19 CFR 351.301(b)(2).

351.301, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in the letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule*, 78 FR 57790 (September 20, 2013), available at <http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm>, prior to submitting factual information in this investigation.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.³⁵ Parties must use the certification formats provided in 19 CFR 351.303(g).³⁶ Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, Commerce published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures*, 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (e.g., the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

³⁵ See section 782(b) of the Act.

³⁶ See *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (“*Final Rule*”); see also frequently asked questions regarding the *Final Rule*, available at http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.

This notice is issued and published pursuant to sections 702 and 777(i) of the Act and 19 CFR 351.203(c).

Dated: November 13, 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.

Appendix

Scope of the Investigation

The products covered by this investigation are primary and secondary pure and alloy magnesium metal, regardless of chemistry, raw material source, form, shape, or size (including, without limitation, magnesium cast into ingots, slabs, t-bars, rounds, sows, billets, and other shapes, and magnesium ground, chipped, crushed, or machined into raspings, granules, turnings, chips, powder, briquettes, and any other shapes). Magnesium is a metal or alloy containing at least 50 percent by actual weight the element magnesium. Primary magnesium is produced by decomposing raw materials into magnesium metal. Secondary magnesium is produced by recycling magnesium-based scrap into magnesium metal. The magnesium covered by this investigation also includes blends of primary magnesium, scrap, and secondary magnesium.

The subject merchandise includes the following pure and alloy magnesium metal products made from primary and/or secondary magnesium: (1) Products that contain at least 99.95 percent magnesium, by actual weight (generally referred to as “ultra-pure” or “high purity” magnesium); (2) products that contain less than 99.95 percent but not less than 99.8 percent magnesium, by actual weight (generally referred to as “pure” magnesium); and (3) chemical combinations of magnesium and other material(s) in which the magnesium content is 50 percent or greater, but less than 99.8 percent, by actual weight, whether or not conforming to an “ASTM Specification for Magnesium Alloy.”

The scope of this investigation excludes mixtures containing 90 percent or less magnesium in granular or powder form by actual weight and one or more of certain non-magnesium granular materials to make magnesium-based reagent mixtures, including lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nepheline syenite, feldspar, alumina (A1203), calcium aluminat, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomite lime, and colemanite.

The merchandise subject to this investigation is classifiable under items 8104.11.0000, 8104.19.0000, and 8104.30.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS items are provided for convenience and customs purposes, the

written description of the merchandise under investigation is dispositive.

[FR Doc. 2018–25293 Filed 11–19–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–898]

Chlorinated Isocyanurates From the People’s Republic of China: Notice of Court Decision Not in Harmony With Final Results of Antidumping Duty Administrative Review; 2012–2013 and Notice of Amended Final Results

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

SUMMARY: On October 24, 2018, the United States Court of International Trade (CIT) entered final judgment sustaining the final results of remand redetermination pursuant to court order by the Department of Commerce (Commerce) pertaining to the antidumping duty (AD) administrative review of chlorinated isocyanurates (chlorinated isos) from the People’s Republic of China (China). Commerce is notifying the public that the final judgment in this case is not in harmony with Commerce’s final results in the AD review of chlorinated isos from China.

DATES: Applicable November 3, 2018.

FOR FURTHER INFORMATION CONTACT: Sean Carey, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4261.

SUPPLEMENTARY INFORMATION:

Background

On January 28, 2015, Commerce published its final results in the eighth AD review of chlorinated isos from China.¹ Commerce selected the two largest exporters, Hebei Jiheng Chemical Co., Ltd. and Juancheng Kangtai Chemical Co., Ltd., as the mandatory respondents, and determined that Heze Huayi Chemical Co., Ltd. (Heze Huayi), Arch Chemicals (China) Co., Ltd., and Zucheng Taisheng Chemical Co., Ltd. demonstrated their eligibility for separate rate status.² On January 28,

¹ See *Chlorinated Isocyanurates from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2012–2013*, 80 FR 4539 (January 28, 2015) and accompanying Issues and Decision Memorandum (*Final Results*).

² See *Chlorinated Isocyanurates from the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012–2013*, 79 FR 43391 (July 25, 2014) (Preliminary

2015, Commerce published the *Final Results* and assigned Heze Huayi the separate rate of 53.15 percent from the *Seventh Review*³ consistent with our past practice because both mandatory respondents received zero margins and none of the separate rate companies had its own calculated rate from the segment immediately prior to the instant segment.

Heze Huayi appealed Commerce's decisions not to treat Heze Huayi as a mandatory or voluntary respondent and not to apply the zero rate of the mandatory respondents to Heze Huayi. While the case was pending before the CIT, in June 2016, Commerce voluntarily sought a remand⁴ to consider the impact of the Court of Appeals for the Federal Circuit's decision in *Albemarle Corp. v. United States*.⁵ On September 11, 2018, the Court held a telephone status conference and ordered that the Government "advise the court in one week from September 11, 2018, if they have any reason for anything other than a zero rate for all outstanding entries."⁶ Commerce responded within the one-week deadline that Commerce's request for a voluntary remand on this issue was still pending; however, in light of the Court's request, Commerce stated that it had identified no "reason for anything other than a zero rate" to be applied to Heze Huayi's entries.⁷ On September 28, 2018, the Court ordered Commerce to assign Heze Huayi the mandatory respondents' weighted-average zero rate.⁸ On remand, Commerce, under respectful protest, assigned Heze Huayi the mandatory respondents' weighted-average zero rate.⁹ On October 24, 2018,

the CIT sustained Commerce's Final Redetermination.¹⁰

Timken Notice

In its decision in *Timken*,¹¹ as clarified by *Diamond Sawblades*,¹² the Federal Circuit held that, pursuant to section 516A(c) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not "in harmony" with a Commerce determination and must suspend liquidation of entries pending a "conclusive" court decision. The CIT's October 24, 2018, judgment constitutes a final decision of that court that is not in harmony with Commerce's *Final Results*. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, Commerce will continue suspension of liquidation of subject merchandise pending expiration of the period of appeal or, if appealed, pending a final and conclusive court decision.

Amended Final Results

Because there is now a final court decision, Commerce is amending the *Final Results* and assigning Heze Huayi the mandatory respondents' weighted-average zero rate¹³ for the period June 1, 2012, through May 31, 2013. In the event the CIT's ruling is not appealed, or, if appealed, is upheld by a final and conclusive court decision, we will instruct U.S. Customs and Border Protection (CBP) to liquidate Heze Huayi's appropriate entries without regard to antidumping duties.

Cash Deposit Rate

Heze Huayi has a superseding cash deposit rate (e.g., from a subsequent administrative review). Therefore, Commerce will not issue revised cash deposit instructions to CBP.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1) and 777(i)(1) of the Act.

Dated: November 15, 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. 2018-25298 Filed 11-19-18; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-508-812]

Magnesium From Israel: Initiation of Less-Than-Fair-Value Investigation

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

DATES: Applicable November 13, 2018.

FOR FURTHER INFORMATION CONTACT: Bryan Hansen at (202) 482-3683 or Mino Hatten (202) 482-1690; AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petition

On October 24, 2018, the U.S. Department of Commerce (Commerce) received an antidumping duty (AD) Petition concerning imports of magnesium from Israel, filed in proper form on behalf of US Magnesium LLC (the petitioner), a domestic producer of magnesium.¹ The AD Petition was accompanied by a countervailing duty (CVD) Petition concerning imports of magnesium from Israel.

On October 29, 2018, and November 5, 2018, Commerce requested supplemental information pertaining to certain aspects of the Petition in three separate supplemental questionnaires, two addressing Volume I of the Petition and the other addressing Volume III of the Petition (i.e., the AD allegation).² The petitioner filed its responses to the supplemental questionnaires on October

¹ See the petitioner's Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties in the Matter of: Magnesium from Israel," dated October 24, 2018 (Petition).

² See Commerce Letters, "Re: Petition for the Imposition of Antidumping Duties on Imports of Magnesium from Israel: Supplemental Questions," dated October 29, 2018, "Re: Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Magnesium from Israel: Supplemental Questions," dated October 29, 2018, and Memorandum "RE: Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Magnesium from Israel—Phone Call with Counsel to the Petitioner," dated November 5, 2018.

Results), and accompanying Decision Memorandum, at 5-6.

³ See *Chlorinated Isocyanurates from the People's Republic of China; 2011-2012; Final Results of Antidumping Duty Administrative Review*, 79 FR 4875, 4876 (January 30, 2014) (*Seventh Review*).

⁴ See *Heze Huayi Chemical Co. Ltd., v. United States*, Ct. No. 15-27, Defendant's Supplemental Brief and Motion for Voluntary Remand, Docket #68, June 21, 2016 ("In light of the intervening legal decision in *Albemarle*, we respectfully request that the Court grant a voluntary remand for Commerce to consider the application of *Albemarle* to the facts of this case.")

⁵ 821 F.3d 1345 (Fed. Cir. 2016).

⁶ See *Heze Huayi Chemical Co., Ltd. v. United States*, Ct. No. 15-27, Court Order, Docket #81, Sept. 12, 2018.

⁷ See *Heze Huayi Chemical Co., Ltd., v. United States*, Defendant's Response to Court Order, Ct. No. 15-27, Docket #82, at 1-2, Sept. 18, 2018.

⁸ See *Remand Order* at 7.

⁹ See Final Results of Redetermination Pursuant to Court Remand, *Heze Huayi Chemical Co., Ltd. v. United States*, Court No. 15-00027, Slip Op. 18-130 (CIT September 28, 2010), dated October 19, 2018 (Final Redetermination).

¹⁰ See *Heze Huayi Chemical Co., Ltd. v. United States*, Slip Op. 18-149, Consolidated Court No. 15-00027 (CIT 2018).

¹¹ See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

¹² See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

¹³ See *Remand Order* at 7.

31, 2018, and November 2, 2018, and November 6, 2018.³

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of magnesium from Israel are being, or are likely to be, sold in the United States at less-than-fair-value (LTFV) within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing magnesium in the United States. Consistent with section 732(b)(1) of the Act, the Petition is accompanied by information reasonably available to the petitioner supporting its allegation.

Commerce finds that the petitioner filed the Petition on behalf of the domestic industry because the petitioner is an interested party as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support with respect to the initiation of the requested AD investigation.⁴

Period of Investigation

Because the Petition was filed on October 24, 2018, pursuant to 19 CFR 351.204(b)(1), the period of investigation (POI) is October 1, 2017, through September 30, 2018.

Scope of the Investigation

The product covered by this investigation is magnesium from Israel. For a full description of the scope of this investigation, see the Appendix to this notice.

Scope Comments

During our review of the Petition, Commerce contacted the petitioner regarding the proposed scope language to ensure that the scope language in the Petition is an accurate reflection of the products for which the domestic industry is seeking relief.⁵ As a result, the scope of the Petition was modified to clarify the description of merchandise covered by the Petition. The description of the merchandise covered by this

³ See the petitioner's Letters, "Re: Magnesium from Israel/Petitioner's Response to the Department's Questions Regarding the General Issues Volume of the Petition," dated October 31, 2018 (General Issues Supplement), "Re: Magnesium from Israel/Petitioner's Response to the Department's Questions Regarding the Petition Volume III (Antidumping)," dated November 2, 2018 (AD Issues Supplement), and "Re: Magnesium from Israel/Petitioner's Response to the Department's November 5, 2018 Request," dated November 6, 2018 (Second General Issues Supplement).

⁴ See the "Determination of Industry Support for the Petition" section, *infra*.

⁵ See General Issues Supplement, at 1–4 and Exhibit I–S8; see also Second General Issues Supplement, at 2 and Exhibit I–S14.

initiation, as described in the Appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (scope).⁶ Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information,⁷ all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit scope comments by 5:00 p.m. Eastern Time (ET) on December 3, 2018, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on December 13, 2018, which is 10 calendar days from the initial comments deadline.⁸

Commerce requests that any factual information parties consider relevant to the scope of the investigation be submitted during this period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact Commerce and request permission to submit the additional information. All such submissions must be filed on the records of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically using Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS).⁹ An electronically filed document must be received successfully in its entirety by the time and date it is due. Documents exempted from the electronic submission requirements must be filed manually (*i.e.*, in paper form) with Enforcement and

⁶ See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

⁷ See 19 CFR 351.102(b)(21) (defining "factual information").

⁸ See 19 CFR 351.303(b).

⁹ See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011); see also *Enforcement and Compliance; Change of Electronic Filing System Name*, 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at <https://access.trade.gov/help.aspx> and a handbook can be found at <https://access.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf>.

Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Comments on Product Characteristics

Commerce is providing interested parties an opportunity to comment on the appropriate physical characteristics of magnesium to be reported in response to Commerce's AD questionnaire. This information will be used to identify the key physical characteristics of the subject merchandise in order to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) General product characteristics, and (2) product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe magnesium, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, Commerce attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, all product characteristics comments must be filed by 5:00 p.m. ET on December 3, 2018, which is 20 calendar days from the signature date of this notice.¹⁰ Any rebuttal comments must be filed by 5:00 p.m. ET on December 13, 2018. All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above, on the record of the AD investigation.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets

¹⁰ See 19 CFR 351.303(b).

this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the “industry.”

Section 771(4)(A) of the Act defines the “industry” as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether “the domestic industry” has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,¹¹ they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce’s determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.¹²

Section 771(10) of the Act defines the domestic like product as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.” Thus, the reference point from which the domestic like product analysis begins is “the article subject to an investigation” (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product

distinct from the scope of the Petition.¹³ Based on our analysis of the information submitted on the record, we have determined that magnesium, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.¹⁴

In determining whether the petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the “Scope of the Investigation,” in the Appendix to this notice. To establish industry support, the petitioner provided its own production of the domestic like product in 2017.¹⁵ The petitioner also provided letters of support from MagPro LLC and Advanced Magnesium Alloys Corporation, providing each company’s 2017 production of the domestic like product and stating each company’s support for the Petition.¹⁶ In addition, the petitioner provided a letter of support from the United Steel, Paper & Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, which represents workers employed in the production of the domestic like product at the petitioner’s plant in Rowley, UT (Local 8319).¹⁷ The petitioner compared the production of the supporters of the Petition to the estimated total production of the domestic like product for the entire domestic industry.¹⁸ We relied on data provided by the petitioner for purposes of measuring industry support.¹⁹

Our review of the data provided in the Petition, the General Issues Supplement, the Second General Issues Supplement,

¹³ See Volume I of the Petition, at 11–17; *see also* General Issues Supplement, at 1 and Exhibits S–1 through S–7.

¹⁴ For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, *see* “Enforcement and Compliance Office of AD/CVD Operations Antidumping Duty Investigation Initiation Checklist: Magnesium from Israel” (AD Initiation Checklist), at Attachment II, “Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Magnesium from Israel (Attachment II). This checklist is dated concurrently with, and hereby adopted by, this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

¹⁵ See Volume I of the Petition, at 2 and Exhibits I–5 and I–6; *see also* General Issues Supplement, at 7–8 and Exhibit I–S13.

¹⁶ See Volume I of the Petition, at 1–2 and Exhibits I–3 and I–4.

¹⁷ *Id.* at 1 and Exhibit I–2.

¹⁸ *Id.* at 2–3 and Exhibits I–5 and I–6; *see also* General Issues Supplement, at 6–8 and Exhibits I–S12 and I–S13.

¹⁹ *Id.* For further discussion, *see* AD Initiation Checklist, at Attachment II.

and other information readily available to Commerce indicates that the petitioner has established industry support for the Petition.²⁰ First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product, and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.*, polling).²¹ Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.²² Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.²³

Commerce finds that the petitioner filed the Petition on behalf of the domestic industry because it is an interested party as defined in sections 732(b)(1) and 771(9)(C) of the Act, and it has demonstrated sufficient industry support with respect to the AD investigation that it is requesting that Commerce initiate.²⁴

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (NV). In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.²⁵

The petitioner contends that the industry’s injured condition is illustrated by the significant volume and increasing market share of subject imports; reduced market share; underselling and price depression or suppression; declines in capacity, production, U.S. shipments, and capacity utilization; decline in

²⁰ See AD Initiation Checklist, at Attachment II.

²¹ See section 732(c)(4)(D) of the Act; *see also* AD Initiation Checklist, at Attachment II.

²² See AD Initiation Checklist, at Attachment II.

²³ *Id.*

²⁴ *Id.*

²⁵ See Volume I of the Petition, at 21 and Exhibit I–13.

¹¹ See section 771(10) of the Act.

¹² See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff’d* 865 F.2d 240 (Fed. Cir. 1989)).

employment variables; decline in the domestic industry's financial performance; and lost sales and revenues.²⁶ We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.²⁷

Allegations of Sales at LTFV

The following is a description of the allegation of sales at LTFV upon which Commerce based its decision to initiate an AD investigation of imports of magnesium from Israel. The sources of data for the deductions and adjustments relating to U.S. price and NV are discussed in greater detail in the AD Initiation Checklist.

Export Price

The petitioner based U.S. export price (EP) on the delivered prices for actual sales and/or offers for sale of magnesium produced in Israel by Dead Sea Magnesium, Ltd. (DSM) to unaffiliated customers in the United States.²⁸ Where appropriate, the petitioner made deductions from U.S. price for U.S. inland freight from warehouse to customer, U.S. warehousing charges, U.S. inland freight from port to warehouse, U.S. brokerage and handling charges, ocean freight and insurance, Israeli brokerage and handling, and Israeli inland freight.²⁹

Normal Value Based on Constructed Value

The petitioner contends that the Israeli home market is not viable, because the domestic consumption of magnesium in Israel is estimated to be minimal due to the lack of manufacturing assets in the magnesium consuming industries, and therefore, home market prices would not be an appropriate basis for NV.³⁰ The petitioner provided information indicating that the third-country prices were below the cost of production (COP), and therefore, the petitioner

based NV on constructed value (CV).³¹ The petitioner based NV on the average unit values (AUVs) of Brazilian imports of magnesium from Israel.³² The petitioner made deductions for Israeli brokerage and handling and inland freight.³³

Pursuant to section 773(b)(3) of the Act, CV consists of the cost of manufacturing; selling, general and administrative (SG&A) expenses; financial expenses; profit; and packing expenses.

The petitioner based its usage rates on its own production experience as a U.S. producer of magnesium, for January 2017 through December 2017, and from DSM-specific information contained in a 2013 third-party report entitled "Life Cycle Assessment (LCA) of Magnesium in Vehicle Construction," which was initiated by the International Magnesium Association (IMA LCA Study). The petitioner valued the material, labor, and energy inputs indicated in the IMA LCA Study based on the petitioner's experience or based on the applicable per-unit values in Israel.³⁴

The petitioner relied on the 2017 financial statements of DSM's parent, Israel Chemicals, Ltd. (ICL), to determine the per-unit factory overhead costs associated with the production of magnesium.³⁵ The petitioner also relied on the 2017 ICL financial statements to determine the SG&A expense ratio used to calculate the per-unit SG&A expenses and the financial expense ratio³⁶ used to calculate the per-unit financial expenses.³⁷ The petitioner calculated profit for CV based on the segmented financial results published in ICL's 2017 financial statements.³⁸

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of magnesium from Israel are being, or are likely to be, sold in the United States at less than fair value. Based on comparisons of EP to CV in accordance with sections 772 and 773 of the Act, the estimated dumping margins for magnesium covered by this initiation range from 92.06 percent to 130.61 percent.³⁹

Initiation of LTFV Investigation

Based upon the examination of the Petition, we find that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating an AD investigation to determine whether imports of magnesium from Israel are being, or are likely to be, sold in the United States at LTFV. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Respondent Selection

Although Commerce normally relies on import data from using United States Customs and Border Protection (CBP) import statistics to determine whether to select a limited number of producers/exporters for individual examination in AD investigations, the petitioner identified only one company in Israel, *i.e.*, Dead Sea Magnesium, Ltd., as a producer/exporter of magnesium and provided independent, third-party information as support.⁴⁰ We currently know of no additional producers/exporters of magnesium from Israel. Accordingly, Commerce intends to examine all known producers/exporters (*i.e.*, DSM). We invite interested parties to comment on this issue. Such comments may include factual information within the meaning of 19 CFR 351.102(b)(21). Parties wishing to comment must do so within three business days of the publication of this notice in the **Federal Register**. Comments must be filed electronically using ACCESS. An electronically-filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5 p.m. ET by the specified deadline.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the Petition have been provided to the government of Israel *via* ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation, as required by section 732(d) of the Act.

⁴⁰ See Volume I of the Petition, at Exhibits I-8 and I-12, Volume III of the Petition, at Exhibit III-2 (ship manifest data published by CBP's Automated Manifest System), and General Issues Supplement at 1.

²⁶ *Id.* at 18-30 and Exhibits I-5, I-6, I-10, I-12, I-14, and I-15.

²⁷ See AD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Magnesium from Israel (Attachment III).

²⁸ See Volume III of the Petition at 6 and Exhibit III-8.

²⁹ See Volume III of the Petition, at 6-7 and Exhibits III-10 through III-12; *see also* AD Issues Supplement, at 1-3 and Exhibits III-S2, III-S3 and III-S9.

³⁰ See Volume III of the Petition, at 3; *see also* AD Issues Supplement, at 4.

³¹ See AD Initiation Checklist.

³² See Volume III of the Petition, at 4 and Exhibit III-6.

³³ See Volume III of the Petition, at 4 and Exhibit III-7.

³⁴ *Id.*

³⁵ *Id.*

³⁶ See AD Initiation Checklist.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of magnesium from Israel are materially injuring or threatening material injury to a U.S. industry.⁴¹ A negative ITC determination will result in the investigation being terminated.⁴² Otherwise, the investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted⁴³ and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.⁴⁴ Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in this investigation.

Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of particular market situation (PMS) for purposes of constructed value (CV) under section 773(e) of the Act.⁴⁵ Section 773(e) of the Act states that “if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use

another calculation methodology under this subtitle or any other calculation methodology.” When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of a respondent's initial Section D questionnaire response.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule*, 78 FR 57790 (September 20, 2013), available at <http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm>, prior to submitting factual information in this investigation.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy

and completeness of that information.⁴⁶ Parties must use the certification formats provided in 19 CFR 351.303(g).⁴⁷ Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, Commerce published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures*, 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (e.g., the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: November 13, 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.

Appendix

Scope of the Investigation

The products covered by this investigation are primary and secondary pure and alloy magnesium metal, regardless of chemistry, raw material source, form, shape, or size (including, without limitation, magnesium cast into ingots, slabs, t-bars, rounds, sows, billets, and other shapes, and magnesium ground, chipped, crushed, or machined into raspings, granules, turnings, chips, powder, briquettes, and any other shapes). Magnesium is a metal or alloy containing at least 50 percent by actual weight the element magnesium. Primary magnesium is produced by decomposing raw materials into magnesium metal. Secondary magnesium is produced by recycling magnesium-based scrap into magnesium metal. The magnesium covered by this investigation also includes blends of primary magnesium, scrap, and secondary magnesium.

The subject merchandise includes the following pure and alloy magnesium metal products made from primary and/or secondary magnesium: (1) Products that contain at least 99.95 percent magnesium, by actual weight (generally referred to as “ultra-pure” or “high purity” magnesium); (2)

⁴⁶ See section 782(b) of the Act.

⁴⁷ See also *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are available at http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.

⁴¹ See section 733(a) of the Act.

⁴² *Id.*

⁴³ See 19 CFR 351.301(b).

⁴⁴ See 19 CFR 351.301(b)(2).

⁴⁵ See Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

products that contain less than 99.95 percent but not less than 99.8 percent magnesium, by actual weight (generally referred to as “pure” magnesium); and (3) chemical combinations of magnesium and other material(s) in which the magnesium content is 50 percent or greater, but less than 99.8 percent, by actual weight, whether or not conforming to an “ASTM Specification for Magnesium Alloy.”

The scope of this investigation excludes mixtures containing 90 percent or less magnesium in granular or powder form by actual weight and one or more of certain non-magnesium granular materials to make magnesium-based reagent mixtures, including lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nepheline syenite, feldspar, alumina (A1203), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomite lime, and colemanite.

The merchandise subject to this investigation is classifiable under items 8104.11.0000, 8104.19.0000, and 8104.30.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS items are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

[FR Doc. 2018–25300 Filed 11–19–18; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–070]

Rubber Bands From the People’s Republic of China: Final Affirmative Countervailing Duty Determination

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

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of rubber bands from the People’s Republic of China (China) for the period of investigation (POI) January 1, 2017, through December 31, 2017.

DATES: Applicable November 20, 2018.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–4793.

SUPPLEMENTARY INFORMATION:

Background

This final determination is made in accordance with section 705 of the Tariff Act of 1930, as amended (the Act).

The petitioner in this investigation is Alliance Rubber Co. The mandatory respondents in this investigation are Graceful Imp. & Exp. Co., Ltd. (Graceful), Moyoung Trading Co., Ltd. (Moyoung), and Ningbo Syloon Imp & Exp Co., Ltd. (Ningbo). Neither the mandatory respondents nor the Government of China (GOC) responded to our requests for information in this investigation.

We published the *Preliminary Determination* on July 9, 2018,¹ and the *Preliminary Critical Circumstances and Amended Scope* on September 6, 2018.² We invited interested parties to comment on the preliminary determinations. We received scope comments from certain interested parties.

Period of Investigation

The POI is January 1, 2017, through December 31, 2017.

Scope Comments

We invited parties to comment on Commerce’s Preliminary Scope Memorandum, and the changes made to the scope of the investigation therein.³ We have reviewed the briefs submitted by interested parties, considered the arguments therein, but have not made further changes to the scope of the investigation beyond those incorporated in the *Preliminary Critical Circumstances and Amended Scope*. For further discussion, see Commerce’s Final Scope Decision Memorandum.⁴

Scope of the Investigation

The products covered by this investigation are rubber bands from China. For a complete description of the scope of this investigation, see the Appendix to this notice.

¹ See *Rubber Bands from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Determination*, 83 FR 31729 (July 9, 2018) (*Preliminary Determination*), and accompanying Preliminary Determination Memorandum (PDM).

² See *Rubber Bands from the People’s Republic of China: Preliminary Affirmative Determination of Critical Circumstances, in Part, in the Countervailing Duty Investigation, and Amendment to the Scope of the Preliminary Determination in the Countervailing Duty Investigation*, 83 FR 45217 (September 6, 2018) (*Preliminary Critical Circumstances and Amended Scope*).

³ See Memorandum, “Rubber Bands from the People’s Republic of China and Thailand: Scope Comments Decision Memorandum for the Preliminary Antidumping Duty and Countervailing Duty Determinations,” dated August 29, 2018 (Preliminary Scope Memorandum).

⁴ See Memorandum, “Rubber Bands from the People’s Republic of China and Thailand: Scope Decision Memorandum for the Final Antidumping Duty and Countervailing Duty Determinations,” dated concurrently with, and hereby adopted by, this notice (Final Scope Decision Memorandum).

Analysis of Subsidy Programs—Adverse Facts Available

For purposes of this final determination, we relied solely on facts otherwise available because neither the GOC nor any of the selected mandatory respondents participated in this investigation.⁵ Further, because the mandatory respondents and the GOC did not cooperate to the best of their abilities in responding to our requests for information in this investigation, we drew adverse inferences in selecting from among the facts otherwise available, in accordance with sections 776(a)–(b) of the Act. Therefore, consistent with the *Preliminary Determination*, we continue to apply adverse facts available (AFA) to Graceful, Moyoung, and Ningbo Syloon. No interested party submitted comments on Commerce’s preliminary determination to apply AFA. Thus, we made no changes to the subsidy rate for the mandatory respondents for this final determination. A detailed discussion of our application of AFA was provided in the *Preliminary Determination*.⁶

All-Others Rate

As discussed in the *Preliminary Determination*, Commerce based the selection of the all-others rate on the countervailable subsidy rate established for the mandatory respondents, in accordance with section 705(c)(5)(A)(ii) of the Act.⁷ We made no changes to the selection of the all-others rate for this final determination.

Final Affirmative Determination of Critical Circumstances, in Part

As noted above, the mandatory respondents did not participate in this investigation, and no interested party submitted comments on critical circumstances. Because Graceful, Moyoung, and Ningbo Syloon did not cooperate to the best of their abilities in this investigation, we continue to apply AFA, in accordance with sections 776(a)–(b) of the Act, with respect to critical circumstances.

We are making the inconsistency determination with regard to the “Export Assistance Grants” program, which had the lowest rate in the *Preliminary Determination* among the programs alleged to be inconsistent with the Subsidies and Countervailing Measures Agreement (SCM

⁵ See sections 776(a)(1) and (2) of the Act.

⁶ See *Preliminary Determination PDM at Use of Facts Otherwise Available and Adverse Inferences*.

⁷ See *Preliminary Determination*, 83 FR at 31730.

Agreement).⁸ In so doing, we limit the corresponding offset to the dumping margin in the companion antidumping duty investigation, which best fulfills our statutory mandate “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully,”⁹ and induce future cooperation by companies in investigations where the petitioners allege the existence of programs potentially inconsistent with the SCM Agreement.

Because we find that the “Export Assistance Grants” program is export contingent, we determine that the criterion under section 705(a)(2)(A) of the Act has been met. In addition, for the purposes of the “massive imports” analysis, we continue to find, pursuant to section 776(b) of the Act, that the mandatory respondents shipped rubber bands in “massive” quantities during the comparison period, thereby fulfilling the criteria under section 705(a)(2)(B) of the Act. Consequently, pursuant to section 705(a)(2) of the Act, Commerce determines that critical circumstances exist for imports of rubber bands from China for Graceful, Moyoung, and Ningbo Syloon.

Commerce, however, determines that critical circumstances do not exist with respect to all other producers or exporters of rubber bands from China because there was not a massive increase in imports, as defined by 19 CFR 351.206(h)(2). For further information on Commerce’s critical circumstances analysis, see the *Preliminary Critical Circumstances and Amended Scope*.¹⁰

Final Determination

Commerce determines that the following estimated countervailable subsidy rates exist:

| Company | Subsidy rate (percent) |
|--|------------------------|
| Graceful Imp. & Exp. Co., Ltd | 125.77 |
| Moyoung Trading Co., Ltd | 125.77 |
| Ningbo Syloon Imp & Exp Co., Ltd | 125.77 |
| All-Others | 125.77 |

Disclosure

We described the subsidy rate calculations, which were based on AFA,

⁸ See *Preliminary Determination PDM* at 10–11 and Appendix.

⁹ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103–316, Vol. 1 (1994) at 870.

¹⁰ See *Preliminary Critical Circumstances and Amended Scope*, 83 FR at 45218–19.

in the *Preliminary Determination*.¹¹ As noted above, there are no changes to the calculations. Thus, no additional disclosure is necessary for this final determination.

Continuation of Suspension of Liquidation

As a result of our affirmative *Preliminary Determination* and pursuant to section 703(d) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of rubber bands from China that were entered or withdrawn from warehouse, for consumption, on or after July 9, 2018, the date of publication of the *Preliminary Determination* in the **Federal Register**.¹² Subsequently, we issued our affirmative *Preliminary Critical Circumstances and Amended Scope* and, pursuant to section 703(e)(2)(A) of the Act, we instructed CBP to suspend liquidation, with regard to Graceful, Moyoung, and Ningbo Syloon, of any unliquidated entries of subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after April 10, 2018, which is 90 days prior to the date of publication of the *Preliminary Determination* in the **Federal Register**.¹³

Additionally, in accordance with section 703(d) of the Act, we issued instructions to CBP to discontinue the suspension of liquidation for CVD purposes for subject merchandise entered, or withdrawn from warehouse, for consumption on or after November 6, 2018. We also instructed CBP to continue to suspend liquidation on all shipments from all other producers or exporters entered, or withdrawn from warehouse, for consumption made during the period July 9, 2018, through November 5, 2018, until the conclusion of this investigation. For Graceful, Moyoung, and Ningbo Syloon, we instructed CBP to continue to suspend liquidation on all shipments entered, or withdrawn from warehouse, for consumption made during the period April 10, 2018, through November 5, 2018, until the conclusion of this investigation.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a CVD order, reinstate the suspension of liquidation under section 706(a) of the Act, and require a cash deposit of estimated CVDs for such entries of subject merchandise in the

¹¹ See *Preliminary Determination PDM* at Appendix—AFA Rate Calculation.

¹² See *Preliminary Determination*, 83 FR at 31729.

¹³ See *Preliminary Critical Circumstances and Amended Scope*, 83 FR at 45219–20.

amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, Commerce will notify the ITC of its determination. In addition, Commerce will make available to the ITC all non-privileged and non-proprietary information relating to this investigation. Commerce will allow the ITC access to all privileged and business proprietary information in the files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Notification Regarding APOs

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

Notification to Interested Parties

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act and 19 CFR 351.210(c).

Dated: November 13, 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.

Appendix

Scope of the Investigation

The products subject to this investigation are bands made of vulcanized rubber, with a flat length, as actually measured end-to-end by the band lying flat, no less than 1/2 inch and no greater than 10 inches; with a width, which measures the dimension perpendicular to the length, actually of at least 3/64 inch and no greater than 2 inches; and a wall thickness actually from 0.020 inch to 0.125 inch. Vulcanized rubber has been chemically processed into a more durable material by the addition of sulfur or other equivalent curatives or accelerators. Subject products are included regardless of color or

inclusion of printed material on the rubber band's surface, including but not limited to, rubber bands with printing on them, such as a product name, advertising, or slogan, and printed material (e.g., a tag) fastened to the rubber band by an adhesive or another temporary type of connection. The scope includes vulcanized rubber bands which are contained or otherwise exist in various forms and packages, such as, without limitation, vulcanized rubber bands included within a desk accessory set or other type of set or package, and vulcanized rubber band balls. The scope excludes products that consist of an elastomer loop and durable tag all-in-one, and bands that are being used at the time of import to fasten an imported product.

Excluded from the scope of this investigation are vulcanized rubber bands of various sizes with arrow shaped rubber protrusions from the outer diameter that exceeds at the anchor point a wall thickness of 0.125 inches and where the protrusion is used to loop around, secure and lock in place.

Excluded from the scope of this investigation are yarn/fabric-covered vulcanized rubber hair bands, regardless of size.

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 4016.99.3510. Merchandise covered by the scope may also enter under HTSUS subheading 4016.99.6050. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

[FR Doc. 2018-25296 Filed 11-19-18; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-084]

Certain Quartz Surface Products From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that certain quartz surface products (QSP) from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is October 1, 2017, through March 31, 2018. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable November 20, 2018.

FOR FURTHER INFORMATION CONTACT:

Andrew Medley or Whitley Herndon, AD/CVD Operations, Office II,

Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-4987 or (202) 482-6274, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on May 16, 2018.¹ On August 28, 2018, Commerce published the postponement of the preliminary determination of this investigation, and the revised deadline is now November 13, 2018.² For a complete description of the events that followed the initiation of this investigation, see the Preliminary Decision Memorandum.³ A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>, and to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Investigation

The products covered by this investigation are QSP from China. For a complete description of the scope of this investigation, see Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,⁴ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product

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) (*Initiation Notice*).

² See *Certain Quartz Surface Products from the People's Republic of China: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation*, 83 FR 43848 (August 28, 2018).

³ See Memorandum, "Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Certain Quartz Surface Products from the People's Republic of China," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁴ See *Antidumping Duties: Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

coverage (scope).⁵ Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice*. For a summary of the product coverage comments and rebuttal responses submitted to the record for this investigation, and accompanying discussion and analysis of all comments timely received, see the Scope Decision Memorandum.⁶ Commerce is not preliminarily modifying the scope language as it appeared in the *Initiation Notice*.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Export prices was calculated in accordance with section 772(a) of the Act. Constructed export prices was calculated in accordance with section 772(b) of the Act. Because China is a non-market economy within the meaning of section 771(18) of the Act, normal value (NV) was calculated in accordance with section 773(c) of the Act.

In addition, because necessary information regarding the China-wide entity is not on the administrative record, Commerce has relied on facts available under section 776(a)(1) of the Act to determine the cash deposit rates assigned to the China-wide entity. Furthermore, pursuant to section 776(a) and (b) of the Act, because the China-wide entity did not cooperate to the best of its ability in responding to Commerce's requests for data, Commerce preliminarily has relied upon facts otherwise available, with adverse inferences, for the China-wide entity. For a full description of the methodology underlying Commerce's preliminary determination, see the Preliminary Decision Memorandum.

Preliminary Affirmative Determination of Critical Circumstances

In accordance with section 733(e) of the Act and 19 CFR 351.206, Commerce preliminarily determines that critical circumstances exist with respect to imports of QSP from China for the mandatory questionnaire respondents (i.e., CQ International,⁷ Foshan Yixin Stone Co., Ltd. (Yixin Stone), and Guangzhou Hercules Quartz Stone Co.,

⁵ See *Initiation Notice*.

⁶ See Memorandum, "Certain Quartz Surface Products from the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determination" (Scope Decision Memorandum), dated September 14, 2018.

⁷ Commerce preliminarily determines that Suzhou Colorquartzstone New Material Co., Ltd./ Shanghai Meiyang Stone Co., Ltd./ CQ International Limited HK are a single entity and hereafter collectively referred to as "CQ International." See Preliminary Decision Memorandum.

Ltd. (Hercules Quartz)), all non-individually-examined companies receiving a separate rate, and the China-wide entity. For a full description of the methodology and results of Commerce's critical circumstances analysis, see the Preliminary Decision Memorandum.

Combination Rates

In the *Initiation Notice*,⁸ Commerce stated that it would calculate exporter/producer combination rates for the respondents that are eligible for a separate rate in this investigation. Policy Bulletin 05.1 describes this practice.⁹ For a list of the respondents that

established eligibility for their own separate rates and the exporter/producer combination rates applicable to these respondents, see Appendix III.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

| Exporter | Producer | Estimated weighted-average dumping margin (percent) | Cash deposit rate (adjusted for subsidy offset) (percent) |
|---|--|---|---|
| Foshan Yixin Stone Co., Ltd | Foshan Yixin Stone Co., Ltd | 341.29 | 314.10 |
| Foshan Yixin Stone Co., Ltd | QingYuan Yue Feng Decoration Material Co., Ltd | 341.29 | 314.10 |
| Guangzhou Hercules Quartz Stone Co., Ltd | Guangzhou Hercules Quartz Stone Co., Ltd | 289.62 | 262.43 |
| Suzhou Colorquartzstone New Material Co., Ltd., Shanghai Meiyang Stone Co., Ltd., CQ International Limited. | Suzhou Colorquartzstone New Material Co., Ltd. and Shanghai Meiyang Stone Co., Ltd. | 242.10 | 242.10 |
| Non-Individually Examined Exporters Receiving Separate Rates (see Appendix III). | Producers Supplying the Non-Individually-Examined Exporters Receiving Separate Rates (see Appendix III). | 290.86 | 263.67 |
| China-Wide Entity ¹⁰ | China-Wide Entity | 341.29 | 314.10 |

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, as discussed below. Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the weighted average amount by which NV exceeds U.S. price, and, where appropriate, adjusted for export subsidies and estimated domestic subsidy pass-through as indicated in the chart above, as follows: (1) For the producer/exporter combinations listed in the table above, the cash deposit rate is equal to the combination listed in the table; (2) for all combinations of Chinese producers/exporters of merchandise under consideration that have not established eligibility for their own separate rates, the cash deposit rate will be equal to the rate established for the China-wide entity; and (3) for all third-country exporters of merchandise under consideration not listed in the table above, the cash deposit rate is the cash deposit rate applicable to the Chinese

exporter/producer combination (or the China-wide entity) that supplied that third-country exporter.

Section 733(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of (a) the date which is 90 days before the date on which the suspension of liquidation was first ordered, or (b) the date on which notice of initiation of the investigation was published. Commerce preliminarily finds that critical circumstances exist for imports of subject merchandise from CQ International, Yixin Stone, Hercules Quartz, all non-individually-examined companies receiving a separate rate, and the China-wide entity. In accordance with section 733(e)(2)(A) of the Act, the suspension of liquidation shall apply to all unliquidated entries of merchandise from the exporter/producer combinations identified in this paragraph that were entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice.

To determine the cash deposit rate, Commerce normally adjusts the estimated weighted-average dumping

margin by the amount of domestic subsidy pass-through and export subsidies determined in a companion CVD proceeding when CVD provisional measures are in effect. Accordingly, where Commerce has made a preliminary affirmative determination for domestic subsidy pass-through or export subsidies, Commerce has offset the calculated estimated weighted-average dumping margin by the appropriate rate(s). Any such adjusted rates may be found in the chart of estimated weighted-average dumping margins located in the section titled Preliminary Determination above.

Should provisional measures in the companion CVD investigation expire prior to the expiration of provisional measures in this LTFV investigation, Commerce will direct CBP to begin collecting cash deposits at a rate equal to the estimated weighted-average dumping margins calculated in this preliminary determination unadjusted for the passed-through domestic subsidies or for export subsidies at the time the CVD provisional measures expire.

These suspension of liquidation instructions will remain in effect until further notice.

their eligibility for a separate rate and, therefore, preliminarily determined that these companies are part of the China-wide entity. See Preliminary Decision Memorandum.

⁸ See *Initiation Notice*, 83 FR at 22617.

⁹ See Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, "Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries," (April 5, 2005) (Policy

Bulletin 05.1), available on Commerce's website at <http://enforcement.trade.gov/policy/bull05-1.pdf>.

¹⁰ Commerce preliminarily determined that Foshan Hero Stone Co., Ltd., Foshan Quartz Stone Imp & Exp Co., Ltd., Hero Stone Co., Ltd., and Vemy Quartz Surface Co., Ltd. failed to establish

Disclosure

Commerce intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify information relied upon in making its final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the final verification report is issued in this investigation, unless the Secretary alters the time limit. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.¹¹ Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the

preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. Pursuant to 19 CFR 351.210(e)(2), Commerce requires that requests by respondents for postponement of a final antidumping determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

In November 2018, pursuant to 19 CFR 351.210(e), Hercules Quartz and Hero Stone requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.¹² In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because (1) the preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce intends to issue its final determination no later than 135 days after the date of publication of this preliminary determination.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination of sales at LTFV. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of the subject merchandise are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections

733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: November 13, 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.

Appendix I

Scope of the Investigation

The merchandise covered by the investigation is certain quartz surface products.¹³ Quartz surface products consist of slabs and other surfaces created from a mixture of materials that includes predominately silica (e.g., quartz, quartz powder, cristobalite) as well as a resin binder (e.g., an unsaturated polyester). The incorporation of other materials, including, but not limited to, pigments, cement, or other additives does not remove the merchandise from the scope of the investigation. However, the scope of the investigation only includes products where the silica content is greater than any other single material, by actual weight. Quartz surface products are typically sold as rectangular slabs with a total surface area of approximately 45 to 60 square feet and a nominal thickness of one, two, or three centimeters. However, the scope of this investigation includes surface products of all other sizes, thicknesses, and shapes. In addition to slabs, the scope of this investigation includes, but is not limited to, other surfaces such as countertops, backsplashes, vanity tops, bar tops, work tops, tabletops, flooring, wall facing, shower surrounds, fire place surrounds, mantels, and tiles. Certain quartz surface products are covered by the investigation whether polished or unpolished, cut or uncut, fabricated or not fabricated, cured or uncured, edged or not edged, finished or unfinished, thermoformed or not thermoformed, packaged or un packaged, and regardless of the type of surface finish.

In addition, quartz surface products are covered by the investigation whether or not they are imported attached to, or in conjunction with, non-subject merchandise such as sinks, sink bowls, vanities, cabinets, and furniture. If quartz surface products are imported attached to, or in conjunction with, such non-subject merchandise, only the quartz surface product is covered by the scope.

Subject merchandise includes material matching the above description that has been finished, packaged, or otherwise fabricated in a third country, including by cutting, polishing, curing, edging, thermoforming, attaching to, or packaging with another product, or any other finishing, packaging, or fabrication that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the quartz surface products.

¹³ Quartz surface products may also generally be referred to as engineered stone or quartz, artificial stone or quartz, agglomerated stone or quartz, synthetic stone or quartz, processed stone or quartz, manufactured stone or quartz, and Bretonstone®.

¹¹ See 19 CFR 351.309; see also 19 CFR 351.303 (for general filing requirements).

¹² See Hercules Quartz's Letter, "Certain Quartz Surface Products from the People's Republic of China: Request to Postpone the Final Determination of the Investigation," dated November 6, 2018; and Hero Stone's Letter, "Quartz Surface Products from the People's Republic of China: Request to Postpone the Final Determination of the Investigation," dated November 9, 2018.

The scope of the investigation does not cover quarried stone surface products, such as granite, marble, soapstone, or quartzite. Specifically excluded from the scope of the investigation are crushed glass surface products. Crushed glass surface products are surface products in which the crushed glass content is greater than any other single material, by actual weight.

The products subject to the scope are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under the following subheading: 6810.99.0010. Subject merchandise may also enter under subheadings 6810.11.0010, 6810.11.0070, 6810.19.1200, 6810.19.1400, 6810.19.5000, 6810.91.0000, 6810.99.0080, 6815.99.4070, 2506.10.0010, 2506.10.0050, 2506.20.0010, 2506.20.0080. The HTSUS subheadings set forth above are provided for convenience and

U.S. Customs purposes only. The written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Determination Not to Select Hirsch Glass as a Voluntary Respondent
- IV. Period of Investigation
- V. Scope Comments
- VI. Discussion of the Methodology
 - A. Non-Market Economy Country
 - B. Surrogate Country
 - C. Separate Rates
 - D. Separate Rate Recipients
 - E. Companies Not Receiving a Separate Rate
 - F. Margin for the Separate Rate Companies

- G. Combination Rates
- H. The China-Wide Entity
- I. Application of Facts Available and Adverse Inferences
- J. Critical Circumstances
- K. Date of Sale
- L. Fair Value Comparisons
- M. Export Price and Constructed Export Price
- N. Normal Value
- O. Comparisons to Normal Value
- VII. Currency Conversion
- VIII. Adjustment Under Section 777(A)(F) of the Act
- IX. Adjustments to Cash Deposit Rates for Export Subsidies
- X. Verification
- XI. Conclusion

Appendix III

LIST OF SEPARATE RATE COMPANIES

| Exporter | Producer |
|--|--|
| Non-individually examined exporters receiving separate rates | Producers supplying the non-individually-examined exporters receiving separate rates |
| Anhui Youlisi Quartz Building Materials Co., Ltd d.b.a. Anhui Uviistone Quartz Building Material Co., Ltd. | Anhui Youlisi Quartz Building Materials Co., Ltd d.b.a. Anhui Uviistone Quartz Building Material Co., Ltd. |
| Ansen Investment And Development Co., Limited | Yunfu Honghai Stone Co., Ltd. |
| Ansen Investment And Development Co., Limited | Foshan Adamant Science & Technology Co., Ltd. |
| Ansen Investment And Development Co., Limited | Heshan City Nande Stone Co., Ltd. |
| Ansen Investment And Development Co., Limited | Dongguan Lafite Quartz-Stone Co., Ltd. |
| Ansen Investment And Development Co., Limited | Foshan Shunde O'Riordan Building Materials Manufacture Co., Ltd. |
| Aurea Stone Solutions Inc | Jiangxi Fasa Industrial Corporation Limited. |
| Best Bath & Kitchen Co., Limited | Fujian Province Kaisida Quartz Co., Ltd. |
| Best Cheer (Xiamen) Stone Works Co., Ltd | Best Cheer (Xiamen) Stone Works Co., Ltd. |
| Best Cheer (Xiamen) Stone Works Co., Ltd | Quanzhou Best Cheer Industry Co., Ltd. |
| Bestone High Tech Materials Co., Limited | Bestone High Tech Materials Co., Limited. |
| Bestone High Tech Materials Co., Limited | Guangdong Bosun Quartz Stone Co., Ltd. |
| Bestone High Tech Materials Co., Limited | Heshan Biyu Stone Co., Ltd. |
| Bestview (Fuzhou) Import & Export Co. Ltd | Dongguan Lafite Quartz Stone Co., Ltd. |
| Bestview (Fuzhou) Import & Export Co. Ltd | Nanan Fute Stone Co., Ltd. |
| Bestview (Fuzhou) Import & Export Co. Ltd | Foshan City Lewistone New Material Co., Limited. |
| Bestview (Fuzhou) Import & Export Co. Ltd | Yifeng Industries Corporation Co., Ltd. |
| Deyuan Panmin International Limited | Fujian Panmin Co., Ltd. |
| DH Group Co., Limited d.b.a. Xiamen DH Stone Co., Limited | DH Group Co., Limited. |
| DH Group Co., Limited d.b.a. Xiamen DH Stone Co., Limited | Nan An Zheng Shun Building Material Co., Ltd. |
| DH Group Co., Limited d.b.a. Xiamen DH Stone Co., Limited | Nan An Ju Jiu Building Materials Co., Ltd. |
| DH Group Co., Limited d.b.a. Xiamen DH Stone Co., Limited | Whitley New Material Co., Ltd. |
| East Asia Limited | Heshan City Nande Co., Ltd. |
| East Asia Limited | Vemy Quartz Surface Co., Ltd. |
| East Asia Limited | Lanling Jinzhao New Material Co., Ltd. |
| East Asia Limited | Rong Hua Fu Quartz Co., Ltd. |
| East Asia Limited | Runtai Stone Co., Ltd. |
| Elite Industry International Group Limited | Heshan Biyu Stone Industry Co., Ltd. |
| Enming Art Stone Co., Ltd | Thinking Industries Corporation Limited. |
| Ersten Surfaces Limited | Huizhou Zhongbo Engineering Stone Co., Ltd. |
| Ersten Surfaces Limited | Guangdong Xiongjie Building Materials Co., Ltd. |
| Farfield Trade Co., Ltd | Ronghuafu Yunfu Stone Co., Ltd. |
| Farfield Trade Co., Ltd | Yunfu Meiao Stone Co., Ltd. |
| Foshan Adamant Science & Technology Co., Ltd | Foshan Adamant Science & Technology Co., Ltd. |
| Foshan Biyu Stone Co., Limited | Foshan City Gaoming Biyustone Co., Ltd. |
| Foshan Biyu Stone Co., Limited | Foshan City Gaoming Biyu New Materials Co., Ltd. |
| Foshan Bluesea Quartz Stone Co., Ltd | Foshan Bluesea Quartz Stone Co., Ltd. |
| Heshan Nande Stone Industry Co., Ltd | Heshan Nande Stone Industry Co., Ltd. |
| Foshan Evergreen Import and Export Co., Ltd | Foshan Yixin Stone Co., Ltd. |
| Foshan Leda Building Materials Co., Ltd | Foshan Leda Building Materials Co., Ltd. |
| Foshan Leda Building Materials Co., Ltd | Hengyang Athena Quartz Stone Co., Ltd. |
| Foshan Monica Quartz Stone Co., Ltd | Foshan Monica Quartz Stone Co., Ltd. |
| Foshan Nanhai Cuipo Artificial Quartz Co., Ltd | Yunfu Stone Solutions Co., Ltd. |
| Foshan Nanhai Cuipo Artificial Quartz Co., Ltd | Qingyuan Yuefeng Decoration Materials Co., Ltd. |
| Foshan Nanhai Cuipo Artificial Quartz Co., Ltd | Yunfu Xiangyun Stone Co., Ltd. |
| Foshan Nanhai Cuipo Artificial Quartz Co., Ltd | Yunfu Ronghuafu Stone Co., Ltd. |

LIST OF SEPARATE RATE COMPANIES—Continued

| Exporter | Producer |
|--|--|
| Non-individually examined exporters receiving separate rates | Producers supplying the non-individually-examined exporters receiving separate rates |
| Foshan Nanhai Cuipo Artificial Quartz Co., Ltd | Heshan City Nande Stone Co., Ltd. |
| Foshan Nanhai Cuipo Artificial Quartz Co., Ltd | Yunfu Wayon Stone Co., Ltd. |
| Foshan Opalus Stone Co., Ltd | Foshan Oubo Stone Co., Ltd. |
| Foshan Opaly Composite Materials Co., Ltd | Foshan Opaly Composite Materials Co., Ltd. |
| Foshan Rongguan Glass Material For Building Co., Ltd | Foshan Rongguan Glass Material For Building Co., Ltd. |
| Foshan Sanshui Queen Ceramic Inc | Foshan Sanshui Queen Ceramic Inc. |
| Foshan Shunde O'Riordan Building Materials Manufacture Co., Ltd | Foshan Shunde O'Riordan Building Materials Manufacture Co., Ltd. |
| Free Trans International Trading Limited | Foshan Xianghai Quartz Stone Co., Ltd. |
| Free Trans International Trading Limited | Foshan Tianci Quartz Stone Co., Ltd. |
| Fujian Nan'an Zuci Building Material Co., Ltd | Fujian Nan'an Zuci Building Material Co., Ltd. |
| Fujian Nan'an Zuci Building Material Co., Ltd | Shanghai Yijin Decorating Materials Co., Ltd. |
| Fujian Pengxiang Industrial Co., Ltd | Fujian Pengxiang Industrial Co., Ltd. |
| Fujian Putian Wangzhong New Type Building Materials Co., Ltd | Fujian Putian Wangzhong New Type Building Materials Co., Ltd. |
| Fujian Quanzhou Risheng Stone Co., Ltd | Fujian Quanzhou Risheng Stone Co., Ltd. |
| Fuzhou CBM Imp. And Exp. Co., Ltd | Fujian Nan'an Zuci Building Material Co., Ltd. |
| Fuzhou CBM Imp. And Exp. Co., Ltd | Dongguan Lafite Quartz-Stone Co., Ltd. |
| Golden Dragon Stone Co., Limited | Foshan Rongguan Glass Material For Building Co., Ltd. |
| Golden Dragon Stone Co., Limited | One Stone Quartz Co., Ltd. |
| Guangdong Bitto New Material Technologies Co., Ltd | Guangdong Bitto New Material Technologies Co., Ltd. |
| Guangdong Bosun Quartz Stone Co., Ltd | Guangdong Bosun Quartz Stone Co., Ltd. |
| Guangdong Overland Ceramics Co., Ltd | Guangdong Overland Ceramics Co., Ltd. |
| Guangdong Zhongxun New Material Co., Ltd | Guangdong Zhongxun New Material Co., Ltd. |
| Guangzhou Gelandy New Material Co., Ltd | Guangzhou Gelandy New Material Co., Ltd. |
| Guangzhou Wei Sheng Stone Building Materials Co., Ltd | Huizhou Zhongbo Engineering Stone Co., Ltd. |
| HCH Industrial Co., Ltd d.b.a., Shenzhen Hengchang hao Industrial | J W Quartz Co., Ltd. |
| HCH Industrial Co., Ltd d.b.a., Shenzhen Hengchang hao Industrial | He Shan Biyu Stone Co., Ltd. |
| HCH Industrial Co., Ltd d.b.a., Shenzhen Hengchang hao Industrial | Dongguan kaisa stone Co., Ltd. |
| HCH Industrial Co., Ltd d.b.a., Shenzhen Hengchang hao Industrial | Vemy Quartz Surfaces Co., Ltd. |
| HCH Industrial Co., Ltd d.b.a., Shenzhen Hengchang hao Industrial | Heng Jia Stone. |
| HCH Industrial Co., Ltd d.b.a., Shenzhen Hengchang hao Industrial | Hubei Guantai Building Materials Co., Ltd. |
| HCH Industrial Co., Ltd d.b.a., Shenzhen Hengchang hao Industrial | Dongguan Huaxiang Stone Co., Ltd. |
| HCH Industrial Co., Ltd d.b.a., Shenzhen Hengchang hao Industrial | Guangzhou Hercules Quartz Stone Co., Ltd. |
| Heshan Biyu Stone Company | Heshan Biyu Stone Company. |
| Hirsch Glass (Dalian) Co., Ltd | Hirsch Glass (Dalian) Co., Ltd. |
| Hirsch Glass (Dalian) Co., Ltd | Foshan Yixin Stone Co., Ltd. |
| HongKong FS Development Limited | Yunfu Chuangyun New Meterail Co., Ltd. |
| HongKong FS Development Limited | RONGHUAFU Yunfu Stone Co., Ltd. |
| Huahe Stone (Yunfu) Co., Ltd | Huahe Stone (Yunfu) Co., Ltd. |
| Huidong Hexingtai Industry Co., Ltd | Huidong Hexingtai Industry Co., Ltd. |
| Intec Stone (Xiamen) Ltd | Intec Stone (Xiamen) Ltd. |
| Jiangxi Jingwei Stone Co., Ltd, d.b.a. Jiangxi Jingwei Stone Material Ltd. | Jiangxi Jingwei Stone Co., Ltd, d.b.a. Jiangxi Jingwei Stone Material Ltd. |
| Kaistar (Xiamen) Co., Ltd | Fujian Best Matrix Quartz Co., Ltd. |
| Kaistar (Xiamen) Co., Ltd | Kinstone (Jieyang) Stone Co., Ltd. |
| Kaistar (Xiamen) Co., Ltd | Jieyang Bai Sheng Stone Limited. |
| KBI Construction Materials Ltd | YUNFU HongHai Stone Co., Ltd. |
| KBI Construction Materials Ltd | Guangdong Si Hui YuLong Stone Co., Ltd. |
| KBI Construction Materials Ltd | Foshan Vemy Building Material Co., Ltd. |
| KBI Construction Materials Ltd | Foshan Adamant Science & Technology Co., Ltd. |
| KBI Construction Materials Ltd | Yun Fu Xiang Yun Stone Co., Ltd. |
| Landmark Surface Company Limited | Guangdong Lai Ma Ke Environmental Building Materials Company Limited. |
| Landmark Surface Company Limited | Foshan Gaoming Dexing Quartz Stone Co., Ltd. |
| Lanling Jinzhao New Material Co., Ltd | Lanling Jinzhao New Material Co., Ltd. |
| Lindberg Stone Co., Limited | Dongguan City Lafite Quartz-Stone Co., Ltd. |
| Lixin Stone Co., Limited | Heshan City Nande Stone Co., Ltd. |
| Lixin Stone Co., Limited | Guangdong Dexing Quartz Stone Co., Ltd. |
| Lixin Stone Co., Limited | Guangzhou Hercules Quartz Stone Co., Ltd. |
| Lixin Stone Co., Limited | Foshan Adamant Science & Technology Co., Ltd. |
| Lixin Stone Co., Limited | Vemy Building Materials Co., Ltd. |
| Lixin Stone Co., Limited | Yunfu Honghai Stone Co., Ltd. |
| Lixin Stone Co., Limited | Dongguan Lefei New Stone Materials Co., Ltd. |
| Lixin Stone Co., Limited | Dongguan Lafite Quartz-stone Co., Ltd. |
| Lixin Stone Co., Limited | Huahe Stone (Yunfu) Co., Ltd. |
| Lixin Stone Co., Limited | Guangdong BOSUN Quartz Stone Co., Ltd. |
| Lixin Stone Co., Limited | Foshan Nanhai Yachang Building Materials Products Co., Ltd. |
| Loyalty Enterprise Development (Xinyang) Co., Ltd | Loyalty Enterprise Development (Xinyang) Co., Ltd. |
| Lulong Ruitong Trading Co., Ltd | Lulong Ruitong Trading Co., Ltd. |
| Macostone International Industry Co., Limited | Qingyuan Yuefeng Decoration Materials Co., Ltd. |

LIST OF SEPARATE RATE COMPANIES—Continued

| Exporter | Producer |
|--|--|
| Non-individually examined exporters receiving separate rates | Producers supplying the non-individually-examined exporters receiving separate rates |
| Macostone International Industry Co., Limited | Lanling Modern Materials Co., Ltd. |
| Monica Surfaces Company Limited | Foshan Monica Quartz Stone Co., Ltd. |
| Nan'an Guangtaixiang Stone Co., Ltd | Nan'an Guangtaixiang Stone Co., Ltd. |
| Nanchang Montary Industrial Co., Ltd | Yunfu Kimria Quarts Stone Co., Ltd. |
| Nanchang Montary Industrial Co., Ltd | Yunfu Montary Stone Co., Ltd. |
| New Powerstone Industry Co., Limited | Qing Yuan Yuefeng Quartz Stone Co., Ltd. |
| New Powerstone Industry Co., Limited | Shandong Whitley New Materials Co., Ltd. |
| New Powerstone Industry Co., Limited | Foshan Devialef New Materials Co., Ltd. |
| New Powerstone Industry Co., Limited | Yunan Guanglai Stone Co., Ltd. |
| New Powerstone Industry Co., Limited | Nanan Guangtaixiang Stone Co., Ltd. |
| Newstar (Quanzhou) Industrial Co., Ltd | Quanzhou Yifeng Industries Corporation. |
| One Stone Quartz Co., Ltd | Wuzhou Yuanhong Building Materials Product Co., Ltd. |
| Penglai Huasheng Electronic Co., Ltd | Shandong Sunfull Industrial Co., Ltd. |
| Po Nice International Trading Limited | Xinyun Stone (Yunfu) Co., Ltd. |
| Po Nice International Trading Limited | Guangzhou Hercules Quartz Stone Co., Ltd. |
| Po Nice International Trading Limited | Ronghuaфу Yunfu Stone Co., Ltd. |
| Po Nice International Trading Limited | Henan Namei Quartz Stone Technology Co., Ltd. |
| Po Nice International Trading Limited | Lanling Jinzhao New Material Co., Ltd. |
| Po Nice International Trading Limited | Foshan Opalus Quartz Stone Co., Ltd. |
| Po Nice International Trading Limited | Zhejiang Tiancheng Stone Enterprise Co., Ltd. |
| Po Nice International Trading Limited | Zhejiang Sanxing Cheng Yuan Energy Science and Technology Co., Ltd. |
| Po Nice International Trading Limited | LESSO Technology Industry (Chengdu) Co., Ltd. |
| Qinhuangdao Jingwei Stone Co., Ltd | Qinhuangdao Jingwei Stone Co., Ltd. |
| Quanzhou Franco Trade Co., Ltd | Fujian Pengxiang Industrial Co., Ltd. |
| Quanzhou Xinxing Stone Technics Co., Ltd | Quanzhou Xinxing Stone Technics Co., Ltd. |
| Quanzhou Yifeng Co., Ltd. (AKA Quanzhou Yifeng Industries Corporation). | Quanzhou Yifeng Co., Ltd. (AKA Quanzhou Yifeng Industries Corporation). |
| Ronghuaфу Yunfu Stone Co., Ltd | Ronghuaфу Yunfu Stone Co., Ltd. |
| Shanghai Rightime International Trading Co., Ltd | Fujian Quanzhou Risheng Stone Co., Ltd. |
| Shunsen Industries Corporation | Shunsen Industries Corporation. |
| Shunsen Industries Corporation | Thinking Industries Corporation. |
| Sinostone (Guangdong) Co., Ltd | Sinostone (Guangdong) Co., Ltd. |
| Stone Solutions Co., Ltd | Stone Solutions Co., Ltd. |
| Sunjoin Imp. & Exp. (Xiamen) Co., Limited | Henan Namei Quartz Stone Technology Co., Ltd. |
| Sunjoin Imp. & Exp. (Xiamen) Co., Limited | Thinking Industries Cooperation Limited. |
| Sunjoin Imp. & Exp. (Xiamen) Co., Limited | Nan'an Hanwa New Building Material Co. Ltd. |
| Sunjoin Imp. & Exp. (Xiamen) Co., Limited | Quanzhou Yifeng Industries Corporation. |
| Teltos Quartz Stone Co., Ltd | Teltos Quartz Stone Co., Ltd. |
| Vquartz Stone Limited | Vquartz Stone Limited. |
| Wanfeng Compound Stone Technology Co., Ltd | Wanfeng Compound Stone Technology Co., Ltd. |
| Wanfu Building Materials Products Co., Ltd. Nanan Fujian. | Wanfu Building Materials Products Co., Ltd. Nanan Fujian. |
| Wuxi Yushea Furniture Co., Ltd | Yunfu Zhengfang Stone Company. |
| Xiamen Ally Group Co., Ltd | Thinking Industries Corporation Limited. |
| Xiamen Ally Group Co., Ltd | Nanan Fute Stone Co., Ltd. |
| Xiamen Avanti Stone Industrial Co., Ltd | Foshan Xinyixin Stone Industry Co., Ltd. |
| Xiamen Best Cheer Industry Co., Ltd | Xiamen Best Cheer Industry Co., Ltd. |
| Xiamen Best Cheer Industry Co., Ltd | Quanzhou Best Cheer Industry Co., Ltd. |
| Xiamen City Yadilong Imp & Exp. Co., Ltd | Quanzhou Yifeng Co., Ltd. |
| Xiamen City Yadilong Imp & Exp. Co., Ltd | Xiamen Orienti New Building Materials Ltd. |
| Xiamen Deyuan Panmin Trading Co., Ltd | Fujian Panmin Co., Ltd. |
| Xiamen Duoia Stone Material Co., Ltd. d.b.a. Xiamen Multi-Family Stone Co., Ltd. | Foshan Yixin Stone Co., Ltd. |
| Xiamen Duoia Stone Material Co., Ltd. d.b.a. Xiamen Multi-Family Stone Co., Ltd. | Foshan Blue Sea Quartz Stone Co., Ltd. |
| Xiamen Duoia Stone Material Co., Ltd. d.b.a. Xiamen Multi-Family Stone Co., Ltd. | Foshan Ronguan Glass Material For Building Co., Ltd. |
| Xiamen Duoia Stone Material Co., Ltd. d.b.a. Xiamen Multi-Family Stone Co., Ltd. | One Stone Quartz Co., Ltd. |
| Xiamen Duoia Stone Material Co., Ltd. d.b.a. Xiamen Multi-Family Stone Co., Ltd. | Quanzhou Yifeng Co., Ltd. |
| Xiamen Duoia Stone Material Co., Ltd. d.b.a. Xiamen Multi-Family Stone Co., Ltd. | Xiamen Orienti New Building Materials Ltd. |
| Xiamen Duoia Stone Material Co., Ltd. d.b.a. Xiamen Multi-Family Stone Co., Ltd. | Fujian Panmin Xincai Ltd Co. |
| Xiamen Duoia Stone Material Co., Ltd. d.b.a. Xiamen Multi-Family Stone Co., Ltd. | Fujian Nan'an Zuci Building Material Co., Ltd. |
| Xiamen Enrich Co., Ltd | Dongguan Lafite Quartz-Stone Co., Ltd. |
| Xiamen Enrich Co., Ltd | Quanzhou Yifeng Industries Corporation. |

LIST OF SEPARATE RATE COMPANIES—Continued

| Exporter | Producer |
|---|--|
| Non-individually examined exporters receiving separate rates | Producers supplying the non-individually-examined exporters receiving separate rates |
| Xiamen Fortua (Hong Kong) Industry Co., Limited Xiamen Further Star Imp and Exp Co., Ltd Xiamen Gofor Stone Co., Ltd Xiamen Good Time Stone Co., Ltd Xiamen Good Time Stone Co., Ltd Xiamen Good Time Stone Co., Ltd Xiamen Good Time Stone Co., Ltd Xiamen Good Time Stone Co., Ltd Xiamen Got Cheer Trading Co., Ltd d.b.a. Xiamen Got Cheer Co., Ltd Xiamen Got Cheer Trading Co., Ltd d.b.a. Xiamen Got Cheer Co., Ltd Xiamen Got Cheer Trading Co., Ltd d.b.a. Xiamen Got Cheer Co., Ltd Xiamen Honglei Imp. & Exp. Co., Ltd. d.b.a. Honglei (Xiamen) Stone Co., Ltd Xiamen Injoy Import & Export Co., Ltd Xiamen Interock Stone Co., Ltd Xiamen Interock Stone Co., Ltd Xiamen Jianming Rising Import & Export Co., Ltd Xiamen Jianming Rising Import & Export Co., Ltd Xiamen Luck Stone Co., Ltd Xiamen Luck Stone Co., Ltd Xiamen Luck Stone Co., Ltd Xiamen Luck Stone Co., Ltd Xiamen Luck Stone Co., Ltd Xiamen Maoshuang Stone Industry Co., Ltd Xiamen Northern Mining Stone Co., Ltd Xiamen Northern Mining Stone Co., Ltd Xiamen Northern Mining Stone Co., Ltd Xiamen Northern Mining Stone Co., Ltd Xiamen Northern Mining Stone Co., Ltd Xiamen Northern Mining Stone Co., Ltd Xiamen Ogrand Stone Imp. & Exp. Co., Ltd Xiamen Oriental Stone Products Co., Ltd Xiamen Oriental Stone Products Co., Ltd Xiamen Orienti New Building Materials Ltd Xiamen Qinhui Import & Export Co., Ltd Xiamen Qinhui Import & Export Co., Ltd Xiamen Realho Stone Co., Ltd Xiamen Realho Stone Co., Ltd Xiamen Realho Stone Co., Ltd Xiamen Realho Stone Co., Ltd Xiamen Shihui Stone Product Co., Ltd Xiamen Shihui Stone Product Co., Ltd Xiamen Sinocau Import & Export Co., Ltd Xiamen Smarter Stone Co., Ltd Xiamen Smarter Stone Co., Ltd Xiamen Smarter Stone Co., Ltd Xiamen Stone Forest Co., Ltd Xiamen Stone Forest Co., Ltd Xiamen Stone Forest Co., Ltd Xiamen Stone Forest Co., Ltd Xiamen Stone Forest Co., Ltd Xiamen Stone Forest Co., Ltd Xiamen Stone Forest Co., Ltd Xiamen Stone Forest Co., Ltd Xiamen Stone Forest Co., Ltd Xiamen Stone Forest Co., Ltd Xiamen Stone Harbour Co., Ltd Xiamen Stone Harbour Co., Ltd Xiamen Stonelink Imp & Exp Co., Ltd Xiamen Stonelink Imp & Exp Co., Ltd Xiamen Stonevic Co., Ltd Xiamen Stonevic Co., Ltd Xiamen Sun Young Corporation Xiamen Sun Young Corporation Xiamen Sun Young Corporation Xiamen Sun Young Corporation Xiamen Sun Young Corporation Xiamen Terry Stone Co., Ltd Xiamen Touch Stone Co., Ltd Xiamen Vatro Stone Imp. & Exp. Co., Ltd | Xiamen Fortua Industry & Trade Co., Ltd. Quanzhou Yifeng Industries Corporation. Huayao Stone Slab Factory. One Stone Quartz Co., Ltd. Lanling Jinzhao New Material Co., Ltd. Thinking Industries Corporation Limited. Xiamen Deyuan Panmin Trading Co., Ltd. Quanzhou Yifeng Industries Corporation. Quanzhou Best Cheer Industry Co., Ltd. Xiamen Best Cheer Industry Co., Ltd. Best Cheer (Xiamen) Stone Works Co., Ltd. Xiamen Honglei Imp. & Exp. Co., Ltd. d.b.a. Honglei (Xiamen) Stone Co., Ltd. Thinking Industries Corporation. Loyalty Enterprise Development (XinYang) Co., Ltd. Fujian Nan'an Zuci Building Material Co., Ltd. Thinking Industries Corporation. Nan'an Hanhua New Building Materials Co., Ltd. Foshan Opaly Composites Co., Ltd. Foshan Yixin Stone Co., Ltd. Heshan Biyu Stone Co., Ltd. Shandong Whitley New Materials Co., Ltd. Vemy Building Materials Co., Ltd. Fujian Panmin Quartz Co., Ltd. Fujian Nanan Xietai Stone Co., Ltd. Fujian Nanan Mao Tong Yuan Stone Co., Ltd. Fujian Nanan Run Ze Stone Co., Ltd. Shandong Horizon Group Co., Ltd. Lanling Jinzhao New Material Co., Ltd. Fujian Panmin Quartz Co., Ltd. Quanzhou Yifeng Co., Ltd Nanan Branch. Nanan City Shijing Town Stone Products Factory. Fujian Nanan Lianhui Stone Products Co., Ltd. Xiamen Orienti New Building Materials Ltd. Zhangzhou Qinhui Quartz Stone Co., Ltd. Fujian Quanzhou Qinhui Stone Co., Ltd. Thinking Industries Corporation. Shandong Whitley New Materials Co., Ltd. Quanzhou Yifeng Co., Ltd. Nan'an Fute Building Material Co., Ltd. Guangdong Baoxin New Stone Products Co., Ltd. Yunfu Honghai Investment Co., Ltd. Jinjiang Huabao Stone Co., Ltd. Heshan Nande Quartz Stone Co., Ltd. Fujian Quanzhou Runze Stone Co., Ltd. Hongsheng Stone Co., Ltd. Quanzhou Yifeng Industries Corporation. Foshan Vemy Stone Building Material Co., Ltd. Foshan Rongguan Glass Material For Building Co., Ltd. Qingyuan Yuefeng Decoration Materials Co., Ltd. Lanling Jinzhao New Material Co., Ltd. Foshan Yixin Stone Co., Ltd. Xiamen Orienti New Building Materials, Ltd. Dongguan Lafite Quartz-Stone Co., Ltd. Dongguan City Hongke Quartz Stone Co., Ltd. Fujian PengXiang Industrial Co., Ltd. Zhangzhou QinHui Quartz Co., Ltd. Fujian PengXiang Industrial Co., Ltd. Heshan Biyu Stone Co., Ltd. Heshan Biyu Stone Co., Ltd. Quanzhou Yifeng Industries Co., Ltd. Yifeng Industries Corporation. Heshan City Nande Stone Co., Ltd. Benyi New Materials Co., Ltd. Fujian Quanzhou Risheng Stone Co., Ltd. Nanan Chunjia Stone Co., Ltd. Heshan Biyu Stone Co., Ltd. One Stone Quartz Co., Ltd. Xiamen Vatro Stone Imp. & Exp. Co., Ltd. |

LIST OF SEPARATE RATE COMPANIES—Continued

| Exporter | Producer |
|---|--|
| Non-individually examined exporters receiving separate rates | Producers supplying the non-individually-examined exporters receiving separate rates |
| Xiamen Vatro Stone Imp. & Exp. Co., Ltd | Shandong Whitley New Materials Co., Ltd. |
| Xiamen Vesen Imp. & Exp. Trade Co., Ltd | Nanan Xingli Stone Co., Ltd. |
| Xiamen Wanfu Trade Co., Ltd | Xiamen Wanfu Trade Co., Ltd. |
| Xiamen Wanfu Trade Co., Ltd | Thinking Industries Corporation. |
| Xiamen Wanfu Trade Co., Ltd | Yifeng Industries Corporation. |
| Xiamen Wanli Stone Decoration & Design Co., Ltd | Xiamen Wanlistone Stock Co., Ltd. |
| Xiamen Wanli Stone Decoration & Design Co., Ltd | Quanzhou Yifeng Co., Ltd. |
| Xiamen Wanli Stone Decoration & Design Co., Ltd | Nan'an Fengsheng Stone Co., Ltd. |
| Xiamen Wanli Stone Decoration & Design Co., Ltd | Thinking Industries Corporation Limited. |
| Xiamen Wanli Stone Decoration & Design Co., Ltd | One Stone Quartz Co., Ltd. |
| Xiamen Wanli Stone Decoration & Design Co., Ltd | Taking Luck (Xiamen) Granite & Marble Co., Ltd. |
| Xiamen Wanlistone Stock Co., Ltd | Xiamen Wanlistone Stock Co., Ltd. |
| Xiamen Winson Import and Export Co., Ltd | Xiamen Oulandi New Building Materail Co., Ltd. |
| Xiamen Yadonglong Imp & Exp. Co., Ltd | Quanzhou Yifeng Co., Ltd. |
| Xiamen Yadonglong Imp & Exp. Co., Ltd | Xiamen Orienti New Building Materials Ltd. |
| Xiamen Yadonglong Imp & Exp. Co., Ltd | Xinmingdu Building Materials (Xiamen) Co., Ltd. |
| Xiamen Yalitong Stone Industrial Co., Ltd | Fujian Nanan Xudong Building Materials Co., Ltd. |
| Xiamen Yalitong Stone Industrial Co., Ltd | Zhongci Wanjia Decoration Materials Co., Ltd. |
| Xiamen Yalitong Stone Industrial Co., Ltd | Quanzhou Yifeng Co., Ltd. |
| Xiamen Yeyang Import & Export Co., Ltd. (AKA Xiamen Yeyang Imp&Exp Co., Ltd.) | Fujian Nanan Yuanhong Construction Materails Co., Ltd. |
| Xiamen Yiqing Imp. & Exp. Co., Ltd | Fujian Nanan Yuanhong Construction Materails Co., Ltd. |
| Xiamen Zhongguanshi Stone Industry Co., Limited | Yunan Guanglai Stone Co., Ltd. |
| Xiamen Zhongguanshi Stone Industry Co., Limited | Foshan Devialef New Materials Co., Ltd. |
| Xiamen Zhongguanshi Stone Industry Co., Limited | Nan'an Guang Tai Xiang Stone Co., Ltd. |
| Xiamen Zhongguanshi Stone Industry Co., Limited | Wanfeng Compound Stone Technology. |
| Xiamen Zhongguanshi Stone Industry Co., Limited | Foshan Xinghe Quartz Stone Co., Ltd. |
| Xinyun Stone (Yunfu) Co., Ltd | Xinyun Stone (Yunfu) Co., Ltd. |
| Yekalon Industry Inc | Foshan Xinyixin Stone Company Limited. |
| Yunfu Andi Stone Co., Ltd | Yunfu Andi Stone Co., Ltd. |
| Yunfu Chuangyun New Meterail Co., Ltd | Yunfu Chuangyun New Meterail Co., Ltd. |
| Yunfu Dong Shan Stone Material Co., Ltd | Yunfu Dong Shan Stone Material Co., Ltd. |
| Yunfu Honghai Co., Ltd | Yunfu Honghai Co., Ltd. |
| Yunfu Jiuru Stone Ltd | Yunfu Jiuru Stone Ltd. |
| Yunfu Meiao Stone Co., Ltd | Yunfu Meiao Stone Co., Ltd. |
| Yunfu Wayon Stone Co., Ltd | Yunfu Wayon Stone Co., Ltd. |
| Yunfu Wayon Stone Co., Ltd | Guangdong Wayon Industrial Co., Ltd. |
| Yunfu Weibao Stone Co., Ltd | Yunfu Weibao Stone Co., Ltd. |
| Yunfu Weibao Stone Co., Ltd | Guangdong Wayon Industrial Co., Ltd. |
| Yunfu Wintop Stone Co., Ltd | Yunfu Wintop Stone Co., Ltd. |
| Yunfu Wintop Stone Co., Ltd | Guangdong Bosun Quartz Stone Co., Ltd. |
| Yunfu Wintop Stone Co., Ltd | Yunfu Runtai Stone Co., Ltd. |
| Yunfu Wintop Stone Co., Ltd | RongHuaFu Yunfu Stone Co., Ltd. |
| Zhangzhou OCA Furniture Co., Ltd | Fujian Panmin Co., Ltd. |
| Zhangzhou OCA Furniture Co., Ltd | Wanfu Building Materials Products Co., Ltd. |
| Zhaoqing Aibo New Material Technology Co., Ltd | Zhaoqing Aibo New Material Technology Co., Ltd. |
| Zhaoqing Aibo New Material Technology Co., Ltd | Shanghai Meiyang Stone Co., Ltd. |
| Zhaoqing Maxstone Co., Ltd | Zhaoqing Maxstone Co., Ltd. |
| Zhaoqing Uni Marble Co., Ltd | Vemy Quartz Co., Ltd. |
| Zhaoqing Uni Marble Co., Ltd | Guangdong Bosun Quartz Stone Co., Ltd. |

[FR Doc. 2018-25299 Filed 11-19-18; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE**International Trade Administration****[A-570-069]****Rubber Bands From the People's Republic of China: Final Determination of Sales at Less Than Fair Value****AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.**SUMMARY:** The Department of Commerce (Commerce) determines that rubber bands from the People's Republic of

China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV) during the period of investigation (POI) July 1, 2017, through December 31, 2017.

DATES: Applicable November 20, 2018.**FOR FURTHER INFORMATION CONTACT:** Paul Stolz or Stephanie Berger, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone:

(202) 482-4474 or (202) 482-2483, respectively.

SUPPLEMENTARY INFORMATION:

Background

This final determination is made in accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act). On September 6, 2018, Commerce published in the **Federal Register** its preliminary affirmative determination of sales at LTFV in the investigation of rubber bands from China.¹ We invited interested parties to comment on the *Preliminary Determination*. We received no comments from interested parties in this respect.

Period of Investigation

The POI is July 1, 2017, through December 31, 2017. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the Petition, which was filed on January 30, 2018.²

Scope Comments

We invited parties to comment on Commerce's Preliminary Scope Memorandum, and the changes made to the scope of the investigation therein.³ We have reviewed the briefs submitted by interested parties, considered the arguments therein, but have not made further changes to the scope of the investigation beyond those incorporated in the *Preliminary Determination*. For further discussion, see Commerce's Final Scope Decision Memorandum.⁴

Scope of the Investigation

The products covered by this investigation are rubber bands from China. For a complete description of the scope of this investigation, see the Appendix to this notice.

¹ See *Less-Than-Fair-Value Investigation of Rubber Bands from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances*, 83 FR 45213 (September 6, 2018) (*Preliminary Determination*).

² See letter from Alliance Rubber Co., "Petition for Imposition of Antidumping and Countervailing Duties on Rubber Bands from Thailand, China and Sri Lanka," dated January 30, 2018 (the Petition).

³ See memorandum, "Rubber Bands from the People's Republic of China and Thailand: Scope Comments Decision Memorandum for the Preliminary Antidumping Duty and Countervailing Duty Determinations," dated August 29, 2018 (*Preliminary Scope Memorandum*).

⁴ See memorandum, "Rubber Bands from the People's Republic of China and Thailand: Scope Decision Memorandum for the Final Antidumping Duty and Countervailing Duty Determinations," dated concurrently with, and hereby adopted by, this notice.

Analysis of Comments Received

As noted above, we received no comments in response to the *Preliminary Determination*. For the purposes of this final determination, Commerce has made no changes to the *Preliminary Determination*.

China-Wide Entity

As explained in the *Preliminary Determination*, Commerce did not receive timely responses to its quantity and value (Q&V) questionnaire, nor did it receive separate rate applications, from certain exporters and/or producers of subject merchandise that were named in the Petition and to which Commerce issued Q&V questionnaires.⁵ As these non-responsive China companies did not demonstrate that they are eligible for separate rate status, Commerce continues to consider them to be a part of the China-wide entity. Because these companies, which comprise part of the China-wide entity, failed to submit the requested Q&V information, we determine that the China-wide entity did not cooperate to the best of its ability. Consequently, we continue to find that the China-wide entity withheld requested information and significantly impeded the proceeding by not submitting the requested information. As a result, we are continuing to find that the use of adverse facts available (AFA), pursuant to sections 776(a) and (b) of the Act, is appropriate and are applying a rate based entirely on AFA to the China-wide entity.

China-Wide Rate

In selecting the AFA rate for the China-wide entity, Commerce's practice is to select a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.⁶ Specifically, it is Commerce's practice to select, as an AFA rate, the higher of: (a) The highest dumping margin alleged in the Petition; or, (b) the highest calculated dumping margin of any respondent in the investigation.⁷ Because no party

⁵ See *Preliminary Determination* at the "Methodology" section, and the memorandum, "Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Rubber Bands from the People's Republic of China," dated August 29, 2018 (PDM) at 4-7.

⁶ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316 at 870 (1994) (H.R. Rep 103-316), reprinted in 1994 U.S.C.A.A.N.

⁷ See, e.g., *Certain Stilbenic Optical Brightening Agents from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 17436, 17438 (March 26, 2012); *Final Determination of Sales at Less Than Fair Value:*

responded to Commerce's Q&V questionnaire, and thus no mandatory respondents could be selected, there are no calculated dumping margins on the record of this investigation. Therefore, as AFA, Commerce has assigned to the China-wide entity, the rate of 27.27 percent, which is the only dumping margin alleged in the Petition.⁸

Final Affirmative Determination of Critical Circumstances

In accordance with section 733(e)(1) of the Act and 19 CFR 351.206, we preliminarily found that critical circumstances exist with respect to imports of rubber bands from the China-wide entity.⁹ As stated above, we received no comments with respect to the *Preliminary Determination*. Therefore, for the final determination, we continue to find that, in accordance with section 735(a)(3) of the Act, and 19 CFR 351.206, critical circumstances exist with respect to subject merchandise exported by the China-wide entity.

Final Determination

The final weighted-average dumping margin is as follows:

| Producer/exporter | Weighted-average margin (percent) |
|-------------------------|-----------------------------------|
| China-Wide Entity | 27.27 |

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a final determination within five days of its public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). However, because Commerce applied AFA to the China-wide entity in this investigation, in accordance with section 776 of the Act, there are no individually examined companies participating in this investigation, and the applied AFA rate is based solely on the Petition. Thus, there are no calculations to disclose.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(4)(A) of the Act, we will instruct U.S. Customs and Border Protection

Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from the People's Republic of China, 65 FR 34660 (May 31, 2000), and accompanying Issues and Decision Memorandum.

⁸ See *Preliminary Determination* at 45213-14 and the PDM at 6-7.

⁹ *Id.* at 45213 and see the PDM at 7-10.

(CBP) to continue to suspend liquidation of all imports of the merchandise subject to the investigation from the China-wide entity, that were entered or withdrawn from warehouse, for consumption on or after June 8, 2018, 90 days prior to publication of the *Preliminary Determination* notice in the **Federal Register**, and require a cash deposit for such entries as noted below.

Further, pursuant to section 735(c)(1)(B)(ii) of the Act, Commerce will instruct CBP to collect a cash deposit as follows: (1) The rate for the exporters listed in the chart above will be the rate we have determined in this final determination; (2) for all Chinese exporters of subject merchandise which have not received their own rate, the cash-deposit rate will be the China-wide rate; and (3) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash-deposit rate will be the rate applicable to the Chinese exporter/producer combination that supplied that non-Chinese exporter. These suspension of liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the U.S. International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. Because the final determination in this proceeding is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of rubber bands from China no later than 45 days after this final determination. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated, and all cash deposits will be refunded. If the ITC determines that such injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Orders

This notice serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely

notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act, and 19 CFR 351.210(c).

Dated: November 13, 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.

Appendix

Scope of the Investigation

The products subject to this investigation are bands made of vulcanized rubber, with a flat length, as actually measured end-to-end by the band lying flat, no less than 1/2 inch and no greater than 10 inches; with a width, which measures the dimension perpendicular to the length, actually of at least 3/64 inch and no greater than 2 inches; and a wall thickness actually from 0.020 inch to 0.125 inch. Vulcanized rubber has been chemically processed into a more durable material by the addition of sulfur or other equivalent curatives or accelerators. Subject products are included regardless of color or inclusion of printed material on the rubber band's surface, including but not limited to, rubber bands with printing on them, such as a product name, advertising, or slogan, and printed material (*e.g.*, a tag) fastened to the rubber band by an adhesive or another temporary type of connection. The scope includes vulcanized rubber bands which are contained or otherwise exist in various forms and packages, such as, without limitation, vulcanized rubber bands included within a desk accessory set or other type of set or package, and vulcanized rubber band balls. The scope excludes products that consist of an elastomer loop and durable tag all-in-one, and bands that are being used at the time of import to fasten an imported product.

Excluded from the scope of this investigation are vulcanized rubber bands of various sizes with arrow shaped rubber protrusions from the outer diameter that exceeds at the anchor point a wall thickness of 0.125 inches and where the protrusion is used to loop around, secure and lock in place.

Excluded from the scope of this investigation are yarn/fabric-covered vulcanized rubber hair bands, regardless of size.

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 4016.99.3510. Merchandise covered by the scope may also enter under HTSUS subheading 4016.99.6050. While the HTSUS subheadings are provided for convenience and customs

purposes, the written description of the scope of the investigation is dispositive.

[FR Doc. 2018–25294 Filed 11–19–18; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; West Coast Fisheries Participation Survey

AGENCY: National Oceanic and Atmospheric Administration (NOAA), 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: Written comments must be submitted on or before January 22, 2019.

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 pracomment@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Karma Norman, Northwest Fisheries Science Center, 2725 Montlake Blvd. East, Seattle, WA 98112–2097, by telephone: 206–302–2418 (or via the internet at karma.norman@noaa.gov).

SUPPLEMENTARY INFORMATION:

I. Abstract

This is a request for a revision of a currently approved information collection.

Fishing livelihoods are both centrally dependent on marine ecosystems and part of the set of forces acting on other components of these ecosystems, including the ecosystem's resident fish and marine species. Alongside social factors like economics and management actions, biophysical dynamics within the ecosystems, including fisheries population fluctuations, shape fishing livelihoods. However, the decisions fishermen make regarding which fisheries to access and when to access them are not fully understood, particularly within the holistic food web frameworks offered up by ecosystem-

based approaches to research and management. Moreover, a full understanding and predictive capacity for these movements of fishermen across fisheries in the context of ecological and social variability presents a significant gap in management-oriented knowledge. Managing fisheries in a way that enhances their social and economic value, mitigates risks to ecosystems and livelihoods, and facilitates sustainable adaptation, requires this fundamental knowledge.

For this reason, the Northwest Fisheries Science Center (NWFSC) seeks to conduct fisheries participation analyses which involve repeated follow-up surveys of United States (U.S.) West Coast commercial fishing participants. A U.S. mail survey will be conducted, replicating the survey administered during 2017. The survey will be voluntary, and contacted individuals may decline to participate. Respondents will be asked to answer questions about their motivations for fishing and other factors that affect participation in the suite of West Coast commercial fisheries. Demographic and employment information will be collected so that responses can be organized based on a respondent typology. This survey is essential because data on smaller scale fishing practices, values, participation decisions and beliefs about fishing livelihoods are sparse; yet, they are critical to the development of usable fishery ecosystem models that account for non-pecuniary benefits of fishing, as well as the ways in which fishing practices shape individual and community well-being.

II. Method of Collection

Respondents will be contacted via mail for administration of the survey.

III. Data

OMB Control Number: 0648–0749.
Form Number(s): None.

Type of Review: Regular submission (revision of a currently approved information collection).

Affected Public: Individuals or households.

Estimated Number of Respondents: 3,000.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 1,000.

Estimated Total Annual Cost to Public: \$0 in recordkeeping/reporting costs.

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.

Dated: November 15, 2018.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2018–25276 Filed 11–19–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG535

Fisheries of the Exclusive Economic Zone Off Alaska; Application for an Exempted Fishing Permit

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

ACTION: Notice; receipt of application for exempted fishing permit.

SUMMARY: This notice announces the receipt of an application and the public comment period for an exempted fishing permit (EFP) from the Aleut Corporation. If granted, this permit would allow the applicant to test methods to minimize bycatch of Pacific ocean perch (POP) in the Aleutian Islands (AI) pollock fishery. The objective of the EFP is to develop an economically viable AI pollock fishery under current POP abundance levels. Testing will be conducted in the fishery's winter "A" season in 2019 and 2020. This experiment has the potential to promote the objectives of the Magnuson-Stevens Fishery Conservation and Management Act.

DATES: Comments on this EFP application must be submitted to NMFS on or before December 11, 2018. The North Pacific Fishery Management Council (Council) will consider the application at its meeting from

December 3, 2018, through December 11, 2018, in Anchorage, AK.

ADDRESSES: The Council meeting will be held at the Anchorage Hilton Hotel, 500 W 3rd Ave., Anchorage, AK 99501. The agenda for the Council meeting is available at <http://www.npfmc.org>. In addition to submitting public comments at the Council meeting, you may submit your comments, identified by NOAA–NMFS–2018–0117, by either of the following methods:

- *Federal e-Rulemaking Portal.* Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0117, 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: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address) submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic copies of the EFP application and the basis for a categorical exclusion under the National Environmental Policy Act are available from the Alaska Region, NMFS website at <http://alaskafisheries.noaa.gov/>.

FOR FURTHER INFORMATION CONTACT: Megan Mackey, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the domestic groundfish fisheries in the Bering Sea and Aleutian Islands (BSAI) management area under the Fishery Management Plan for Groundfish of the BSAI Management Area (FMP), which the Council prepared under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing the BSAI groundfish fisheries appear at 50 CFR parts 600 and 679. The FMP and the implementing regulations at § 600.745(b) and § 679.6 allow the NMFS Regional Administrator to authorize, for limited experimental purposes, fishing that would otherwise be prohibited. Procedures for issuing EFPs are contained in the implementing regulations.

Background

Section 803(a–d) of Public Law 108–199 allocated the directed AI pollock fishery’s total allowable catch (TAC) to the Aleut Corporation. The allocation was implemented under Amendment 82 to the FMP and became effective in 2005 (70 FR 9856, March 1, 2005). Since 2005, the AI pollock TAC has been set at 19,000 metric tons (mt) annually; however, AI pollock harvest since 2005 has been less than 2,000 mt.

An obstacle to maintaining an economically viable AI pollock fishery has been high levels of POP bycatch due to a resurgence of POP in the AI and a lack of flexibility in the current management system to allow the fishery to adapt to this large increase. Currently the fishery is limited to a 5 percent maximum retainable amount (MRA) limit on POP per landing. POP biomass in the AI has more than tripled between 1981 and 2011, going from 235,000 mt to 845,000 mt, and has remained above 750,000 mt through the last full stock assessment in 2016. During the same period, AI pollock biomass has decreased more than four times from 847,000 mt in 1981 to 191,000 mt in 2011, and has averaged 200,000 mt since 2011.

In the 1990s when the AI POP population was approximately 60 percent of what it is now, the proportion of POP bycatch in the AI pollock fishery was consistently less than 1 percent of the total catch. In contrast, during a 2006 through 2008 AI cooperative acoustic survey study (AICASS) conducted by NOAA’s Alaska Fisheries Science Center, intended to estimate groundfish biomass in order to set acceptable biological catch levels inside Steller sea lion critical habitat, the proportion of POP bycatch in the pollock fishery was highly variable, with a low of 7 percent in 2006 to a high of 21 percent in 2008. The AICASS surveys also showed a high degree of overlap between pollock and POP populations. The limited amount of fishing under the Aleut Corporation’s allocation since 2008 has similarly demonstrated the high overlap of pollock and POP observed during the AICASS surveys with bycatch rates often exceeding the 5 percent MRA, thereby constraining the pollock fishery and leading to POP mortality and waste. The 5 percent MRA was also exceeded in 2018.

An additional issue is crew safety. Catcher vessels (CVs) that are allowed to deliver pollock in the AI are small with limited deck space. This fishery is conducted primarily from February through April when weather conditions

in the AI are often hazardous with rapidly developing storms and high winds. The only practical means of sorting POP from a large mixed trawl catch in order to comply with the 5 percent MRA is to dump the codend on deck in sections as the remainder of the codend hangs off the stern. Crew then manually sort and discard POP from the catch as the pollock flow into the holding tanks. During this time, vessel maneuverability is substantially hindered, and crew are exposed to the elements and a shifting codend on deck for an extended period. In good weather, the 5 percent MRA may constrict the full utilization of the AI pollock TAC. During the winter, the MRA management measure adds substantial safety risks to the vessel and the crew.

Need for Exempted Fishing Permit

One potential regulatory means to address the burden to harvesting AI pollock while decreasing POP bycatch mortality would be to manage a quantity up to a cap of POP in the pollock fishery. Experience with constraining POP caps in the west coast whiting fishery cooperatives has shown that setting a cap and allowing self-management of the catch rates in a risk pool maximizes incentives to optimize the use of the cap by reducing POP bycatch to harvest as much of the whiting allocation as possible. If the acceptable bycatch rate of AI POP in the AI pollock fishery was 5 percent (the MRA), this would require an additional incidental catch amount of roughly 500 mt from the AI POP TAC of 26,381 mt (2 percent) to support a 2019 “A” season AI pollock directed fishing allowance of 10,361 mt.

However, there are several regulatory obstacles to managing the AI pollock fishery as a mixed target fishery. Legislation mandates that the Aleut Corporation’s pollock allocation be harvested either by vessels designated as BSAI pollock fishing vessels under the American Fisheries Act (AFA) or vessels less than 60 feet (ft) length overall (LOA). There is a targeted POP fishery in the AI; however, AFA vessels are subject to sideboards that prevent them from directed fishing for POP. The POP fishery for the non-Amendment 80 vessels (including CVs less than 60 ft LOA) does not open for directed fishing until April 15 to limit halibut bycatch in the bottom trawl fishery.

Current regulatory constraints limit the ability of the Aleut Corporation to achieve an economically viable AI pollock fishery, and current POP abundance levels put fishermen at risk when POP rates in excess of the 5 percent MRA are encountered and POP

must be sorted and discarded with limited deck space. Fishing under this EFP will provide data about alternative fishing methods for limiting POP bycatch in the AI pollock fishery, which could potentially provide an opportunity for the Aleut Corporation to develop an economically viable AI pollock fishery while improving safety at sea and reducing the overall POP bycatch mortality.

Exempted Fishing Permit

On September 21, 2018, Mr. Dave Fraser and Ms. Kay Larson-Blair of the Aleut Corporation submitted an application for an EFP for 2019 through 2020 to test alternative management frameworks for limiting POP bycatch in the AI pollock fishery. The goals of the proposed 2018 EFP are as follows:

- To the level practicable, fully prosecute the Aleut Corporation’s AI pollock allocation as intended by Section 803(ad) of Public Law 108–199 while testing methods to minimize POP bycatch.
- To limit POP bycatch mortality and waste in a fully prosecuted AI pollock fishery through full retention and accounting of POP bycatch and limiting of overall POP catch to 500 mt for this fishery by AFA CVs and non-AFA CVs less than 60 ft LOA.
- To improve safety at sea by eliminating the need to sort POP from catch on the deck.
- To evaluate timing and location of POP during the EFP AI pollock fishery to determine means of reducing bycatch rates.

The experiment would be conducted on vessels selected from trawl CVs on the NMFS-approved list of vessels eligible to fish the Aleut Corporation’s pollock allocation. It is anticipated that three AFA CVs and two non-AFA CVs less than 60 ft LOA would be selected to operate under the EFP in 2019. Preference would be given to vessels with additional fish location equipment, such as those equipped with a Simrad ES60 or ES70 echosounder with a 38kHz split beam transducer. Both AFA CVs and non-AFA CVs less than 60 ft LOA would carry an observer, as they are currently required to do. Fishing would be conducted with pelagic trawl gear, appropriate to each vessel’s horsepower.

No more than 500 mt of POP would be harvested under this EFP by the selected AFA CVs and non-AFA CVs less than 60 ft LOA. The 500-mt POP cap would be allocated between management areas 541 (450 mt) and 542 (50 mt). A maximum of 10,361 mt of pollock would be harvested by the participating vessels under this EFP.

Fishing for pollock under this EFP would be required to cease should the pollock or POP limits be attained.

Any salmon bycatch will be counted against the prohibited species catch (PSC) cap for the AI pollock fishery. Any incidental catch of non-pollock species will be counted against the optimum yield for that species. All catch will be retained for weighing and secondary sampling at the processing plant.

Exemptions

Two exemptions are necessary to conduct this experiment. First, an exemption would be necessary from MRA requirements at § 679.20(e)(ii). The participating AFA CVs and non-AFA CVs less than 60 ft LOA fishing for AI pollock under the Aleut Corporation's permit would be exempted from the 5 percent MRA limit for POP in the pollock fishery. This exemption would apply from the date the 2019 final harvest specifications are effective until April 15, 2019 and again during the same time period in 2020. Harvest specifications may be found at <https://alaskafisheries.noaa.gov/>.

Second would be an exemption from § 679.21(b)(1)(ii)(B)(4) that applies to halibut PSC bycatch management and PSC limits for rockfish trawl fisheries in the BSAI. POP is a type of rockfish. While this EFP is not targeting POP directly, allowing participating vessels to retain POP above the 5 percent MRA may put them into the range of POP in the directed POP fishery. The directed POP fishery in the AI for vessels less than 60 ft LOA does not open until April 15 to limit halibut bycatch. Because vessels fishing under this EFP would be operating before that April 15 date, those vessels would be exempt from the halibut PSC limit applicable to directed fishing for POP in the BSAI.

Permit Conditions, Review, and Effects

The applicant would be required to submit to NMFS an interim report of the EFP results by November 30, 2019, and a final report by November 30, 2020. The report would include all data from this experimental fishery, including the catch and position data.

The activities that would be conducted under this EFP are not expected to have a significant impact on the human environment, as detailed in the categorical exclusion prepared for this action (see **ADDRESSES**).

In accordance with § 679.6, NMFS has determined that the application warrants further consideration and has forwarded the application to the Council to initiate consultation. The Council is scheduled to consider the

EFP application during its December 2018 meeting, which will be held at the Hilton Hotel, Anchorage, AK. The EFP application will also be provided to the Council's Scientific and Statistical Committee for review at the December Council meeting. The applicant has been invited to appear in support of the application.

Public Comments

Interested persons may comment on the application at the December 2018 Council meeting during public testimony or until December 11, 2018 when the 15-day comment period ends. Information regarding the meeting is available at the Council's website at <http://www.npfmc.org>. Copies of the application and categorical exclusion are available for review from NMFS (see **ADDRESSES**). Comments also may be submitted directly to NMFS (see **ADDRESSES**) by the end of the comment period (see **DATES**).

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

Dated: November 15, 2018.

Karen H. Abrams,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 2018-25327 Filed 11-19-18; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XG634

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council, NEFMC) will hold a three-day meeting to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, December 4, 2018 through Thursday, December 6, 2018, beginning at 9 a.m. on December 4 and 8:30 a.m. on December 5 and 6.

ADDRESSES:

Meeting address: The meeting will be held at Hotel Viking, One Bellevue Avenue, Newport, RI 02840; telephone: (508) 747-4900; online at www.hotel1620.com.

Council address: New England Fishery Management Council, 50 Water

Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465-0492; www.nefmc.org.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465-0492, ext. 113.

SUPPLEMENTARY INFORMATION:

Agenda

Tuesday, December 4, 2018

After introductions and brief announcements, the meeting will begin with reports from the Council Chairman and Executive Director, NMFS's Regional Administrator for the Greater Atlantic Regional Fisheries Office (GARFO), liaisons from the Northeast Fisheries Science Center (NEFSC) and Mid-Atlantic Fishery Management Council, representatives from NOAA General Counsel and NOAA's Office of Law Enforcement, and staff from the Atlantic States Marine Fisheries Commission (ASMFC), the U.S. Coast Guard, and the Stellwagen Bank National Marine Sanctuary. The Council then will hear a report summarizing the mid-October meeting of the Advisory Committee to the U.S. Section of the International Commission for the Conservation of Atlantic Tunas. This will be followed by a brief update on the Council's Research Set-Aside Program Review, which is ongoing. The Small-Mesh Multispecies (Whiting) Committee Report will be next. The Council will take final action on Amendment 22 to the Northeast Multispecies Fishery Management Plan (FMP), also known as the "Whiting Amendment." The Council first will review public hearing comments on the amendment and then decide whether or not to adopt a limited access program and related measures for small-mesh multispecies.

Following the lunch break, the Council will hear from its Enforcement Committee, which will provide recommendations and enforcement concerns related to: (1) The Atlantic Large Whale Take Reduction Plan; (2) Atlantic cod discards; (3) the Codend Compliance Assistance Program; (4) the OMEGA Mesh Gauge; and (5) other issues. The Coast Guard will provide a short demonstration on use of the OMEGA gauge as part of this report. The Habitat Committee will be up next. During this segment, the Council will take final action on its Clam Dredge Framework, which contains alternatives to consider continued surfclam fishery access and potential mussel dredge access to the Great South Channel Habitat Management Area. As part of this report, the Enforcement Committee

will present its recommendations on the framework alternatives. Following the framework action, the Council will receive an update on offshore energy activities and consult on any timely issues. The Council then will adjourn for the day. Shortly following the conclusion of Council business, NMFS staff will hold a feedback session in the Council's meeting room to solicit suggestions for improving communication and utilization of results achieved by the Saltonstall-Kennedy (S-K) Grant Program.

Wednesday, December 5, 2018

The Council will begin the day with a NMFS presentation on the S-K Grant Program, which will include: An overview of the program; information on priority setting, funding, and proposal reviews; and an explanation of the decision-making process for issuing awards. The Council will have an opportunity to provide feedback on the S-K program. Next, the Council will receive a presentation on a project to measure the ecological, social, economic, and governance effects of catch shares in the groundfish fishery. The presentation will include a short demonstration on the use of 14 neutral, scientific indicators that can be used to measure the effects of catch shares. Then, the Council will receive a report on the November 19, 2018 meeting of the Northeast Trawl Advisory Panel Working Group. The Groundfish Committee Report will follow. The Council will take final action on Framework Adjustment 58 to the Northeast Multispecies FMP, which includes: (1) 2019 total allowable catches for shared U.S./Canada stocks of Eastern Georges Bank cod, Eastern Georges Bank haddock, and Georges Bank yellowtail flounder; (2) rebuilding plans for Georges Bank winter flounder, Southern New England/Mid-Atlantic yellowtail flounder, witch flounder, Gulf of Maine/Georges Bank northern windowpane flounder, and ocean pout; (3) minimum size exemptions for vessels fishing in waters regulated by the Northwest Atlantic Fisheries Organization (NAFO); and (4) extension of a scallop fishery provision for triggering Georges Bank yellowtail flounder accountability measures. The Groundfish Committee Report also will include: An update on Groundfish Monitoring Amendment 23; and an update on work being conducted by the Fishery Data for Stock Assessment Working Group. Next, the Scientific and Statistical Committee (SSC) will provide the Council with 2019–2020 overfishing limit (OFL) and acceptable biological catch (ABC) recommendations for

Atlantic sea scallops and 2019–2021 OFL and ABC recommendations for Atlantic herring.

After the lunch break, members of the public will have the opportunity to speak during an open comment period on issues that relate to Council business but are not included on the published agenda for this meeting. The Council asks the public to limit remarks to 3–5 minutes. Next, the Council will hear from its Scallop Committee and take final action on Framework Adjustment 30 to the Atlantic Sea Scallop FMP. The framework includes specifications for fishing year 2019, default specifications for 2020, and several standard default measures. Then, if available, the Council will review, discuss, and comment on NMFS's proposed rule to set Atlantic herring catch limits and other specifications for the 2019 fishing year. After that, the Council will receive a report on the Northeast Regional Coordinating Council's decisions for revising the stock assessment process and assessment scheduling. The Council then will adjourn for the day. Following the conclusion of Council business, NMFS staff will hold a second feedback session to solicit suggestions for improving communication and utilization of results achieved by the S-K Grant Program.

Thursday, December 6, 2018

The third day of the meeting will begin with a presentation on the Council's work on Ecosystem-Based Fishery Management (EBFM). This will include two components: (1) A progress report on efforts to develop an example Fishery Ecosystem Plan (eFEP) framework for Georges Bank; and (2) a brief introduction into how Management Strategy Evaluation (MSE) may be used for EBFM. Next, the Council will take final action on 2019–2021 fishing year specifications for spiny dogfish. Then, the Council will receive a report on the Standardized Bycatch Reporting Methodology three-year review. Following this discussion, the Council will receive two whale-related reports, which will cover: (a) The October meeting of the Atlantic Large Whale Take Reduction Team; and (b) the November meeting of the Ropeless Consortium. Next, the Council will receive a presentation on GARFO's Fishery Dependent Data Initiative. NMFS annually reports to the Council on efforts by GARFO and the Northeast Fisheries Science Center to modernize fishery dependent data collection.

After the lunch break, the Council will discuss and take final action on 2019 priorities for all committees and Council responsibilities. After that, the

Council will discuss and make a decision on the future of its Research Steering Committee. The Council will close out the meeting with "other business."

Although non-emergency issues not contained on this agenda may come before the Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: November 15, 2018.

Tracey L. Thompson,

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

[FR Doc. 2018–25307 Filed 11–19–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG631

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Whiting Advisory Panel and Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Monday, December 3, 2018 at 1:30 p.m.

ADDRESSES: The meeting will be held at the Hotel Viking, One Bellevue Avenue, Newport, RI 02840; telephone: (401) 847-3300.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465-0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Whiting Advisory Panel and Committee will evaluate Amendment 22 (limited access alternatives) public hearing comments and impact analyses to recommend final action to the Council at its December meeting. Other business will be discussed as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. This meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465-0492, at least 5 days prior to the meeting date.

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

Dated: November 15, 2018.

Tracey L. Thompson,

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

[FR Doc. 2018-25306 Filed 11-19-18; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; North Pacific Observer Safety and Security Survey

AGENCY: National Oceanic and Atmospheric Administration (NOAA), 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: Written comments must be submitted on or before January 22, 2019.

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 pracomments@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Special Agent Jaclyn Smith, NOAA Fisheries Office of Law Enforcement, 222 W 7th Ave., #10, Anchorage, AK 99513, 907-271-1869, or Jaclyn.Smith@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for revision of a currently approved information collection.

NMFS certified observers are a vital part of fisheries management. Observers are deployed to collect fisheries data in the field; observers often deploy to vessels and work alongside fishers for weeks and months at a time. The work environment observers find themselves in can be challenging, especially if the observer finds themselves a target for victim type violations such as sexual harassment, intimidation, or even assault. NOAA Fisheries' Office of Law Enforcement prioritizes investigations into allegations of sexual harassment, hostile work environment, assault and other complaints which may affect observers individually. However, it is difficult for a person to disclose if they have been a victim of a crime, and law enforcement cannot respond if no complaint is submitted. The true number of observers who have experienced victim type crimes is unknown, and the reasons why they do not report is also unclear. More information is needed to understand how many observers per year experience victim type crimes, and why they chose not to report to law enforcement.

The Office of Law Enforcement, Alaska Division, is conducting a survey of North Pacific Observers to determine

the number of observers who experienced victimizing behavior during deployments in 2018. This survey is a repeat of a voluntary survey previously conducted, and will be launched on an annual basis. The survey will also investigate the reasons that prevented observers from reporting these violations. The results of the survey will provide the Office of Law Enforcement a better understanding of how often observers are victimized, which will enable them to reallocate resources as needed, conduct more training for observers to ensure they know how to report, conduct training to ensure people understand what constitutes a victim crime, and to increase awareness of potential victimizations. Additionally, the survey results will help law enforcement understand the barriers to disclosure, so enforcement may begin to address these impediments so they no longer prevent observers from disclosure.

II. Method of Collection

Data will be collected on a voluntary basis, via an electronic survey to ensure anonymity. The survey will be offered to all observers who deployed in 2018 in the North Pacific Observer Program. Individual data will not be released for public use.

III. Data

OMB Control Number: 0648-0759.

Form Number(s): None.

Type of Review: Regular (request for a revised information collection).

Affected Public: Individuals or households.

Estimated Number of Respondents: 300.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 50 hours.

Estimated Total Annual Cost to Public: \$0 in recordkeeping/reporting costs.

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.

Dated: November 15, 2018.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2018–25277 Filed 11–19–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG626

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) will hold a meeting.

DATES: The meeting will be held on Thursday, December 6, 2018, from 9 a.m. through 12 p.m. See

SUPPLEMENTARY INFORMATION for agenda details.

ADDRESSES: The meeting will take place over webinar with a telephone-only connection option. Details on how to connect to the webinar by computer and by telephone will be available at: <http://www.mafmc.org/ssc>.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; website: www.mafmc.org.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to review the SSC's previous overfishing limit (OFL) and acceptable biological catch (ABC) recommendations for Atlantic surfclam for the 2019 and 2020 fishing years based on analyses and recommendations from an SSC and Northeast Fishery Science Center (NEFSC) surfclam working group. In addition, the SSC may take up any other business as necessary.

A detailed agenda and background documents will be made available on the Council's website (www.mafmc.org) prior to the meeting.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: November 15, 2018.

Tracey L. Thompson,

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

[FR Doc. 2018–25297 Filed 11–19–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Charter Renewal of Department of Defense Federal Advisory Committees

AGENCY: Department of Defense.

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: The Department of Defense is publishing this notice to announce that it is renewing the charter for the Defense Health Board (“the Board”).

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: The Board's charter is being renewed in accordance with the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., App) and 41 CFR 102–3.50(d). The Board's charter and contact information for the Board's Designated Federal Officer (DFO) can be found at <https://www.facadatabase.gov/FACA/apex/FACAPublicAgencyNavigation>.

The Board provides the Secretary of Defense and the Deputy Secretary of Defense, through the Under Secretary of Defense for Personnel and Readiness (USD(P&R)) and the Assistant Secretary of Defense for Health Affairs, independent advice and recommendations on matters pertaining to: A. DoD healthcare policy and program management; b. health research programs; c. requirements for the treatment and prevention of disease and injury by the DoD; d. promotion of health and wellness within the DoD and the effective and efficient delivery of high-quality health care services to DoD beneficiaries; and e. other health-related matters of special interest to the DoD, as determined by the Secretary of Defense,

the Deputy Secretary of Defense, or the USD(P&R).

The Board will be composed of no more than 19 members, who are eminent authorities in one or more of the following disciplines: Health care research/academia, infectious disease, occupational/environmental health, public health, health care policy, trauma medicine/systems, clinical health care, strategic decision making, bioethics or ethics, beneficiary representative, neuroscience, and behavioral health. Except for reimbursement of official Board-related travel and per diem, Board members serve without compensation.

The public or interested organizations may submit written statements to the Board membership about the Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Board. All written statements shall be submitted to the DFO for the Board, and this individual will ensure that the written statements are provided to the membership for their consideration.

Dated: November 14, 2018.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–25252 Filed 11–19–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2018–ICCD–0096]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; High School and Beyond 2020 (HS&B:20) Base-Year Field Test Sampling and Recruitment

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before December 20, 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–0096. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at [http://](http://www.regulations.gov)

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 9089, Washington, DC 20202-0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kashka Kubzdela, 202-245-7377 or email NCES.Information.Collections@ed.gov.

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: High School and Beyond 2020 (HS&B:20) Base-Year Field Test Sampling and Recruitment.

OMB Control Number: 1850-NEW.

Type of Review: A new information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 4,836.

Total Estimated Number of Annual Burden Hours: 2,721.

Abstract: The High School and Beyond 2020 study (HS&B:20) will be

the sixth in a series of longitudinal studies at the high school level conducted by the National Center for Education Statistics (NCES), within the Institute of Education Sciences (IES) of the U.S. Department of Education. HS&B:20 will follow a nationally-representative sample of ninth grade students from the start of high school in the fall of 2020 to the spring of 2024 when most will be in twelfth grade. The study sample will be refreshed in 2024 to create a nationally representative sample of twelfth-graders. A high school transcript collection and additional follow-up data collections beyond high school are also planned. The NCES secondary longitudinal studies examine issues such as students' readiness for high school; the risk factors associated with dropping out of high school; high school completion; the transition into postsecondary education and access/choice of institution; the shift from school to work; and the pipeline into science, technology, engineering, and mathematics (STEM). They inform education policy by tracking long-term trends and elucidating relationships among student, family, and school characteristics and experiences. HS&B:20 will follow the Middle Grades Longitudinal Study of 2017/18 (MGLS:2017) which followed the Early Childhood Longitudinal Study, Kindergarten Cohort of 2011 (ECLS-K:2011), thereby allowing for the study of all transitions from elementary school through high school and into higher education and/or the workforce. HS&B:20 will include surveys of students, parents, students' math teachers, counselors, and administrators. Students will also receive assessments in mathematics and reading, and be given a 2-minute vision test and a 10-minute hearing test. This request is to conduct, beginning in January 2019, state, school district, school, and parent recruitment activities, including collection of student rosters and selection of the base-year field test sample in preparation for the HS&B:20 base-year field test, scheduled to take place in the fall of 2019. Approval for the base-year field test data collection and base-year full-scale sampling and recruitment activities will be requested in a separate submission in early 2019.

Dated: November 15, 2018.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2018-25264 Filed 11-19-18; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL19-8-000]

PJM Interconnection, L.L.C.; Notice of Filing

Take notice that on October 29, 2018, PJM Interconnection, L.L.C. (PJM), pursuant to sections 205 and 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, filed proposed revisions to the Amended and Restated Operating Agreement of PJM (Operating Agreement) to amend the provisions relating to the recovery of major maintenance, inspection, and overhaul costs in the wholesale markets administered by PJM.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission 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 online 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 November 19, 2018.

Dated: November 14, 2018.

Kimberly D. Bose,
Secretary.

[FR Doc. 2018-25287 Filed 11-19-18; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC19-5-000]

Commission Information Collection Activities (FERC-500); Comment Request; Extension

AGENCY: Federal Energy Regulatory
Commission.

ACTION: Notice of information collection
and request for comments.

SUMMARY: In compliance with the
requirements of the Paperwork
Reduction Act of 1995, the Federal
Energy Regulatory Commission
(Commission or FERC) is soliciting
public comment on the currently
approved information collection, FERC-
500 (Application for License/Relicense
and Exemption for Water Projects with
More than 5 Megawatt Capacity).

DATES: Comments on the collection of
information are due January 22, 2019.

ADDRESSES: You may submit comments
(identified by Docket No. IC19-5-000)
by either of the following methods:

- *eFiling at Commission's website:*
[http://www.ferc.gov/docs-filing/
efiling.asp](http://www.ferc.gov/docs-filing/efiling.asp).

- *Mail/Hand Delivery/Courier:*
Federal Energy Regulatory Commission,
Secretary of the Commission, 888 First
Street NE, Washington, DC 20426.

Instructions: All submissions must be
formatted and filed in accordance with
submission guidelines at: [http://
www.ferc.gov/help/submission-
guide.asp](http://www.ferc.gov/help/submission-guide.asp). For user assistance, contact
FERC Online Support by email at
ferconlinesupport@ferc.gov, or by phone
at: (866) 208-3676 (toll-free), or (202)
502-8659 for TTY.

Docket: Users interested in receiving
automatic notification of activity in this
docket or in viewing/downloading

comments and issuances in this docket
may do so at [http://www.ferc.gov/docs-
filing/docs-filing.asp](http://www.ferc.gov/docs-filing/docs-filing.asp).

FOR FURTHER INFORMATION CONTACT:

Ellen Brown may be reached by email
at DataClearance@FERC.gov, telephone
at (202) 502-8663, and fax at (202) 273-
0873.

SUPPLEMENTARY INFORMATION:

Title: FERC-500, Application for
License/Relicense and Exemption for
Water Projects with More than 5
Megawatt Capacity.¹

OMB Control No.: 1902-0058

Abstract: Pursuant to the Federal
Power Act, the Commission is
authorized to issue licenses and
exemptions to citizens of the United
States, or to any corporation organized
under the laws of United States or any
State thereof, or to any State or
municipality for the purpose of
constructing, operating, and
maintaining dams, water conduits,
reservoirs, power houses, transmission
lines, or other project works necessary
or convenient for the development and
improvement of navigation and for the
development, transmission, and
utilization of power across, along, from,
or in any of the streams or other bodies
of water over which Congress has
jurisdiction under its authority to
regulate commerce with foreign nations
and among the several States, or upon
any part of the public lands and
reservations of the United States.

FERC-500 is an application (for water
projects with more than 5 megawatt
capacity) for a hydropower license or
exemption. FERC-500 includes certain
reporting requirements in 18 CFR 4, 5,
8, 16, 141, 154.15, and 292. Depending
on the type of application, it may
include project description, schedule,
resource allocation, project operation,
construction schedule, cost, and
financing; and an environmental report.
After an application is filed, the Federal
agencies with responsibilities under the
Federal Power Act (FPA) and other

¹ There is a pending Notice of Proposed
Rulemaking in Docket No. RM18-14-000 which
proposes to make some changes to FERC-500. This
notice does not reflect the proposed changes to
FERC-500 due to Docket No. RM18-14.

statutes,² the States, Indian tribes, and
other participants have opportunities to
request additional studies and provide
comments and recommendations.

Submission of the FERC-500
application is necessary to fulfill the
requirements of the FPA in order for the
Commission to make the required
finding that the proposal is
economically, technically, and
environmentally sound, and is best
adapted to a comprehensive plan for
improving/developing a waterway or
waterways.

Type of Respondent: Applicants for
major hydropower licenses or
exemptions greater than 5 MW

*Estimate of Annual Burden*³:
Applicants for licenses are required to
include an estimate of their cost to
prepare the license application, which
would include nearly all of the
reporting requirements in FERC-500.⁴
Because the requirements for an
exemption application are largely the
same as that of a license application, the
license application costs are a good
estimate of the exemption application
costs and of the overall burden of
preparing license and exemption
applications for projects greater than 5
MW.

To estimate the burden, we used
actual data reported by applicants for
proposed projects greater than 5 MW
filed in fiscal years (FY) 2016 through
2018, and averaged the reported license
application costs. The results are
presented in the table below.

² Statutes include the Electric Consumers
Protection Act (ECPA), the National Environmental
Policy Act (NEPA), the Endangered Species Act, the
Federal Water Pollution Control Amendments of
1972 (the Clean Water Act), and the Coastal Zone
Management Act.

³ "Burden" is the total time, effort, or financial
resources expended by persons to generate,
maintain, retain, or disclose or provide information
to or for a Federal agency. For further explanation
of what is included in the information collection
burden, refer to Title 5 Code of Federal Regulations
1320.3.

⁴ Exceptions would be 18 CFR 2.19, 4.201, 4.202,
4.303, 4.35, 8.1, 8.2, 16.19, 141.15, and 292.208,
none of which directly relate to preparation of a
license or exemption application for a project
greater than 5 MW.

| Fiscal year | FY 2016 | FY 2017 | FY 2018 |
|--|-------------|-------------|-------------|
| Number of applications (Responses) | 14 | 8 | 6 |
| Average Cost per Response | \$3,571,786 | \$3,735,714 | \$2,293,413 |
| Total Burden Cost for All Applications (Responses) | 50,005,004 | 29,885,712 | 13,760,478 |

The average burden cost per application over the period FY 2016 through FY 2018 was approximately

\$3,344,686⁵. We estimate a cost (salary plus benefits) of \$79/hour.⁶ Using this hourly cost estimate, the average burden

for each application filed from FY 2016 to FY 2018 is 42,338 hours.

FERC-500

| Number of respondents (1) | Annual number of responses per respondent (2) | Total number of responses (1) * (2) = (3) | Average burden hours & cost (\$) per response (4) | Total annual burden hours & total annual cos (\$) ^t (3) * (4) = (5) | Cost per respondent (\$) (5) ÷ (1) |
|------------------------------|--|--|--|---|---------------------------------------|
| 9 | 1 | 9 | 42,337.79 hrs.; \$3,344,685.50 | 381,040.11 hrs.; \$30,102,169.50 | \$3,344,685.50 |

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: November 14, 2018.

Kimberly D. Bose,
Secretary.

[FR Doc. 2018-25288 Filed 11-19-18; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP17-66-000; CP17-67-000]

Venture Global Plaquemines LNG, LLC and Venture Global Gator Express, LLC; Notice of Availability of the Draft Environmental Impact Statement for the Proposed Plaquemines LNG and Gator Express Pipeline Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a draft environmental impact statement (EIS) for the Plaquemines LNG and Gator Express Pipeline Project, proposed by

Venture Global Plaquemines LNG, LLC and Venture Global Gator Express, LLC (collectively called Venture Global) in the above-referenced dockets. Venture Global requests authorization to construct and operate a new LNG export terminal and associated facilities along the west bank of the Mississippi River in Plaquemines Parish, Louisiana (LNG Terminal) and to construct and operate two new 42-inch-diameter natural gas pipeline laterals that would connect to the LNG Terminal. The new liquefaction facilities would have a design production capacity of 20 million metric tons of liquefied natural gas (LNG) per annum.

The draft EIS assesses the potential environmental effects of the construction and operation of the Plaquemines LNG and Gator Express Pipeline Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed project, with the mitigation measures recommended in the draft EIS, would have some adverse environmental impacts. These impacts would be reduced to less-than-significant levels with the implementation of Venture Global's proposed mitigation measures and the additional measures recommended in the draft EIS.

The U.S. Army Corps of Engineers, U.S. Coast Guard, U.S. Department of Energy, U.S. Environmental Protection Agency, and U.S. Department of Transportation participated as cooperating agencies in the preparation of the EIS. Cooperating agencies have jurisdiction by law or special expertise

with respect to resources potentially affected by the proposal and participate in the NEPA analysis.

The draft EIS addresses the potential environmental effects of the construction and operation of the following project facilities:

- *LNG Terminal:* Construction and operation of various liquefaction, LNG distribution, and appurtenant facilities within the boundaries of the site leased by Venture Global on the Mississippi River, including:
 - Six pretreatment facilities (three in each phase);
 - a liquefaction plant with 18 integrated single-mixed refrigerant blocks and support facilities (otherwise referred to as liquefaction blocks or blocks) to be constructed in two phases (nine blocks in each phase);
 - four 200,000-cubic-meter aboveground LNG storage tanks;
 - three LNG loading docks within a common LNG berthing area; and
 - air-cooled electric power generation facilities.
- *Pipeline System:* Construction and operation of two parallel 42-inch-diameter natural gas pipelines that share one right-of-way corridor for the majority of their respective routes and appurtenant aboveground facilities, including the following:
 - 15.1-mile-long Southwest Lateral Tennessee Gas Pipeline, LLC (TGP) Pipeline;
 - 11.7-mile-long Southwest Lateral Texas Eastern Transmission, LP (TETCO) Pipeline;
 - TGP metering and regulation station; and
 - TETCO metering and regulation station.

⁵ \$93,651,194 (Total burden cost from FY 2016-2018) ÷ 28 (total number of applications received from FY 2016-2018) = \$3,344,686.

⁶ FERC staff estimates that industry is similarly situated in terms of the hourly cost for salary plus

benefits. Therefore, we are using the FERC FY 2018 hourly cost (salary plus benefits) of \$79/hour.

The Commission mailed a copy of the *Notice of Availability* to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the project area. The draft EIS is only available in electronic format. It may be viewed and downloaded from the FERC's website (www.ferc.gov), on the Environmental Documents page (<https://www.ferc.gov/industries/gas/enviro/eis.asp>). In addition, the draft EIS may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (<https://www.ferc.gov/docs-filing/elibrary.asp>), click on General Search, and enter the docket number in the "Docket Number" field, excluding the last three digits (*i.e.* CP17-66 or CP17-67). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov or toll free at (866) 208-3676, or for TTY, contact (202) 502-8659.

Any person wishing to comment on the draft EIS may do so. Your comments should focus on draft EIS's disclosure and discussion of potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. To ensure consideration of your comments on the proposal in the final EIS, it is important that the Commission receive your comments on or before 5:00 p.m. Eastern Time on January 7, 2019.

For your convenience, there are four methods you can use to submit your comments to the Commission. The Commission will provide equal consideration to all comments received, whether filed in written form or provided verbally. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208-3676 or FercOnlineSupport@ferc.gov. Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's website (www.ferc.gov) under the link to Documents and Filings. This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature on the Commission's website (www.ferc.gov) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file

with your submission. New eFiling users must first create an account by clicking on "eRegister." If you are filing a comment on a particular project, please select "Comment on a Filing" as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket numbers (CP17-66-000 and CP17-67-000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426

(4) In lieu of sending written or electronic comments, the Commission invites you to attend the public comment session its staff will conduct in the project area to receive comments on the draft EIS, scheduled as follows:

| Date and time | Location |
|---|---|
| Tuesday, December 11, 2018 (4:00 p.m.–7:00 p.m. CST). | Belle Chasse Library, 8442 Hwy 23, Belle Chasse, Louisiana 70037, (504) 394-3570. |

The primary goal of these comment sessions is to have you identify the specific environmental issues and concerns with the draft EIS. Individual verbal comments will be taken on a one-on-one basis with a court reporter. This format is designed to receive the maximum amount of verbal comments, in a convenient way during the timeframe allotted.

The comment session is scheduled from 4:00 p.m. to 7:00 p.m. CST. You may arrive at any time after 4:00 p.m. There will not be a formal presentation by Commission staff when the session opens. If you wish to speak, the Commission staff will hand out numbers in the order of your arrival. Comments will be taken until 7:00 p.m. However, if no additional numbers have been handed out and all individuals who wish to provide comments have had an opportunity to do so, staff may conclude the session at 6:30 p.m. Please see appendix 1 for additional information on the session format and conduct.¹

Your verbal comments will be recorded by the court reporter (with FERC staff or representative present) and become part of the public record for

¹ The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at www.ferc.gov using the link called "eLibrary" or from the Commission's Public Reference Room, 888 First Street NE, Washington, DC 20426, or call (202) 502-8371. For instructions on connecting to eLibrary, refer to page 2 of this notice.

this proceeding. Transcripts will be publicly available on FERC's eLibrary system (see below for instructions on using eLibrary). If a significant number of people are interested in providing verbal comments in the one-on-one settings, a time limit of 5 minutes may be implemented for each commentor.

It is important to note that verbal comments hold the same weight as written or electronically submitted comments. Although there will not be a formal presentation, Commission staff will be available throughout the comment session to answer your questions about the environmental review process.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR part 385.214). Motions to intervene are more fully described at <http://www.ferc.gov/resources/guides/how-to/intervene.asp>. Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Questions?

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208-FERC, or on the FERC website (www.ferc.gov) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to www.ferc.gov/docs-filing/esubscription.asp.

Dated: November 13, 2018.

Kimberly D. Bose,
Secretary.

[FR Doc. 2018-25308 Filed 11-19-18; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. CP18–332–000]

El Paso Natural Gas Company; Notice of Availability of the Environmental Assessment for the Proposed South Mainline Expansion Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the South Mainline Expansion Project, proposed by El Paso Natural Gas Company (El Paso) in the above-referenced docket. El Paso requests authorization to construct two new natural gas compressor stations on its existing South Mainline pipeline system in Luna County, New Mexico and Cochise County, Arizona and a 17-mile, 30-inch-diameter loop line in El Paso and Hudspeth Counties, Texas.

The EA assesses the potential environmental effects of the construction and operation of the South Mainline Expansion Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The proposed South Mainline Expansion Project includes the following facilities:

- A new 13,220 horsepower compressor station in Luna County, New Mexico (“Red Mountain Compressor Station”);
- a new 13,220 horsepower compressor station in Cochise County, Arizona (“Dragoon Compressor Station”);
- approximately 17-miles of 30-inch-outside diameter loop line extension of existing Line 1110 between milepost (MP) 174.5 and MP 191.5 in Hudspeth and El Paso counties, Texas.

The Commission mailed a copy of the *Notice of Availability* to federal, state, and local government representatives and agencies; elected officials; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the project area. The EA is only available in electronic format. It may be viewed and downloaded from the FERC’s website (www.ferc.gov), on the Environmental Documents page (<https://www.ferc.gov/industries/gas/enviro/eis.asp>). In addition, the EA may be accessed by using the eLibrary link

on the FERC’s website. Click on the eLibrary link (<https://www.ferc.gov/docs-filing/elibrary.asp>), click on General Search, and enter the docket number in the “Docket Number” field, excluding the last three digits (*i.e.* CP18–332). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any person wishing to comment on the EA may do so. Your comments should focus on EA’s disclosure and discussion of potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before 5:00 p.m. Eastern Time on December 14, 2018.

For your convenience, there are three methods you can use to file your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or FercOnlineSupport@ferc.gov. Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission’s website (www.ferc.gov) under the link to Documents and Filings. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the eFiling feature on the Commission’s website (www.ferc.gov) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on “eRegister.” You must select the type of filing you are making. If you are filing a comment on a particular project, please select “Comment on a Filing”; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP18–332–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426.

Any person seeking to become a party to the proceeding must file a motion to

intervene pursuant to Rule 214 of the Commission’s Rules of Practice and Procedures (18 CFR 385.214). Motions to intervene are more fully described at <http://www.ferc.gov/resources/guides/how-to/intervene.asp>. Only intervenors have the right to seek rehearing or judicial review of the Commission’s decision. The Commission may grant affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission’s Office of External Affairs, at (866) 208–FERC, or on the FERC website (www.ferc.gov) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to www.ferc.gov/docs-filing/esubscription.asp.

Dated: November 14, 2018.

Kimberly D. Bose,
Secretary.

[FR Doc. 2018–25285 Filed 11–19–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. CP19–1–000]

Northern Natural Gas Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Palmyra to Ogden A-Line Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Palmyra to Ogden A-Line Project involving abandonment by sale of facilities by Northern Natural Gas

Company (Northern) to DKM Enterprises, LLC (DKM) in Otoe and Cass counties in Nebraska, and Mills, Pottawattamie, Cass, Audubon, Guthrie, Greene, and Boone counties in Iowa. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies about issues regarding the project. The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires the Commission to discover concerns the public may have about proposals. This process is referred to as “scoping.” The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on December 14, 2018.

You can make a difference by submitting your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Commission staff will consider all filed comments during the preparation of the EA.

If you sent comments on this project to the Commission before the opening of this docket on October 3, 2018, you will need to file those comments in Docket No. CP19–1–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission’s current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

Northern provided landowners with a fact sheet prepared by the FERC entitled “An Interstate Natural Gas Facility On My Land? What Do I Need To Know?” This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission’s proceedings. It is also available for

viewing on the FERC website (www.ferc.gov) at <https://www.ferc.gov/resources/guides/gas/gas.pdf>.

Public Participation

The Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. To sign up go to www.ferc.gov/docs-filing/esubscription.asp.

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or FercOnlineSupport@ferc.gov. Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature, which is located on the Commission’s website (www.ferc.gov) under the link to *Documents and Filings*. Using *eComment* is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature, which is located on the Commission’s website (www.ferc.gov) under the link to *Documents and Filings*. With *eFiling*, you can provide comments in a variety of formats by attaching them as a file with your submission. New *eFiling* users must first create an account by clicking on “*eRegister*.” You will be asked to select the type of filing you are making; a comment on a particular project is considered a “Comment on a Filing”; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP19–1–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426.

Summary of the Proposed Project

Northern proposes to isolate and abandon by sale to DKM approximately 146.6 miles of 24-inch-diameter pipeline on Northern’s M580A and M530A system (collectively referred to as the “A-line”) from Palmyra, Nebraska, to Ogden, Iowa. Northern indicates that DKM intends to salvage the abandoned pipeline.

To abandon the pipeline, Northern would disconnect and cap the A-line at five interconnections where it is linked to other system facilities. Ground disturbances would be limited to one location in Otoe County, Nebraska, and four locations in Mills, Guthrie, and Boone (two locations) counties, Iowa, where the A-line would be disconnected from Northern’s existing pipeline system.

The general location of the project facilities is shown in appendix 1.¹

Land Requirements for Construction

In total, the Project would affect approximately 28.8 acres of land, which includes 7.1 acres of temporary workspace, 21.6 acres of additional temporary workspace, and 0.1 acre for one access road. Generally, Northern would use 100-foot-wide workspaces centered over the existing A-line right-of-way at each interconnect.

The EA Process

In the EA we will discuss impacts that could occur as a result of the abandonment of project facilities under these general headings:

- Geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- air quality and noise;
- public safety; and
- cumulative impacts

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present Commission staffs’ independent analysis of the issues. The EA will be available in electronic format in the public record through *eLibrary*² and the Commission’s website (<https://www.ferc.gov/industries/gas/enviro/eis.asp>). If *eSubscribed*, you will receive instant email notification when the EA is issued. The EA may be issued for an allotted public comment period. Commission staff will consider all comments on the EA before making recommendations to the Commission.

¹ The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at www.ferc.gov using the link called “*eLibrary*” or from the Commission’s Public Reference Room, 888 First Street NE, Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to *eLibrary*, refer to the last page of this notice.

² For instructions on connecting to *eLibrary*, refer to the last page of this notice.

To ensure Commission staff have the opportunity to address your comments, please carefully follow the instructions in the Public Participation section, beginning on page 2.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the EA.³ Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Offices (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.⁴ Commission staff will define the project-specific Area of Potential Effects (APE) in consultation with the SHPOs as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). The EA for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground

³ The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

⁴ The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

facilities, and anyone who submits comments on the project. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If the Commission issues the EA for an allotted public comment period, a *Notice of Availability* of the EA will be sent to the environmental mailing list and will provide instructions to access the electronic document on the FERC's website (www.ferc.gov). *If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please return the attached "Mailing List Update Form" (appendix 2).*

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208-FERC, or on the FERC website at www.ferc.gov using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number in the "Docket Number" field, excluding the last three digits (*i.e.*, CP19-1). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov or (866) 208-3676, or for TTY, contact (202) 502-8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at www.ferc.gov/EventCalendar/EventsList.aspx along with other related information.

Dated: November 14, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018-25286 Filed 11-19-18; 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: RP19-214-001.

Applicants: Tallgrass Interstate Gas Transmission, LLC.

Description: Compliance filing Erata Compliance Tariff Filing RP19-214 to be effective 11/1/2018.

Filed Date: 11/1/18.

Accession Number: 20181101-5178.

Comments Due: 5 p.m. ET 11/16/18.

Docket Numbers: RP19-283-000.

Applicants: Gulf Crossing Pipeline Company LLC.

Description: § 4(d) Rate Filing: Remove Expired Agreements from Tariff eff 11-13-2018 to be effective 11/13/2018.

Filed Date: 11/13/18.

Accession Number: 20181113-5040.

Comments Due: 5 p.m. ET 11/26/18.

Docket Numbers: RP19-284-000.

Applicants: Northwest Pipeline LLC.

Description: § 4(d) Rate Filing: Supply Shortage OFO Filing to be effective 11/27/2018.

Filed Date: 11/13/18.

Accession Number: 20181113-5190.

Comments Due: 5 p.m. ET 11/26/18.

Docket Numbers: RP19-285-000.

Applicants: Maritimes & Northeast Pipeline, L.L.C.

Description: Compliance filing MNUS IT Refund Report.

Filed Date: 11/13/18.

Accession Number: 20181113-5303.

Comments Due: 5 p.m. ET 11/26/18.

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: November 14, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018-25269 Filed 11-19-18; 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: EC18-132-001.

Applicants: Linde Energy Services, Inc.

Description: Notice of Change in Circumstances of Linde Energy Services, Inc.

Filed Date: 11/9/18.

Accession Number: 20181109-5230.

Comments Due: 5 p.m. ET 11/30/18.

Docket Numbers: EC18-164-000.

Applicants: Wabash Valley Power Association, Inc.

Description: Supplement to September 27, 2018 Application for Authorization Under Section 203 of the Federal Power Act, et. al. of Wabash Valley Power Association, Inc.

Filed Date: 11/13/18.

Accession Number: 20181113-5306.

Comments Due: 5 p.m. ET 11/27/18.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12-1946-011; ER10-1333-011; ER13-2387-005; ER15-190-008; ER17-543-005; ER18-1343-002.

Applicants: Duke Energy Florida, LLC, Duke Energy Beckjord, LLC, Duke Energy Commercial Enterprises, Inc., Duke Energy Renewable Services, LLC, Duke Energy SAM, LLC, Carolina Solar Power, LLC.

Description: Notice of Change in Status of the Duke MBR Sellers.

Filed Date: 11/13/18.

Accession Number: 20181113-5326.

Comments Due: 5 p.m. ET 12/4/18.

Docket Numbers: ER17-1442-002.

Applicants: Axiall, LLC.

Description: Second Supplement to June 28, 2018 Updated Market Power Analysis for Central Region of Axiall, LLC.

Filed Date: 11/13/18.

Accession Number: 20181113-5316.

Comments Due: 5 p.m. ET 12/4/18.

Docket Numbers: ER19-333-000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to WMPA, SA No. 4737; Queue No. AC1-025 (consent) to be effective 5/31/2017.

Filed Date: 11/13/18.

Accession Number: 20181113-5302.

Comments Due: 5 p.m. ET 12/4/18.

Docket Numbers: ER19-334-000.

Applicants: Southwestern Electric Power Company.

Description: § 205(d) Rate Filing: Revised and Restated Prescott PSA to be effective 8/1/2018.

Filed Date: 11/13/18.

Accession Number: 20181113-5304.

Comments Due: 5 p.m. ET 12/4/18.

Docket Numbers: ER19-335-000.

Applicants: ISO New England Inc., New England Power Pool Participants Committee.

Description: § 205(d) Rate Filing: ISO-NE and NEPOOL; Consolidation of FCM Parameter Review to be effective 1/14/2019.

Filed Date: 11/14/18.

Accession Number: 20181114-5036.

Comments Due: 5 p.m. ET 12/5/18.

Docket Numbers: ER19-336-000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 1977R12 Nemaha-Marshall Electric Cooperative NITSA NOA to be effective 6/1/2018.

Filed Date: 11/14/18.

Accession Number: 20181114-5041.

Comments Due: 5 p.m. ET 12/5/18.

Docket Numbers: ER19-337-000.

Applicants: NorthWestern Corporation.

Description: Tariff Cancellation: Notice of Cancellation: SA 782, Reimbursement Agreement with the City of Bozeman to be effective 11/15/2018.

Filed Date: 11/14/18.

Accession Number: 20181114-5043.

Comments Due: 5 p.m. ET 12/5/18.

Docket Numbers: ER19-338-000.

Applicants: Mid-Atlantic Interstate Transmission, LLC, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: MAIT submits Interconnection Agreement SA No. 4562 to be effective 10/26/2018.

Filed Date: 11/14/18.

Accession Number: 20181114-5060.

Comments Due: 5 p.m. ET 12/5/18.

Docket Numbers: ER19-339-000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2018-11-14_SA 3204 Pine River Wind-Wolverine Power FCA (J589) to be effective 10/30/2018.

Filed Date: 11/14/18.

Accession Number: 20181114-5114.

Comments Due: 5 p.m. ET 12/5/18.

Docket Numbers: ER19-340-000.

Applicants: PacifiCorp.

Description: § 205(d) Rate Filing: LVE Const Agmt for Threemile Knoll-Hooper Springs to be effective 1/14/2019.

Filed Date: 11/14/18.

Accession Number: 20181114-5126.

Comments Due: 5 p.m. ET 12/5/18.

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: November 14, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018-25270 Filed 11-19-18; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. AC19-22-000]

Dominion Energy Transmission, Inc.; Notice of Filing

Take notice that on November 13, 2018, Dominion Energy Transmission, Inc. filed a request for approval to use Account 439, authorized by the Financial Accounting Standards Board.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

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.

Comments: 5 p.m. Eastern Time on December 4, 2018.

Dated: November 14, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018-25289 Filed 11-19-18; 8:45 am]

BILLING CODE 6717-01-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-1218]

Information Collections Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before January 22, 2019. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email: PRA@fcc.gov and to Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418-2918.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060-1218.

Title: Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 11 respondents and 11 responses.

Estimated Time per Response: 0.25 hours (15 minutes).

Frequency of Response: Third party disclosure requirement and recordkeeping requirement.

Total Annual Burden: 3 hours.

Total Annual Cost Burden: None.

Obligation to Respond: Required in order to monitor regulatory compliance. The statutory authority for this information collection is contained in sections 4, 303, 614, and 615 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: The information collection imposes a notification requirement on certain small cable systems that become ineligible for exemption from the requirement to carry high definition broadcast signals in HD (adopted in FCC 15-65). In particular, the information collection requires that, beginning December 12, 2016, at the time a small cable system utilizing the HD carriage exemption offers any programming in HD, the

system must give notice that it is offering HD programming to all broadcast stations in its market that are carried on its system. Cable operators also must keep records of such notification. This information collection requirement allows affected broadcast stations to monitor compliance with the requirement that cable operators transmit high definition broadcast signals in HD.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer.

[FR Doc. 2018-25321 Filed 11-19-18; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-0937]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before January 22, 2019. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email: PRA@fcc.gov and to Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418-2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0937.
Title: Establishment of a Class A Television Service, MM Docket No. 00-10.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Frequency of Response:

Recordkeeping requirement; Third party disclosure requirement; On occasion and quarterly reporting requirements.

Number of Respondents and Responses: 380 respondents; 9,850 responses.

Estimated Time per Response: 0.017 hours-52 hours.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 154(i), 307, 308, 309 and 319 of the Communications Act of 1934, as amended.

Total Annual Burden: 172,087 hours.

Total Annual Cost: \$1,851,000.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: On November 29, 1999, the Community Broadcasters Protection Act of 1999 (CBPA), Public Law 106-113, 113 Stat. Appendix I at pp. 1501A-594-1501A-598 (1999), codified at 47 U.S.C. 336(f), was enacted. That legislation provided that a low power television (LPTV) licensee should be permitted to convert the secondary status of its station to the new Class A status, provided it can satisfy certain statutorily-established criteria by January 28, 2000. The CBPA directs that Class A licensees be subject to the same license terms and renewal standards as full-power television licenses and that Class A licensees be accorded primary status as television broadcasters as long as they continue to meet the requirements set forth in the statute for a qualifying low power station.

For those stations that met the certification deadline, the CBPA sets out certain certification procedures, prescribes the criteria to maintain a Class A license, and outlines the interference protection Class A stations must provide to analog, digital, LPTV and TV translator stations.

The CBPA directs that Class A stations must comply with the operating requirements for full-service television broadcast stations in order to maintain Class A status. Therefore, beginning on the date of its application for a Class A license and thereafter, a station must be "in compliance" with the Commission's operating rules for full-service television stations, contained in 47 CFR part 73.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer.

[FR Doc. 2018-25322 Filed 11-19-18; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-1044]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of

Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before January 22, 2019. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email PRA@fcc.gov and to Nicole.ongele@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418-2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-1044.

Title: Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338 and WC Docket No. 04-313, Order on Remand.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, Not-for-profit institutions and State, Local or Tribal Government.

Number of Respondents and Responses: 645 respondents; 645 responses.

Estimated Time per Response: 8 hours.

Frequency of Response:

Recordkeeping requirement, third party disclosure requirement and on occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 251 of the Communications Act of 1934, as amended.

Total Annual Burden: 5,160 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality:

The Commission is not requesting respondents to submit or disclose confidential information. However, in certain circumstances, respondents may voluntarily choose to submit confidential information pursuant to applicable confidentiality rules.

Needs and Uses: In the Order on Remand, the Commission imposed unbundling obligations in a more targeted manner where requesting carriers have undertaken their own facilities-based investments and will be using UNEs (unbundled network

elements) in conjunction with self-provisioned facilities. The Commission also eliminated the subdelegation of authority to state commissions adopted in the previous order. Prior to the issuance of the Order, the Commission sought comment on issues relating to combinations of UNEs, called “enhanced extended links” (EELs), in order to effectively tailor access to EELs to those carriers seeking to provide significant local usage to end users. In the Order, the Commission adopted three specific service eligibility criteria for access to EELs in accordance with Commission rules.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer.

[FR Doc. 2018–25319 Filed 11–19–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1050]

Information Collections Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission’s burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control

number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before January 22, 2019. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email: *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1050.

Title: Section 97.303, Frequency Sharing Requirements.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households.

Number of Respondents: 5,000 respondents; 5,000 responses.

Estimated Time per Response: 20 minutes (.33 hours).

Frequency of Response: Recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154, 301, 302(a) and 303(c), and (f) of the Communications Act of 1934, as amended.

Total Annual Burden: 1,650 hours.

Total Annual Cost: No cost.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection.

Needs and Uses: The Commission established a recordkeeping procedure in section 97.303(s) that required that amateur operator licensees using other antennas must maintain in their station records either manufacturer data on the antenna gain or calculations of the antenna gain.

The amateur radio service governed by 47 CFR part 97 of the Commission’s rules, provides spectrum for amateur radio service licensees to participate in a voluntary noncommercial communication service which provides emergency communications and allows experimentation with various radio techniques and technologies to further the understanding of radio use and the development of technologies. The

information collection is used to calculate the effective radiated power (ERP) that the station is transmitting to ensure that ERP does not exceed 100 W PEP.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer.

[FR Doc. 2018–25320 Filed 11–19–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

RIN 3064–ZA04

Request for Information on Small-Dollar Lending

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for Information.

SUMMARY: The FDIC is seeking comments and information from interested parties on small-dollar lending, including steps that can be taken to encourage FDIC-supervised financial institutions (banks) to offer small-dollar credit products that are responsive to customers’ needs and that are underwritten and structured prudently and responsibly.

DATES: Comments must be received by January 22, 2019.

ADDRESSES: You may submit comments, identified by RIN 3064–ZA04, by any of the following methods:

- *Agency website:* <https://www.fdic.gov/regulations/laws/federal/>. Follow the instructions for submitting comments on the Agency website.

- *Email:* Comments@fdic.gov. Include the RIN 3064–ZA04 in the subject line of the message.

- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street NW, building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

Public Inspection: All comments received must include the agency name and RIN for this rulemaking. All comments received will be posted without change to <https://www.fdic.gov/regulations/laws/federal/>—including any personal information provided—for public inspection. Paper copies of public comments may be ordered from the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002,

Arlington, VA 22226 by telephone at (877) 275-3342 or (703) 562-2200.

FOR FURTHER INFORMATION CONTACT: Paul Robin, Section Chief, (202) 898-6818, probin@fdic.gov.

SUPPLEMENTARY INFORMATION: The FDIC is responsible for maintaining stability and public confidence in the nation's financial system by insuring deposits, examining and supervising financial institutions for safety and soundness and consumer protection, making large and complex financial institutions resolvable, and managing receiverships. As discussed further below, the FDIC is soliciting public comments on issues related to small-dollar lending by banks. Specifically, we are requesting information on the consumer demand for small-dollar credit products, the supply of small-dollar credit products currently offered by banks, and whether there are steps the FDIC could take to better enable banks to provide such products to consumers to meet demand.

Overview of Request for Information

The Federal Deposit Insurance Corporation (FDIC) is issuing this request for information (RFI) to seek public input on steps the FDIC could take to encourage FDIC-supervised institutions to offer responsible, prudently underwritten small-dollar credit products that are economically viable and address the credit needs of bank customers. This effort is consistent with the FDIC's commitment to increase transparency, improve efficiency, support innovation, and provide opportunities for public feedback on issues affecting FDIC-supervised institutions and their customers.

The FDIC recognizes the important role small-dollar credit products can play, as part of the spectrum of credit and savings products offered by banks, in helping consumers meet the need for credit for purposes such as addressing cash-flow imbalances, unexpected expenses, or income volatility. Recent research from the FDIC indicates that 20 percent of U.S. households reported that their income varied "somewhat" or "a lot" from month-to-month.¹ Moreover, according to research from the Federal Reserve, if faced with a hypothetical \$400 expense, 4 in 10 U.S. adults in 2017 would borrow, sell something, or not be able to pay.²

Given the unique role banks play in the communities they serve and the

benefits to consumers of having a relationship with an insured financial institution, banks are well-positioned to address the credit needs of their customers in a responsible manner. While some banks currently offer small-dollar credit products, there may be additional opportunities for banks to address unmet demand for consumer credit in their communities. For example, research from the FDIC suggests that in 2017, 14.8 million or nearly 13 percent of U.S. households may have had unmet demand for small-dollar credit from banks. A majority of these households reported staying current on bills in the prior year. Although the vast majority (nearly 9 in 10) of these households had a bank account, fewer than one in three applied for credit from a bank.³ Some of these households may present opportunities for banks to extend credit in the form of small-dollar loans.

Accordingly, the FDIC invites public comments on the full spectrum of issues related to the role banks can play in offering small-dollar credit, obstacles—regulatory and non-regulatory—that banks currently encounter in offering such credit, and whether there are steps the FDIC could take to enable banks to better serve this market.

Suggested Topics for Commenters

The FDIC encourages comments from all interested members of the public, including but not limited to insured depository institutions, other financial institutions or companies, individual depositors and consumers, consumer groups, trade associations, and other members of the financial services industry. Please be as specific as possible to allow the FDIC to evaluate comments more effectively. In particular, the FDIC requests input on the following more specific topics and questions:

Consumer Demand

1. To what extent is there an unmet consumer demand for small-dollar credit products offered by banks?
2. To what extent do banks currently offer small-dollar credit products to meet consumer demand?
3. To what extent and in what ways do entities outside the banking sector currently satisfy the consumer demand for small-dollar credit products?
4. What data, information, or other factors should the FDIC consider in assessing the consumer demand for small-dollar credit products?

Benefits and Risks

5. What are the potential benefits and risks to banks associated with offering responsible, prudently underwritten small-dollar credit products?

6. What are the potential benefits and risks to consumers associated with bank-offered small-dollar credit products?

7. What are the key ways that banks offering small-dollar loan products should manage or mitigate risks for banks and risks for consumers?

8. What are the potential benefits and risks related to banks partnering with third parties to offer small-dollar credit?

9. What steps could the FDIC take, consistent with its statutory authority, to encourage banks to develop and offer responsible, prudently underwritten small-dollar credit products?

Challenges

10. Are there any legal, regulatory, or supervisory factors that prevent, restrict, discourage, or disincentivize banks from offering small-dollar credit products? If so, please explain.

11. Are there any operational, economic, marketplace, or other factors that prevent, restrict, discourage, or disincentivize banks from offering small-dollar credit products? If so, please explain.

12. What factors may discourage consumers from seeking responsible, prudently underwritten small-dollar credit products offered by banks?

Product Features

13. Are there specific product features or characteristics of small-dollar loan products that are key to meeting the credit needs of consumers while maintaining prudent underwriting?

14. Are there specific product features or characteristics that are key to ensuring the economic viability to a bank of responsible, prudently underwritten small-dollar credit products?

Innovation

15. How can technology improve the ability of banks to offer responsible, prudently underwritten small-dollar loan products in a sustainable and cost-effective manner? Please specify the technology or technologies and the use case(s).

16. Are there innovations that might enable banks to better assess the creditworthiness of potential small-dollar loan borrowers with limited or no credit records with a nationwide credit reporting agency?

17. What role should the FDIC play, if any, in supporting innovations that enhance banks' abilities to offer

¹ "2017 FDIC National Survey of Unbanked and Underbanked Households," Federal Deposit Insurance Corporation, October 2018.

² "Report on the Economic Well Being of U.S. Households in 2017," Board of Governors of the Federal Reserve System, May 2018.

³ "2017 FDIC National Survey of Unbanked and Underbanked Households," Federal Deposit Insurance Corporation, October 2018.

responsible, prudently underwritten small-dollar loans? Are there specific barriers that prevent banks from implementing such technologies or innovations?

18. How can technology be leveraged to improve consumers' experiences and reduce potential risks to consumers associated with small-dollar credit products?

Alternatives

19. What other products and services that supplement or complement small-dollar credit offerings should banks consider? Are there other ways that banks can help consumers address cash-flow imbalances, unexpected expenses, or income volatility besides small-dollar credit products?

Other

20. Are there any distinguishing characteristics of particular institutions, such as a bank's size, complexity, or business model, that the FDIC should consider, and if so how?

21. Please provide any other comments or information that would be useful for the FDIC to consider.

Dated at Washington, DC, on November 15, 2018.

Federal Deposit Insurance Corporation.

Robert E. Feldman,
Executive Secretary.

[FR Doc. 2018-25257 Filed 11-19-18; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 5, 2018.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198-0001:

1. *Vicki Berkley, Brian Berkley, and Johnathan Berkley, all of Stockton, Kansas, individually, and as trustees of various family trusts;* each to acquire voting shares of Stockton Bancshares, Inc. and thereby indirectly acquire shares of Solutions North Bank, both of Stockton, Kansas.

Board of Governors of the Federal Reserve System, November 15, 2018.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2018-25302 Filed 11-19-18; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association and nonbanking companies owned by the savings and loan holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the HOLA (12 U.S.C. 1467a(e)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 10(c)(4)(B) of the HOLA (12 U.S.C. 1467a(c)(4)(B)). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 14, 2018.

A. Federal Reserve Bank of Minneapolis (Mark A. Rauzi, Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. *Ameriprise Financial, Inc., Minneapolis, Minnesota;* to become a savings and loan holding company as a

result of the proposed conversion of its subsidiary, Ameriprise National Trust Bank, Minneapolis, Minnesota, into a full-service federal savings bank to be named Ameriprise Bank, FSB.

Board of Governors of the Federal Reserve System, November 15, 2018.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2018-25301 Filed 11-19-18; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

[File Nos. 172 3066 and 172 3067]

Creaxion Corp. and Inside Publications, LLC; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreements.

SUMMARY: The consent agreements in these matters settle alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent orders—embodied in the consent agreements—that would settle these allegations.

DATES: Comments must be received on or before December 13, 2018.

ADDRESSES: Interested parties may file comments online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write: "Creaxion Corp. and Inside Publications, LLC; File Nos. 1723066 and 1723067" on your comment, and file your comment online at <https://ftcpublish.commentworks.com/ftc/creaxionconsent> or <https://ftcpublish.commentworks.com/ftc/insidepublicationssettlement> by following the instructions on the web-based form. If you prefer to file your comment on paper, write "Creaxion Corp. and Inside Publications, LLC; File Nos. 1723066 and 1723067" on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex D), Washington, DC 20580; or deliver your comment to: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Karen Mandel (202-326-2491), Bureau of Consumer Protection, Federal Trade

Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreements containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, have been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreements, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for November 13, 2018), on the World Wide Web, at <https://www.ftc.gov/news-events/commission-actions>.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before December 13, 2018. Write “Creaxion Corp. and Inside Publications, LLC; File Nos. 1723066 and 1723067” on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission website, at <https://www.ftc.gov/policy/public-comments>.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublishcommentworks.com/ftc/creaxionconsent> or <https://ftcpublishcommentworks.com/ftc/insidepublicationsettlement> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that website.

If you prefer to file your comment on paper, write “Creaxion Corp. and Inside Publications, LLC; File Nos. 1723066 and 1723067” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex D), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the

Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible FTC website at <http://www.ftc.gov>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else’s Social Security number; date of birth; driver’s license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “trade secret or any commercial or financial information which . . . is privileged or confidential”—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC website—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from the FTC website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before December 13,

2018. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

Analysis of Proposed Consent Orders To Aid Public Comment

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an agreement containing a consent order as to Creaxion Corp. and Mark Pettit, and an agreement containing a consent order as to Inside Publications, LLC of Georgia and Christopher Korotky (“respondents”).

The proposed consent orders (“orders”) have been placed on the public record for 30 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the orders and the comments received, and will decide whether it should withdraw the orders or make them final.

This matter involves the respondents’ endorsement and advertising format practices with respect to the advertising and promotional campaign they created and implemented for FIT Organic Mosquito Repellent. The complaint alleges that the respondents violated Section 5(a) of the FTC Act by misrepresenting that certain endorsements reflected the independent experiences or opinions of impartial users, and by deceptively failing to disclose that certain endorsers had material connections with the endorsed product, namely that they were paid spokespersons, they were reimbursed for the cost of the product, or they owned or were employed by Creaxion, the public relations firm hired to promote the product. The complaint also alleges that the respondents violated Section 5(a) by misrepresenting that certain advertisements were independent statements and opinions of impartial publications when they actually were paid commercial advertising.

The orders include injunctive relief that prohibits these alleged violations and fences in similar and related conduct. The provisions apply to any product or service.

Part I prohibits misrepresenting the status of any endorser or person reviewing the product or service, including that he or she is an independent user or ordinary consumer of the product or service.

Part II prohibits any representation about any consumer or other endorser of such product or service without disclosing, clearly and conspicuously,

and in close proximity to that representation, any unexpected material connection between such endorser and any respondent, or other individual or entity affiliated with the product or service. Each order defines the terms “clearly and conspicuously” and “unexpected material connection.”

Part III prohibits misrepresenting that paid commercial advertising is a statement or opinion from an independent or objective publisher or source.

Part IV requires the respondents, when they use endorsers to advertise or sell a product or service, to take certain steps to make sure the endorsements comply with Parts I and II of the orders. Such steps include clearly notifying endorsers of their representation and disclosure responsibilities, creating a monitoring system to review endorsements and disclosures, and terminating any endorser who fails to comply with Parts I and II. Part V requires the respondents to distribute the orders to certain persons and submit signed acknowledgments of order receipt.

Part VI requires the respondents to file compliance reports with the Commission, and to notify the Commission of bankruptcy filings or changes in corporate structure that might affect compliance obligations. Part VII contains recordkeeping requirements for personnel records, advertising and marketing materials, and all records necessary to demonstrate compliance with the orders. Part VIII contains other requirements related to the Commission’s monitoring of the respondents’ order compliance.

Part IX provides the effective dates of the orders, including that, with exceptions, the orders will terminate in 20 years.

The purpose of this analysis is to aid public comment on the proposed orders. It is not intended to constitute an official interpretation of the complaint or proposed orders, or to modify in any way the proposed orders’ terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2018–25255 Filed 11–19–18; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–19–18AG]

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 Assessment of the Cancer Survivorship Demonstration Project to the Office of Management and Budget (OMB) for review and approval. CDC previously published a “Proposed Data Collection Submitted for Public Comment and Recommendations” notice on November 13, 2017 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 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

Assessment of the Cancer Survivorship Demonstration Project—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Under CDC’s National Comprehensive Cancer Control Program (NCCCP) Request for Applications DP5–1501, the Division of Cancer Prevention and Control (DCPC) funded six grantees to implement evidence-based and promising strategies to increase knowledge of cancer survivor needs, increase survivor knowledge of treatment and follow-up care, and increase provider knowledge of guidelines pertaining to treatment of cancer. Specifically, this initiative employs strategies that relate to increasing surveillance and community-clinical linkages. Through this initiative DCPC intends to help address the public health needs of cancer survivors. To facilitate evidence-informed policy making and quality improvement of federal programs, a comprehensive assessment is needed to characterize survivorship interventions and document outcomes.

CDC is requesting a three year OMB approval to collect information needed for this assessment. The proposed information collection will focus on how each grantee has expanded their knowledge of cancer survivor needs, increased utilization of surveillance data to inform program planning by providers and coalition members, and enhanced partnerships to facilitate and broaden program reach. Data will also be collected on challenges encountered and addressed, factors that facilitated implementation, and lessons learned along the way. The information to be collected does not currently exist for organizations and entities working to improve cancer survivorship needs. The insights to be gained from this data collection will be critical to improving immediate efforts and achieving the goals of spreading and replicating strategies to improve the public health needs of cancer survivors.

CDC plans to collect information during two cycles of the program (09/2018 and 05/2020) using a web-based Grantee survey of NCCCP DP15–1501 grantee program directors and program managers, a web-based Partner Survey of grantees’ self-identified key partners (*e.g.*, coalition members, providers, patient navigators), and semi-structured

telephone interviews with NCCCP DP15–1501 grantee program directors and program managers. The data from the survey and semi-structured interviews will provide additional insight into program efforts.

CDC is requesting OMB approval to conduct a web-based Grantee survey using Survey Gizmo to a purposive sample of one program director and one program manager in each of six grantees for a total of 12 respondents, and to conduct a web-based Partner Survey of 10 self-identified key partners in each of six grantees for a total of 60 respondents. The web-based surveys will be administered to the same respondents at two time points for a total estimated burden of eight hours for the web-based Grantee Survey and 40 hours for the web-based Partner Survey. Respondents will be asked to provide information regarding the type of respondent; their use of surveillance data to inform survivorship

interventions; communication, education, and training activities to support the implementation of survivorship interventions; partnership engagement; challenges and facilitators regarding the implementation of evidence-based cancer survivorship strategies; reach of cancer survivorship interventions; and respondent background information.

CDC is also requesting OMB approval to conduct semi-structured interviews by telephone with a purposive sample of one program director and one program manager in each of six grantees for a total of 12 respondents. The semi-structured interviews will be conducted with the same respondents at two time points for a total estimated burden of 30 hours. Respondents will be asked to provide information regarding administration of the Behavioral Risk Factor Surveillance System Cancer Survivorship Module; communication, education, and training activities to

support the implementation of cancer survivorship interventions; community-clinical linkage strategies to support cancer survivors, knowledge regarding best practices for survivorship care; partnership engagement; dissemination of evidence-based survivorship interventions; and recommendations for improving the implementation of evidence-based survivorship interventions.

Information collected will be analyzed and used in aggregate to inform future efforts to support cancer survivors and to initiate evidence-informed program decisions when rolling this initiative out to all NCCCP grantees. Without this data collection, CDC will not be able to provide tailored technical assistance to its grantees and communicate program efforts. The estimated annual burden hours requested are 28.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondent | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hrs) |
|---------------------------------|---|-----------------------|------------------------------------|--------------------------------------|
| NCCCP Grantee Program Director. | Web-based Grantee survey | 8 | 1 | 20/60 |
| | Semi-structured telephone interview | 8 | 1 | 90/60 |
| NCCCP Grantee Partner | Web-based Partner survey | 40 | 1 | 20/60 |

Jeffrey M. Zirger,

Acting Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2018–25275 Filed 11–19–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–19–18AFX]

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 Traumatic Brain Injury Disparities in Rural Areas (TBIDRA) 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 June 7,

2018 to obtain comments from the public and affected agencies. CDC received two comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

- (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (c) Enhance the quality, utility, and clarity of the information to be collected;
- (d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or

other forms of information technology, e.g., permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 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

Traumatic Brain Injury Disparities in Rural Areas (TBIDRA)—New — National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Traumatic Brain Injury (TBI) is a significant public health concern in the United States. Research indicates that residents of rural areas have both higher

incidence and higher mortality rates from TBI than do residents of urban areas, and that the prevalence of TBI-related disability in rural geographical areas is higher than in urban and suburban areas. The obstacles healthcare providers and patients face in rural areas are vastly different from those in urban areas. There is little published research specifically related to the challenges rural providers face in TBI diagnosis and treatment, and even less examination into effective ways to address gaps in service and improve TBI outcomes. The National Center for Injury Prevention and Control at the CDC, in a 2015 “Report to Congress on TBI in the United States,” determined that certain population groups,

including residents of rural geographic areas, require special consideration when it comes to researching TBI.

This is a New Information Collection Request for two years to collect information on challenges that rural healthcare providers face in diagnosing, treating, and managing TBI of all severities and developing a knowledge base upon which we can begin to address gaps in services to improve clinical care and TBI outcomes in rural communities. The target population for the data collection effort includes physicians, nurse practitioners (NPs), and physician assistants (PAs) in selected specialties (general or family practice, emergency medicine, pediatrics) working in direct patient care in rural and urban areas. The focus

of the study is rural healthcare providers; urban healthcare providers will be included in this study to allow for comparison in identifying the distinct challenges and opportunities for rural healthcare providers. This study has two data collection methods. A web survey to gather quantitative data on the unique challenges faced by rural clinicians, and focus groups to gain deeper insight into the context supporting and/or inhibiting access to comprehensive TBI evaluation and treatment, the study will collect qualitative data through focus groups with rural clinicians.

The total estimated annualized burden hours are 200. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondent | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hrs) |
|--|--|-----------------------|------------------------------------|--------------------------------------|
| Health care providers (Primary Care Physician, Emergency Physician, Nurse Practitioner and Physician Assistant). | TBI Provider Survey | 600 | 1 | 15/60 |
| | Focus group screener | 36 | 1 | 5/60 |
| | Focus group consent and questionnaire. | 31 | 1 | 5/60 |
| | Focus group discussion guide | 31 | 1 | 85/60 |

Jeffrey M. Zirger,

Acting Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2018–25274 Filed 11–19–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10511, CMS–10575, and CMS–2552–10]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS’ intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed

extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency’s functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by January 22, 2019.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to <http://www.regulations.gov>. Follow the instructions for “Comment or Submission” or “More Search Options” to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS’ website address at website address at <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html>.
2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@cms.hhs.gov.
3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More

detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS-10511 Medicare Coverage of Items and Services in FDA Investigational Device Exemption Clinical Studies—Revision of Medicare Coverage

CMS-10575 Generic Clearance for the Health Care Payment Learning and Action Network

CMS-2552-10 Hospitals and Health Care Complex Cost Report

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term “collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. Type of Information Collection Request: Reinstatement; **Title of Information Collection:** Medicare Coverage of Items and Services in FDA Investigational Device Exemption Clinical Studies—Revision of Medicare Coverage; **Use:** Section 1862(m) of the Social Security Act (and regulations at 42 CFR Subpart B (sections 405.201–405.215) allows for payment of the routine costs of care furnished to Medicare beneficiaries in a Category A investigational device exemption (IDE) study and authorizes the Secretary to establish criteria to ensure that Category A IDE trials conform to appropriate scientific and ethical standards. Medicare does not cover the Category A device itself because Category A (Experimental) devices do not satisfy the statutory requirement that Medicare pay for devices determined to be reasonable and necessary. Medicare may cover Category B (Non-experimental) devices, and associated routine costs of care, if they are considered reasonable and necessary and if all other applicable Medicare coverage requirements are met.

Under the current centralized review process, interested parties (such as

study sponsors) that wish to seek Medicare coverage related to Category A or B IDE studies have a centralized point of contact for submission, review and determination of Medicare coverage IDE study requests. In order for CMS (or its designated entity) to determine if the Medicare coverage criteria are met, as described in our regulations, CMS (or its designated entity) must review documents submitted by interested parties or study sponsors. Such information submitted will be a FDA IDE approval letter, IDE study protocol, IRB approval letter, National Clinical Trials (NCT) number, and Supporting materials as needed. **Form Number:** CMS-10511 (OMB control number: 0938-1250); **Frequency:** Yearly; **Affected Public:** Private Sector (Business or other for-profits, Not-for-Profit Institutions); **Number of Respondents:** 100; **Total Annual Responses:** 100; **Total Annual Hours:** 200. (For policy questions regarding this collection contact Cheryl Gilbreath at 410-786-5919.)

2. Type of Information Collection Request: Extension without change of a currently approved collection; **Title of Information Collection:** Generic Clearance for the Health Care Payment Learning and Action Network; **Use:** The Center for Medicare and Medicaid Services (CMS), through the Center for Medicare and Medicaid Innovation, develops and tests innovative new payment and service delivery models in accordance with the requirements of section 1115A and in consideration of the opportunities and factors set forth in section 1115A(b)(2) of the Act. To date, CMS has built a portfolio of models (in operation or already announced) that have attracted participation from a broad array of health care providers, states, payers, and other stakeholders. During the development of models, CMS builds on ideas received from stakeholders—consulting with clinical and analytical experts, as well as with representatives of relevant federal and state agencies.

CMS will continue to partner with stakeholders across the health care system to catalyze transformation through the use of alternative payment models. To this end, CMS launched the Health Care Payment Learning and Action Network, an effort to accelerate the transition to alternative payment models, identify best practices in their implementation, collaborate with payers, providers, consumers, purchasers, and other stakeholders, and monitor the adoption of value-based alternative payment models across the health care system. A system wide transition to alternative payment models will strengthen the ability of CMS to

implement existing models and design new models that improve quality and decrease costs for CMS beneficiaries.

The information collected from LAN participants will be used by the CMS Innovation Center to potentially inform the design, selection, testing, modification, and expansion of innovative payment and service delivery models in accordance with the requirements of section 1115A, while monitoring the percentage of payments tied to alternative payment models across the U.S. health care system. In addition, the requested information will be made publically available so that LAN participants (payers, providers, consumers, employers, state agencies, and patients) can use the information to inform decision making and better understand market dynamics in relation to alternative payment models. **Form Number:** CMS-10575 (OMB control number: 0938-1297); **Frequency:** Occasionally; **Affected Public:** Individuals; Private Sector (Business or other For-profit and Not-for-profit institutions), State, Local and Tribal Governments; **Number of Respondents:** 30,110; **Total Annual Responses:** 23,110; **Total Annual Hours:** 25,917. (For policy questions regarding this collection contact Dustin Allison at 410-786-8830.)

3. Type of Information Collection Request: Extension of a currently approved collection; **Title of Information Collection:** Hospitals and Health Care Complex Cost Report; **Use:** Under the authority of sections 1815(a) and 1833(e) of the Act, CMS requires that providers of services participating in the Medicare program submit information to determine costs for health care services rendered to Medicare beneficiaries. CMS requires that providers follow reasonable cost principles under 1861(v)(1)(A) of the Act when completing the Medicare cost report. Under the regulations at 42 CFR 413.20 and 413.24, CMS defines adequate cost data and requires cost reports from providers on an annual basis. The Form CMS-2552-10 cost report is needed to determine a provider's reasonable cost incurred in furnishing medical services to Medicare beneficiaries and calculate the hospital settlement amounts. These providers, paid under the inpatient prospective payment system (IPPS) and the outpatient prospective payment system (OPPS), may receive reimbursement outside of the PPS for hospital-specific adjustments such as Medicare reimbursable bad debts, disproportionate share, uncompensated care, direct and indirect medical education costs, and organ acquisition

costs. The Form CMS–2552–10 cost report is also used for rate setting and payment refinement activities, including developing a hospital market basket. Additionally, the Medicare Payment Advisory Commission (MedPAC) uses the hospital cost report data to calculate Medicare margins, to formulate recommendations to Congress regarding the IPPS and OPSS, and to conduct additional analysis of the IPPS and OPSS. *Form Number:* CMS–2552–10 (OMB control number: 0938–0050); *Frequency:* Yearly; *Affected Public:* Private Sector (Business or other For-profit and Not-for-profit institutions), State, Local and Tribal Governments, Federal Government; *Number of Respondents:* 6,088; *Total Annual Responses:* 6,088; *Total Annual Hours:* 4,097,224. (For policy questions regarding this collection contact Gail Duncan at 410–786–7278.)

Dated: November 15, 2018.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2018–25312 Filed 11–19–18; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Tribal Maternal, Infant, and Early Childhood Home Visiting Program Quarterly Performance Reporting Form.

OMB No.: New Collection.

Description: The Administration for Children and Families (ACF), Office of Child Care, in collaboration with the Health Resources and Services Administration (HRSA), Maternal and Child Health Bureau, administers the Maternal, Infant, and Early Childhood Home Visiting (MIECHV) Program, as authorized by Title V, Section 511 of the Social Security Act. The Administration for Children and Families administers the Tribal MIECHV Program while HRSA administers the State/Territory MIECHV Program. Tribal MIECHV discretionary grants support cooperative agreements to conduct community needs assessments; plan for and implement high-quality, culturally-relevant, evidence-based home visiting programs in at-risk tribal communities; establish, measure, and report on progress toward meeting performance

measures in six legislatively-mandated benchmark areas; and conduct rigorous evaluation activities to build the knowledge base on home visiting among Native populations.

The proposed data collection form is as follows: In order to continuously monitor, provide grant oversight, quality improvement guidance, and technical assistance to Tribal MIECHV grantees, ACF is seeking to collect services utilization data on a quarterly basis. The Tribal MIECHV Quarterly Data Performance Reporting Form, is made up of five categories of data—program capacity, place-based services, family engagement, staff recruitment and retention and staff vacancies. This form will be used by Tribal MIECHV grantees that receive grants under the Tribal MIECHV Program to collect data in order to determine the caseload capacity grantees are achieving, where services are being delivered, the retention and attrition of enrolled families, and the retention and attrition of program staff on a quarterly basis.

Respondents: Tribal Maternal, Infant, and Early Childhood Home Visiting Program Managers. The information collection does not include direct interaction with individuals or families that receive the services.

ANNUAL BURDEN ESTIMATES

| Type of respondent | Form name | Number of respondents | Number responses per respondent | Average burden per response (in hours) | Total burden hours |
|------------------------------|---|-----------------------|---------------------------------|--|--------------------|
| Tribal MIECHV Grantees | Tribal MIECHV Quarterly Reporting Form. | 25 | 4 | 24 | 2,400 |
| Total | | | | | 2,400 |

Estimated Total Annual Burden Hours: 2,400.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW, Washington, DC 20201. Attention Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: infocollection@acf.hhs.gov.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the

proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: OIRA_SUBMISSION@OMB.EOP.GOV, Attn: Desk Officer for the Administration for Children and Families.

Robert A. Sargis,

Reports Clearance Officer.

[FR Doc. 2018–25214 Filed 11–19–18; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–3017]

Prescription Drug-Use-Related Software; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing the establishment of a docket to solicit public comment on a proposed framework for regulating software applications disseminated by or on behalf of drug sponsors for use

with one or more of their prescription drug products. Recognizing the opportunities for increased use of digital technology with prescription drugs, the Agency is proposing a framework that would provide prescription drug sponsors the flexibility to develop and disseminate innovative software, while maintaining appropriate Agency oversight over the sponsors' communications about their products. The framework proposed in this notice focuses not on prescription drug-use-related software itself, but rather on the output of such software that is presented to the end user. For purposes of the notice, prescription drug-use-related software refers to software disseminated by or on behalf of a drug sponsor that accompanies one or more of the sponsor's prescription drugs (including biological drug products). Software that is developed for use with prescription drugs but is not disseminated by or on behalf of a drug sponsor is not addressed in this proposal. The proposed framework is being issued for discussion purposes only and is not a draft guidance. This document is not intended to communicate FDA's proposed (or final) regulatory expectations but is instead meant to seek early input from groups and individuals outside the Agency prior to development of a draft guidance.

DATES: Submit either electronic or written comments by January 22, 2019.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before January 22, 2019. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of January 22, 2019. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a

third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA-2018-N-3017 for "Prescription Drug-Use-Related Software; Establishment of a Public Docket; Request for Comments." Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the 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:

Chris Wheeler, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3330, Silver Spring, MD 20993, 301-796-0151, Chris.Wheeler@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

FDA recognizes that digital health has the potential to offer new opportunities to improve patient care, and is working to promote responsible development in digital health.¹ There are currently many mobile applications (apps) available to consumers for a variety of health-related uses—such as tracking drug ingestion, monitoring certain medical conditions that require prescription drug medication, or providing information on how to use a drug—with more under development. Drug sponsors developing or obtaining rights to market software for use with one or more of their prescription drug products have approached FDA seeking clarity regarding the regulatory status of such software, referred to herein as prescription drug-use-related software. In considering digital health and its application to the use of prescription drugs, the Agency is evaluating how FDA authorities apply when such software is disseminated by or on behalf of a drug sponsor for use with one or

¹ For more information on medical devices and digital health, see the FDA Medical Devices Digital Health web page available at: <https://www.fda.gov/MedicalDevices/DigitalHealth/default.htm>.

more of that sponsor's prescription drugs.²

The proposed framework described in this notice is intended to align with ongoing Agency initiatives and foster innovation while ensuring sponsors' communications are consistent with applicable prescription drug labeling requirements. For purposes of this notice, "prescription drug-use-related software" refers to software disseminated by or on behalf of a drug sponsor that accompanies one or more of the sponsor's prescription drugs, including biological drug products. The material presented to the end user of the prescription drug-use-related software (including a patient, caregiver, or healthcare professional) constitutes the output. This includes, for example, screen displays created by the software, whether static or dynamic, as well as sounds or audio messages. For purposes of this notice, FDA is focused on the output of prescription drug-use-related software. Because, as used in this notice, "prescription drug-use-related software" refers to software disseminated by or on behalf of a drug sponsor, this proposed framework would not apply to third-party software developers who independently develop or disseminate software for use with prescription drugs.

The proposed framework is designed to take a risk-based approach to prescription drug-use-related software. Under this approach, it is anticipated that in most cases, the output of such software will not require review by FDA prior to dissemination. This proposed framework is being issued for discussion purposes only and is not a draft guidance. This document is not intended to communicate FDA's proposed (or final) regulatory expectations but is instead meant to seek early input from groups and individuals outside the Agency (21 CFR 10.115(g)(1)). FDA expects to issue a draft guidance after considering the comments submitted in response to this notice that will convey FDA's proposed approach and recommendations regarding prescription drug use related software and output.

Software used in digital health products may have distinct functions. Whether software is a device is determined by Center for Devices and Radiological Health (CDRH) and may

² For the purposes of this notice, all references to *drugs* or *drug products* include human drug products, including biological products, regulated by the Center for Drug Evaluation and Research (CDER) and Center for Biologics Evaluation and Research (CBER), unless otherwise specified.

depend upon the software's functions.³ The focus of this proposed framework is not on whether the software is a device. While FDA anticipates that some prescription drug-use-related software will meet the definition of a device, other prescription drug-use-related software will not meet this definition. This proposed framework does not alter the regulatory framework for devices, but focuses on the output of software disseminated by or on behalf of a drug sponsor for use with one or more of its prescription drug(s).

Regardless of whether a software function meets the definition of a device, or is a device that falls within an FDA enforcement discretion policy related to software as a device,⁴ under this proposed framework, only the output of the software disseminated by or on behalf of a drug sponsor for use with one or more of the drug sponsor's prescription drugs would be treated as drug labeling.

A. Drug Labeling

Under the proposed framework, prescription drug-use-related software output would be regulated as labeling because it "accompanies" a specific drug. Software output that does not accompany a specific drug would not be regulated as labeling unless its categorization changes, such as if a drug sponsor licenses software originally disseminated by an independent third party and then disseminates the software for use in conjunction with the sponsor's drug.

Section 201(m) (21 U.S.C. 321(m)) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) defines "labeling" as all labels and other written, printed, or graphic matter upon any article or any of its containers or wrappers or

³ The term "software function" is a distinct purpose of the product, which could be the intended use or a subset of the intended use of the product. For example, a software product with an intended use to analyze data has one function: analysis. A product with an intended use to store, transfer, and analyze data has three functions: (1) Storage, (2) transfer, and (3) analysis. A software function may be its visual output (e.g., the software function is intended to graphically display blood pressure values) or a software function may not have a visual output (e.g., the software function is intended to transfer blood pressure values from one device to another).

⁴ See "Changes to Existing Medical Software Policies Resulting from Section 3060 of the 21st Century Cures Act: Draft Guidance for Industry and Food and Drug Administration Staff," available at: <https://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/UCM587820.pdf> and "Clinical and Patient Decision Support Software: Draft Guidance for Industry and Food and Drug Administration Staff," available at: <https://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/UCM587819.pdf>.

accompanying such article. The U.S. Supreme Court has explained that the language "accompanying such article" in the labeling definition is interpreted broadly to include materials that supplement or explain an article. No physical attachment between the materials and the article is necessary; rather, "it is the textual relationship between the items that is significant" (*Kordel v. United States*, 355 U.S. 345, 350 (1948)). In evaluating whether materials accompany a product, *Kordel* also considered whether the drug product and the materials relating to the drug product had a "common origin and common destination" and whether they were part of an integrated distribution program (Id. at 348).

FDA generally recognizes two broad categories of labeling for drugs: (1) FDA-required labeling and (2) promotional labeling. For prescription drugs and biological products, FDA-required labeling is the labeling, drafted by the manufacturer, that is reviewed and approved by FDA as part of a new drug application (NDA), an abbreviated new drug application (ANDA), or a biologics license application (BLA), including supplemental applications (21 CFR 314.50(c)(2), 314.94(a)(8), and 601.2(a)). It includes the information that is essential for a provider to make an informed decision about the risks and benefits of prescribing the drug for a patient and the information needed to safely and effectively use the drug. Most changes to such drug labeling require review and approval by FDA.

In contrast, promotional labeling is generally any labeling other than FDA-required labeling that is devised for promotion of the product. Promotional labeling may have other functions in addition to promotion. Promotional labeling can include printed, audio, or visual matter descriptive of a drug that is disseminated by or on behalf of a drug's manufacturer, packer, or distributor (21 CFR 202.1(l)(2)).

Promotional labeling is not approved by FDA in advance of dissemination. Rather, applicants must submit to FDA's Office of Prescription Drug Promotion (OPDP) or Advertising and Promotional Labeling Branch (APLB), as appropriate, "labeling or advertising devised for promotion" of a drug product at the time of initial dissemination or publication of such promotional labeling or advertisement (21 CFR 314.81(b)(3)(i) and 601.12(f)). FDA anticipates that under this proposed framework, most forms of prescription drug-use-related software output would be considered promotional labeling and thus would only be required to be submitted at the time of initial

dissemination pursuant to these existing regulations. The submission of promotional materials to OPDP or APLB at time of initial dissemination by drug sponsors is a longstanding requirement applicable to all communications that are considered promotional labeling, regardless of the content of those communications or the medium used for distribution. Therefore, such prescription drug-use-related software output would be subject to the same regulations as other promotional materials disseminated by or on behalf of the drug sponsor, such as patient brochures and detail pieces.

Last year, drug sponsors submitted over 100,000 promotional pieces to OPDP at the time of initial dissemination. FDA employs a risk-based approach to review these materials. For the vast majority of sponsors, there are no further interactions with FDA about a piece after it is submitted. Sponsors can also avail themselves of the voluntary advisory comment process and receive FDA comments before disseminating a proposed promotional labeling piece.⁵ As discussed herein, for certain prescription drug use-related software output, the Agency will recommend under the proposed framework that a sponsor use the voluntary advisory comment process prior to dissemination.

B. Software as a Medical Device

Following enactment of the 21st Century Cures Act (Pub. L. 114–146), which amended the FD&C Act by excluding certain software functions from the statutory device definition in newly added section 520(o) (21 U.S.C. 360j(o)), FDA continues to develop its digital health device policies.⁶ For example, FDA has issued draft guidance to explain its proposed interpretation of section 520(o)(1)(E) of the FD&C Act, which excludes certain clinical decision support software functions from the device definition in section 201(h) of

the FD&C Act.⁷ Clinical decision support software is intended for use by healthcare providers. In that guidance, FDA also proposes to adopt an enforcement discretion policy for applicable device requirements for certain patient decision support software functions intended for patients and caregivers who are not healthcare professionals.⁸

The proposed framework for prescription drug-use-related software outlined in this notice, if adopted, would not impact FDA's regulation of a stand-alone software function that does not accompany a prescription drug (e.g., a software function that uses complex algorithms to analyze a skin lesion to determine whether it contains cancerous cells or blood establishment computer software and accessories used in the manufacture of blood and blood components). If, however, software that is a device is disseminated by or on behalf of a sponsor of a prescription drug for use with that drug, it may be subject to regulation under drug, biologic, and device authorities, as appropriate. For example, when prescription drug-use-related software meets the definition of a device because of its function, it would be subject to regulation as a device and its output may also constitute drug labeling. Additionally, such prescription drug-use-related software would constitute a combination product if use of the software and drug together meet the definition of combination product under 21 CFR 3.2(e) (§ 3.2(e)). The proposed framework takes into consideration existing Agency policy for the regulation of software to ensure efficient, coordinated review in instances when prescription drug-use-related software is reviewed by the Agency as a device. As noted above, this proposed framework does not apply to software developed by companies or individuals who are unaffiliated with the drug sponsor, even if the developer's intention is for the software to be used with one or more prescription drugs. This proposed framework only applies to the output of such software when the software is disseminated by or on behalf of a drug sponsor specifically for use with one or more of the sponsor's prescription drugs.

⁷ See "Clinical and Patient Decision Support Software: Draft Guidance for Industry and Food and Drug Administration Staff," available at: <https://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/UCM587819.pdf>. When finalized, this guidance will represent FDA's current thinking on the topics it addresses.

⁸ Patient decision support software is not excluded from the device definition by section 520(o) of the FD&C Act.

II. FDA's Proposed Framework for Prescription Drug-Use-Related Software Output

This section outlines FDA's proposed framework for oversight of prescription drug-use-related software output, including distinguishing when information about the output may be included in FDA-required labeling and when the output would be considered promotional labeling, as well as the Agency's expectations for submissions of each type of labeling. FDA is establishing this docket to solicit input from stakeholders on this proposed framework, as well as on the list of specific questions in section III. FDA solicits comment on all aspects of the proposed framework described in this notice, including the examples used to illustrate the proposal.

A. Prescription Drug-Use-Related Software Output as Labeling for a Prescription Drug

Prescription drug-use-related software may be developed by or on behalf of a sponsor for use with the sponsor's prescription drug or drugs, or could be software widely available from a third party that a sponsor adapts for use with the sponsor's prescription drug or drugs. Although software with similar properties may be available from other sources, it is only when a sponsor disseminates such software for use with its prescription drug or drugs that the sponsor would be subject to this proposed framework. For example, if software to measure physical activity is branded with the name of a drug indicated to alleviate pain from osteoarthritis and is disseminated by or on behalf of the drug sponsor to patients to allow them to record their degree of physical functioning while taking the drug, the software output may be considered prescription drug use-related software and be regulated as drug labeling, even if its functionality does not meet the definition of a device. Other examples of software that could be prescription drug-use-related software, if disseminated by or on behalf of a prescription drug sponsor, might include the following:

- Software branded with a drug name that a sponsor intends for patients to use to record and track their use of the sponsor's drug with a mobile application (app). Such an app may allow a patient to share these data with a caregiver or healthcare provider.
- Software that is designed by a drug sponsor for its specific drug and enables a healthcare provider to enter dosing instructions for a sponsor's prescription drug product for a patient that the

⁵ See 21 CFR 202.1(j)(4). For drug products being considered for accelerated approval, unless otherwise informed by the Agency, applicants must submit to the Agency for consideration during the preapproval review period copies of all promotional materials, including promotional labeling as well as advertisements, intended for dissemination or publication within 120 days following marketing approval. After 120 days following marketing approval, unless otherwise informed by the Agency, the applicant must submit promotional materials at least 30 days prior to the intended time of initial dissemination of the labeling or initial publication of the advertisement (21 CFR 314.550; 21 CFR 601.45).

⁶ FDA has issued several software-related draft guidances in this effort. These guidance documents can be found at Guidances with Digital Health Content, <https://www.fda.gov/MedicalDevices/DigitalHealth/ucm562577.htm>.

patient can retrieve through this software. For example, an interactive app that could be programmed by the provider to give the patient information on how to adjust the insulin doses for a specific type of insulin based on blood glucose levels (*i.e.*, an electronic sliding scale).

- Software designed by a drug sponsor to communicate with a device in a drug-led, drug-device combination product. For example, an app that communicates with a device that is embedded in an oral tablet of a specific drug to automatically record when the tablet has been ingested by the patient.

As stated above, the material presented to the end user of the prescription drug-use-related software (including a patient, caregiver, or healthcare professional) constitutes the output. This includes, for example, screen displays created by the software, whether static or dynamic, as well as sounds or audio messages. Examples of prescription drug-use-related software output might include the following:

- For software that a sponsor disseminates to patients to record and track their prescription drug use with an app, the prescription drug-use-related software output would include the screen display where patients can enter a record of their ingestion of the drug and see the records of their ingestion over time.

- For software that a sponsor disseminates to patients taking its drug to record not only when they took the drug but also activity levels or symptoms related to their disease, the prescription drug-use-related software output would include the screen display where patients can enter their symptoms or view a summary of their activity or symptoms (*e.g.*, a graphic representation of steps per day). If the software receives input directly from a separate device (*e.g.*, a step counter or blood pressure monitor), the prescription drug-use-related software output would also include the display of such information (*e.g.*, step count or blood pressure measurements).

- For software that a sponsor disseminates to healthcare providers to enter dosing instructions for a sponsor's drug that can be viewed through an app, the prescription drug-use-related software output would include the screen display of dosing instructions that the patient can retrieve through the app.

- For software that is branded with a cholesterol-lowering drug name and provides a risk calculator to assist healthcare providers in deciding when to prescribe that medication and how to calculate the appropriate dose, the

prescription drug-use-related software output would include the screen display of the risk calculator. While such an app would likely not be a device, the communication by the sponsor of information about its drug would make the software's output drug labeling under this proposed framework.

- For software a sponsor disseminates to patients to communicate information from an embedded device that tracks drug ingestion to an app, the prescription drug-use-related software output would include screen displays that show the information on drug ingestion. In addition, if the app provides alerts (*e.g.*, a dose is registered as ingested) or reminders (*e.g.*, it reminds the patient to take their medication), these messages would also be considered prescription drug-use-related software output. If the alert or reminder includes sounds, vibrations, or an audio message, these would also be considered prescription drug-use-related software output.

Under the proposed framework, the output of prescription drug-use-related software constitutes drug labeling because it accompanies a drug, for example by explaining how to use the drug (*e.g.*, by reminding patients when it is time for them to take the drug), or by supplementing the use of the drug (*e.g.*, by enabling a physician to provide dosing modification instructions to a patient). Prescription drug-use-related software output also shares a common origin and destination with the drug with which the software is to be used—it is disseminated by or on behalf of a drug sponsor to the ultimate end user—and the drug and software are part of an integrated distribution program.

As discussed below, information about prescription drug-use-related software output may be included in FDA-required labeling or constitute promotional labeling, depending on how the output is used with the sponsor's prescription drug.

B. Information About Prescription Drug-Use-Related Software Output That May Be Included in FDA-Required Labeling

FDA expects that, generally, information about prescription drug-use-related software output may be included in FDA-required labeling in two situations: (1) Where the drug sponsor demonstrates to FDA that there is substantial evidence of an effect on a clinically meaningful outcome as a result of the use of the prescription drug-use-related software or (2) where the prescription drug-use-related software provides a function or information that is essential to one or more intended uses of a drug-led, drug-

device combination product of which such software is a device constituent part or an element of a device constituent part.

In the first situation, where a sponsor demonstrates through substantial evidence (from one or more adequate and well-controlled investigations, as necessary) that the use of software with a drug results in a clinically meaningful improvement compared to using the drug alone, and the sponsor chooses to submit such evidence as part of a drug application, information about the prescription drug-use-related software output would be included in FDA-required labeling (*e.g.*, prescribing information, medication guide, or instructions for use). In this scenario, evidence might consist of a demonstration of improvement in a clinical outcome or a validated surrogate endpoint that predicts a change in a clinical outcome. For example, evidence might be developed that shows that use of prescription drug-use-related software with a drug improves patient compliance and thus improves blood levels of the validated endpoint⁹ hemoglobin A1c (HbA1c) compared to drug use alone. Reductions in HbA1c directly reflect improvement in glycemic control. Therefore, if there is substantial evidence that the use of a dose-tracking or reminder app with an antidiabetic drug results in a reduction in HbA1c compared to taking the drug without using the app, such evidence would be sufficient to support a labeling claim and the prescription drug-use-related software and its output would be described in the FDA-required drug labeling, if the sponsor chooses to submit such evidence as part of a drug application.¹⁰

When a sponsor develops clinical evidence from adequate and well-controlled investigations regarding the use of prescription drug-use-related software with a previously approved drug and the sponsor would like to include this information in FDA-required labeling, under this proposed framework, we would expect the sponsor to submit the information to the Agency as a new original application for review. The sponsor should work with the appropriate review division within FDA in developing the submission.

⁹ <https://www.ncbi.nlm.nih.gov/books/NBK453484/?report=reader>.

¹⁰ If the prescription drug-use-related software meets the device definition and, according to its labeling, is intended for use with an approved individually specified drug, where both the software and drug are required to achieve the intended use, indication, or effect, then the software and drug together may constitute a "cross-labeled" combination product (see § CFR 3.2(e)(3) and (4)).

Under the second situation described above, the prescription drug-use-related software is software that is part of a system comprising a device constituent part or is itself a device constituent part of a prescription drug-led, drug-device combination product, and such software provides a function or information that is essential to one or more intended uses of that drug-led, drug-device combination product. In that case, if such software meets the device definition, the software would be considered part of the device that is a constituent part of the combination product and would be regulated as such.¹¹ For example, CDRH has cleared an ingestible event marker (IEM) designed to communicate a time-stamped confirmation of IEM device ingestion via volume conduction communication, also known as intrabody communication, with an external patch (https://www.accessdata.fda.gov/cdrh_docs/reviews/K113070.pdf). Software can be used to interact with the external patch to organize and display the information about ingestion for a patient, provider, or both. CDER recently approved Abilify MyCite, which is a drug-led, drug-device combination product comprised of aripiprazole tablets embedded with this IEM. The IEM is intended to track drug ingestion, and patients can opt to share these data with their healthcare providers. The software program that communicates with the patch, which gathers the information from the IEM, is essential to allow the patient (or, at the patient's election, the healthcare provider) to review the data collected by the IEM about ingestion. In this example, information about that function of the software was included in the FDA-required drug labeling because that function is essential for the combination product to achieve one of its intended uses—tracking ingestion of the drug.

In both cases, the software that will be used with the prescription drug will be developed prior to the marketing of the drug or combination product with the software. During the software development phase, the software could

¹¹ If the software being used as prescription drug-use-related software does not meet the definition of a device (for example, because it is clinical decision support software that is excluded from the device definition by section 520(o) of the FD&C Act) and is not an element of a system that comprises a device, then the regulated product may not be a "combination product" under § 3.2(e), because there is no "device" constituent part. In such a case, the regulated product would be a drug product, but information about such software could still be included in the FDA-required labeling if there is substantial evidence of an effect on a clinically meaningful outcome as a result of the use of the software with the drug product.

be regulated as a device, but under the proposed framework, FDA-required drug labeling regulations (which apply to the sponsor of the drug or combination product) would not apply until the drug or combination product was approved for distribution and disseminated by or on behalf of the drug sponsor.

C. Prescription Drug-Use-Related Software Output That Constitutes Promotional Labeling

Under this proposed framework, when information about prescription drug-use-related software output is not included in FDA-required labeling, the output would be considered promotional labeling for the sponsor's prescription drug when the software is disseminated by or on behalf of the drug's sponsor. Under FDA's postmarket reporting regulations, drug sponsors must submit to FDA "labeling or advertising devised for promotion" of a drug at the time of initial dissemination or publication of such promotional labeling or advertisement (§ 314.81(b)(3)(i)). Prescription drug-use-related software output that is not included in FDA-required labeling is devised, at least in part, to promote use of a sponsor's prescription drug. For example, such output would likely display the name of the drug and may be marketed as part of an integrated system to encourage use of the drug over a competing product. While prescription drug-use-related software output that promotes a prescription drug may also serve additional purposes, such as providing electronic reminders or other information about the prescription drug or the disease it is intended to treat, it is nonetheless devised, at least in part, to promote the use of the sponsor's prescription drug.

Under this proposed framework, prescription drug-use-related software output that constitutes promotional labeling would be submitted to FDA by drug sponsors at the time of initial dissemination using Form FDA 2253 ("Transmittal of Advertisements and Promotional Labeling for Drugs for Human Use"), in the same way that drug sponsors currently submit their other promotional materials. Each submission of prescription drug-use-related software output would include screenshots or other appropriate representations of what the user will experience, and must be accompanied by a completed Form FDA 2253 and a copy of the drug's current professional labeling (§§ 314.81(b)(3)(i) and

601.12(f)(4)).¹² Updates should be submitted to FDA at the time of initial dissemination only when an update to such software results in changes to the output experienced by the user. Software updates, such as security patches and other software updates that do not alter the output, would not need to be resubmitted. This approach will provide drug sponsors the flexibility to innovate and to disseminate prescription drug-use-related software without prior FDA approval.

In some cases, there may be uncertainty regarding whether the output of prescription drug-use-related software is consistent with FDA-required labeling. In order to help evaluate whether a sponsor's communication is consistent with FDA-required labeling, FDA recently published a guidance entitled "Medical Product Communications That Are Consistent With the FDA-Required Labeling—Questions and Answers."¹³ That guidance explains that, in evaluating whether a product communication is consistent with the FDA-required labeling for that product, among other factors, FDA will evaluate whether product communications "increase the potential for harm to health relative to the information reflected in the FDA-required labeling."

FDA anticipates that, in general, most uses of prescription drug-use-related software output would not lead to an increase in the potential for harm to health for the user. For example, an app that a sponsor makes available that allows patients to track signs and symptoms or reminds patients to take an upcoming dose, but does not instruct them to alter their dose or intake of a drug, would not be expected to increase risks associated with use of the drug provided it functions as intended. FDA believes use of such prescription drug-use-related software output poses a comparable risk to other promotional labeling currently in use that are

¹² See draft guidance entitled "Providing Regulatory Submissions in Electronic and Non-Electronic Format—Promotional Labeling and Advertising Materials for Human Prescription Drugs," available at: <https://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM443702.pdf>. When final, this guidance will represent FDA's current thinking on this topic. Form FDA 2253 is available at <https://www.fda.gov/downloads/AboutFDA/ReportsManualsForms/Forms/UCM083570.pdf>. The Instructions for Form FDA 2253 is available at <https://www.fda.gov/downloads/AboutFDA/ReportsManualsForms/Forms/UCM375154.pdf>.

¹³ See "Medical Product Communications That Are Consistent With the FDA-Required Labeling—Questions and Answers, Guidance for Industry," available at: <https://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM537130.pdf>.

intended to help patients take their drugs as prescribed (e.g., drug branded pill boxes, paper calendars, patient diaries). FDA recognizes, however, that the user interface is also an important component and expects sponsors to consider how the design of the user interface could affect the use of the prescription drug-use-related software output with their drugs. Similarly, prescription drug-use-related software output directed to healthcare providers is generally not expected to pose additional risk (e.g., an app made available by a sponsor that gives healthcare providers information on when dosing adjustments consistent with the labeling for that sponsor's drug might be warranted based on clinical data) because of the healthcare providers' training and expertise in properly evaluating treatment options.

The following are examples of prescription drug-use-related software output that, under the proposed framework, drug sponsors would only be required to submit at time of initial dissemination to CDER pursuant to § 314.81(b)(3)(i) or to CBER pursuant to § 601.12(f):¹⁴

- Prescription drug-use-related software output that reminds providers of interventions or tests, consistent with the FDA-required labeling, needed before prescribing a drug product. For example, an app that reminds providers to obtain a blood test before prescribing or renewing a drug prescription as recommended in the FDA-required labeling.

- Prescription drug-use-related software output that provides patients with information about their prescribed drug that is also found in the FDA-required labeling directed to patients (i.e., instructions for use or patient labeling or both).

- Prescription drug-use-related software output that provides patients with simple tools to track their health information related to the condition for which they were prescribed the drug. For example, an app that allows a patient to record the incidence or severity of symptoms of their condition.

- Prescription drug-use-related software output that allows prescribers to provide dosing instructions to a patient that are consistent with the FDA-required labeling (e.g., increase short-acting insulin based on pre-meal glucose level).

- Prescription drug-use-related software output that allows a patient to

enter a regimen for a drug and then reminds the patient to take a dose if the patient fails to record taking a dose at the scheduled time of administration.

- Prescription drug-use-related software output that allows a healthcare provider to program a patient-adjusted weight-based dosing schedule for an immunosuppressant medication and then reminds patients to take their doses at the correct time.

However, FDA anticipates that it is possible that certain prescription drug-use-related software output may increase the potential for harm to health where it provides recommendations that may direct patients to make decisions about their drug or disease that would normally be made in consultation with a healthcare provider. In certain cases, such software might be considered a device if it provides recommendations to patients to prevent, diagnose, or treat a disease or condition.¹⁵ If such software is a device and subsequently is disseminated by or on behalf of a drug sponsor to be used with its prescription drug, the output would be submitted at the time of dissemination and the appropriate centers (e.g., CDER or CBER, and CDRH) would coordinate review (See section II.E below). Software that is not a device may still make recommendations to patients on how to manage their disease; for example, when it is necessary to contact a healthcare provider. If that software is subsequently disseminated by or on behalf of a drug sponsor to be used with its prescription drug, then under the proposed framework, FDA would recommend that sponsors avail themselves of the opportunity for pre-dissemination review of such prescription drug-use-related software output through the voluntary advisory comment process for promotional materials. This would enable sponsors to obtain the benefit of FDA's thinking about whether the proposed prescription drug-use-related software output is consistent with the FDA-required labeling, including whether the output increases the potential for harm to health and whether it is truthful and non-misleading. In evaluating whether the prescription drug-use-related software output is consistent with FDA-required labeling, FDA would evaluate the output using the factors outlined in the guidance entitled "Medical Product Communications That Are Consistent

With the FDA-Required Labeling—Questions and Answers."

The following are categories of prescription drug-use-related software output that, under the proposed framework, FDA would recommend be submitted to the Agency by the drug sponsor in advance of dissemination, using the existing voluntary process for requesting advisory comment, because the use of the prescription drug-use-related software output may increase the potential for harm to health of patients compared to the use of the drug without such output (in which case the prescription drug-use-related software output would not be consistent with the FDA-required labeling):

- Prescription drug-use-related software output that instructs patients on when to adjust their dose based on symptoms without first consulting a healthcare provider. For example, an app that allows patients to calculate an insulin dose based on blood glucose levels based on published treatment guidelines and recommends an insulin dose different than that prescribed by the patients' physician could pose a risk to the patient.

- Prescription drug-use-related software output that provides recommendations on when a patient should contact a healthcare provider based on symptom-related information. Use of such software may or may not increase the potential for harm to the health, relative to the use of the drug without the software, depending on the context and content of the recommendation. For example, if the FDA-required labeling states that patients should contact a healthcare provider if they experience a rash and when the patient enters the word "rash" into the app, the app recommends contacting their provider, this output would be consistent with the labeling and its use would not increase the potential for harm to health relative to the information contained in the FDA-required labeling. However, where an app processes symptom-related information and provides recommendations on when the patient should or should not contact a healthcare provider, the use of such recommendations could increase potential for harm to health by making implicit recommendations on when it is *not* necessary to seek medical attention. For example, prescription drug-use-related software that communicates with a scale in a patient's home to allow the tracking of weight in patients with heart failure and uses the information to generate output with a recommendation of when to contact a healthcare provider is implicitly making a recommendation

¹⁴ Under § 202.1(j)(4), promotional materials may be voluntarily submitted for advisory comment prior to first dissemination. This policy would not alter a sponsor's ability to seek such advisory comment on any such material.

¹⁵ See "Clinical and Patient Decision Support Software: Draft Guidance for Industry and Food and Drug Administration Staff," available at: <https://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/UCM587819.pdf>.

that it is not necessary to contact the provider if weight gain has not reached a certain threshold. The potential for harm to health stems from the use of any recommendation, explicit or implicit, that the patient's signs and symptoms, as entered into the app, do not require attention from a healthcare provider.

FDA's proposed approach applies existing regulations and policies in a risk-based manner that fosters innovation and use of digital technologies with prescription drugs, and leverages FDA's existing mechanisms, such as postmarketing reporting requirements, to provide oversight that is commensurate with other communications by sponsors about their prescription drugs.

It is also important to recognize that whether prescription drug-use-related software output is consistent with the FDA-required labeling may be dependent upon reliability of the underlying software to produce its output as intended. Unlike other types of promotional labeling, such as patient brochures and booklets, prescription drug-use-related software output could change if, for example, the software does not function as intended. Therefore, under this proposed framework, it would be expected that prescription drug-use-related software output submitted by a drug sponsor to the Agency, including prescription drug-use-related software output that is considered promotional labeling, would be reliably produced by the software. It is the responsibility of the drug sponsor to ensure the reliability of the prescription drug-use-related software it disseminates; FDA's labeling oversight described in this proposed framework focuses only on the output, not the software.

Under this proposed framework, FDA would ask that drug sponsors who voluntarily submit their prescription drug-use-related software output (e.g., screenshots) to OPDP or APLB before initial dissemination under the voluntary advisory comment process review the guidance entitled, "Providing Regulatory Submissions in Electronic and Non-Electronic Format—Promotional Labeling and Advertising Materials for Human Prescription Drugs."¹⁶ This guidance provides standard recommendations regarding content, format, and references for sponsors to consider when voluntarily requesting comments on promotional labeling materials. FDA does not expect

sponsors to submit materials pertaining to software coding or programming.

D. Output of Prescription Drug-Use-Related Software That Contains Multiple Functions

As noted above in section II (Background), prescription drug-use-related software may contain multiple functions, some of which may be considered a device. Those functions that meet the device definition may be regulated as device constituent parts of a combination product, or as elements of a system comprising a device constituent part of a combination product, if use of the functions together with the prescription drug meets the definition of combination product under § 3.2(e). Also as discussed above, information about prescription drug-use-related software output may be included in FDA-required labeling for a combination product of which the prescription drug-use-related software is a device constituent part or element thereof, if such software provides a function or information that is essential to one or more intended uses of that drug-led, drug-device combination product. If the output of a function is not essential to an indication for the combination product, that output would be considered promotional labeling.

For example, some prescription drug-led, drug-device combination products may have prescription drug-use-related software that includes within a single app a function that is required for use of the combination product and functions that are not required for use of the product. For example, one software function may track drug ingestion through communication with data from an IEM, whereas other software functions may allow the patient to record symptoms like pain or fatigue, which are not required to achieve the intended effect of the combination product and may not be considered a device constituent of a drug-led, drug-device combination product. In such situations, FDA may require a drug sponsor to provide users of prescription drug-use-related software with adequate disclosure(s) within the prescription drug-use-related software output (and, if appropriate, in FDA-required labeling) that certain functions have not been evaluated by FDA.

Another example of prescription drug-use-related software that may contain multiple functions is where clinical studies are done to show an effect on a clinical endpoint. For example, if the use of a dose-tracking app with an antidiabetic medication led to an improvement in serum HbA1c,

and information about that prescription drug-use-related software output is included in FDA-required labeling, the sponsor might add additional software functions, such as an electronic carbohydrate counter. If there are no clinical studies to show the electronic carbohydrate counter software function improves HbA1c, the prescription drug-use-related software output from this function would be treated as promotional labeling under this proposed framework.

E. Output of Prescription-Drug-Use-Related Software That Has Been Cleared or Approved by CDRH

If prescription drug-use-related software is cleared or approved by CDRH as a device and is not a constituent of an approved prescription drug-device combination product, drug sponsors would only need to submit the prescription drug-use-related software output to CDER or CBER (as appropriate) at the time of first dissemination. Because such software was reviewed by CDRH, and CDRH would have consulted with CDER or CBER during the premarket review, FDA would not expect that the use of such software would result in an increased potential for harm to patients. Therefore, FDA would not recommend that a drug sponsor submit the prescription drug-use-related software output for voluntary advisory comment prior to first use, but would still expect such output to be promotional labeling and must submit on Form FDA 2253 at the time of first use.

III. Additional Issues for Consideration

FDA is soliciting public input from a broad group of stakeholders regarding this proposed framework for prescription drug-use-related software and the output of such software. In addition to general comments, FDA is interested in responses to the following questions:

1. FDA is seeking to foster innovation in the use of digital technology with prescription drugs while maintaining a consistent approach to communications by sponsors about their drugs. Does the proposed approach to prescription drug-use-related software adequately foster innovation by drug sponsors?

2. What alternative regulatory approaches could the Agency consider?

3. What should FDA take into consideration with respect to applying prescription drug labeling requirements in this context (e.g., the requirement that labeling bear adequate directions for use)? Does the proposed approach adequately preserve FDA's ability to ensure that existing prescription drug labeling requirements are met?

¹⁶ Available at: <https://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM443702.pdf>.

4. In a situation where the output of prescription drug-use-related software includes a benefit claim about the drug, what should FDA consider when providing recommendations on how to appropriately address the balancing of benefit information and risk information?

5. Does the proposed framework appropriately characterize the types of prescription drug-use-related software output that should be submitted for advisory comment? (See Section II.C., Prescription Drug-Use-Related Software Output That Constitutes Promotional Labeling) Are there other examples for which advisory comment should be recommended because there is a strong potential that the prescription drug-use-related software output will increase the potential for harm to health if used with a drug?

6. Does the proposed framework appropriately identify the materials and information that should be submitted by drug sponsors as part of a voluntary request for comment under § 202.1(j)(4)? Are there other materials or information FDA should consider in its evaluation of whether prescription drug-use-related software output submitted by drug sponsors is consistent with FDA-required labeling and is truthful and not misleading (e.g., human factors study results)?

7. Regarding software functions, FDA's proposed expectation is that sponsors are responsible for ensuring that prescription drug-use-related software reliably produces its output as intended. Is this approach sufficient to ensure patient safety?

8. FDA recognizes that software will have frequent updates, many of which will not alter prescription drug-use-related software functionality. FDA proposes that for prescription drug-use-related software output that is considered promotional, if changes in the software do not alter the output experienced by the user, FDA would not need to be notified of those changes. Does this approach strike an appropriate balance between allowing for software innovation while providing adequate oversight of sponsor communications about their prescription drugs?

9. What can be done to ensure that the end user has access to the prescription drug-use-related software that is appropriate to the specific drug dispensed at the pharmacy (e.g., in cases of generic substitution)?

10. What issues should the Agency consider as it develops this proposed framework in order to facilitate timely generic competition for prescription drugs that are approved with prescription drug-use-related software output included in the FDA-required labeling?

Dated: November 14, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018-25206 Filed 11-19-18; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2018-N-2027]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Survey of Current Manufacturing Practices for the Cosmetics Industry

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (PRA).

DATES: Fax written comments on the collection of information by December 20, 2018.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202-395-7285, or emailed to oira_submission@omb.eop.gov. All comments should be identified with the OMB control number 0910—New and title “Survey of Current Manufacturing Practices for the Cosmetics Industry.” Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrahi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A-12M, 11601 Landsdown St., North Bethesda, MD 20852, 301-796-7726, PRAStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Survey of Current Manufacturing Practices for the Cosmetics Industry

OMB Control Number 0910—NEW

FDA has the responsibility to protect public health and, as part of this broad mandate, oversees the safety of the nation's cosmetic products. The Federal Food, Drug, and Cosmetic Act (FD&C Act) prohibits the introduction into interstate commerce of any cosmetic that is adulterated or misbranded;

cosmetics are also to be safe and properly labeled.

The FD&C Act defines cosmetics as articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance. Among the products included in this definition are skin moisturizers, perfumes, lipsticks, fingernail polishes, eye and facial makeup, cleansing shampoos, permanent waves, hair colors, deodorants, and tattoo inks, as well as any substance intended for use as a component of a cosmetic product. Some cosmetic products are also regulated as drugs.

As with other commodities FDA regulates, the safety of cosmetic products can be ensured in part through a manufacturer's approach to the management of cosmetic quality. To date, FDA has not identified in the published literature any systematic, detailed study of the diversity of the practices and standards employed across the cosmetic industry. This study is intended to fill this gap. FDA proposes to conduct a voluntary survey of cosmetics establishments to identify the current manufacturing practices in the cosmetic industry.

The survey instrument will collect data, on a voluntary basis, from cosmetic product manufacturers on the following topics:

- Written Procedures and Documentation—including written procedures and records for manufacturing involving personnel, raw materials, processing, cleaning, maintenance, finished products, and training.

- Buildings and Equipment—including facility space, pest control, practices ensuring the cleanliness and sanitation, water usage and treatment, and the proper functioning and operation of equipment.

- Materials and Manufacturing—including practices for inventory management, labeling and storage of raw materials, closures, and in process materials, and in process standard operating procedures.

- Quality Control/Product Testing—including the scope of the quality control unit, laboratory testing, dealing with rejected or returned products and complaints, and corrective actions.

In addition, FDA will obtain the characteristics of surveyed establishments such as the types of cosmetics produced, published standards and guidelines followed, the number of employees, the volume of production, and the approximate

revenue. The survey will be administered by web or by mail (respondent choice) and it will be directed to the Plant Manager of the cosmetics establishment.

This is a new, one-time data collection. FDA does not plan to collect this data from the cosmetics industry on an ongoing basis.

In the **Federal Register** of July 2, 2018 (83 FR 30940), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received three comments. FDA thanks the commenters for their comments and provides our responses below.

The first comment expressed concern that the collection was voluntary, and a number of manufacturers may not participate, which will not inform FDA of manufacturers who are not observing good manufacturing practices. They also indicated that they feel the survey could help set future standards for the industry. In response to this comment, FDA notes that this survey is being conducted to inform FDA with updated information about the practices and

standards employed across the cosmetics industry. With regard to identifying manufacturers who are not observing good manufacturing practices, the survey is structured to provide FDA with anonymized, updated cosmetic industry information, not individual response information about any of its participants.

The second comment addressed specific PRA issues of necessity, burden estimate, quality and utility of the survey, and method of collection. The commenter feels that the survey is not necessary for proper FDA oversight of the industry because this information is already available to FDA through its facility inspections. They also indicated that they had not seen the actual questions on the survey, and therefore felt the burden estimate was not feasible. They suggested that FDA partner with outside sources to assist FDA in gathering information about the industry and thought that web or mail collection was reasonable.

In response to the second comment, FDA noted in the **Federal Register** of July 2, 2018 that FDA has “not

identified in the published literature any systematic, detailed study of the diversity of the practices and standards employed across the cosmetic industry to ensure product quality and safety.” FDA is conducting this survey to fill this gap in knowledge, and this survey is necessary to achieve this goal. With regard to the survey itself, it is (and has been) available at the FDA Docket assigned to this collection (FDA–2018–N–2027). We agree that the burden is likely greater than 30 minutes, and based on results of our pretest with six individuals, we have increased the burden estimate to 60 minutes. FDA’s contractor did consult with industry stakeholders in the development of the survey instrument. Finally, FDA thanks the commenter for their comments and thoughts that our suggested method of web or collection method was reasonable.

The third comment was not related to the PRA and will not be addressed at this time.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN ¹

| Activity | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|-------------------------|-----------------------|------------------------------------|------------------------|-----------------------------|-------------|
| Survey Invitation | 898 | 1 | 898 | 0.08 (5 minutes) | 71.84 |
| Survey | 564 | 1 | 564 | 1 | 564 |
| Total | | | | | 635.84 |

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

We will select a sample of 898 establishments. After adjusting for ineligibility (*i.e.*, firms that do not produce cosmetic products and those no longer in operation) and a response rate of 70 percent, we expect 564 completed surveys.

We expect each individual survey invitation to take 5 minutes (0.08 hour) to complete. Multiplying by the 898 establishments that will receive the survey invitation, we estimate the time burden of the survey invitation to be 71.84 hours. Previously, we estimated that the survey would take 30 minutes to complete. However, based on our pretest with six individuals, we now expect each individual survey to take, on average, 60 minutes (1 hour) to complete. Multiplying by the estimated 564 establishments that will complete the survey, we estimate the time burden of the survey to be 564 hours. We estimate the total hourly reporting burden for this collection of information to be 635.84 hours.

Dated: November 14, 2018.
Leslie Kux,
Associate Commissioner for Policy.
 [FR Doc. 2018–25231 Filed 11–19–18; 8:45 am]
BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA 2012–N–0129]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; General Licensing Provisions; Section 351(k) Biosimilar Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of

information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by December 20, 2018.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0719. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: *JonnaLynn Capezzuto*, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St.,

North Bethesda, MD 20852, 301-796-3794, PRASStaff@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

General Licensing Provisions; Section 351(k) Biosimilar Applications

OMB Control Number 0910-0719—Extension

The Biologics Price Competition and Innovation Act of 2009 (BPCI Act) amended the Public Health Service Act (PHS Act) and other statutes to create an abbreviated licensure pathway for biological products shown to be biosimilar to, or interchangeable with, an FDA-licensed reference product. Section 351(k) of the PHS Act (42 U.S.C. 262(k)), added by the BPCI Act, sets forth the requirements for an application for a proposed biosimilar product and an application or a supplement for a proposed interchangeable product. Section 351(k) defines biosimilarity to mean that the biological product is highly similar to the reference product notwithstanding minor differences in clinically inactive components and that “there are no clinically meaningful differences between the biological product and the reference product in terms of the safety, purity, and potency of the product” (see section 351(i)(2) of the PHS Act). A 351(k) application must contain, among other things, information demonstrating that the biological product is biosimilar to a reference product based upon data derived from analytical studies, animal studies, and clinical studies, unless

FDA determines, in its discretion, that certain studies are unnecessary in a 351(k) application (see section 351(k)(2) of the PHS Act). To meet the standard for interchangeability, an applicant must provide sufficient information to demonstrate biosimilarity and also to demonstrate that the biological product can be expected to produce the same clinical result as the reference product in any given patient and, if the biological product is administered more than once to an individual, the risk in terms of safety or diminished efficacy of alternating or switching between the use of the biological product and the reference product is not greater than the risk of using the reference product without such alternation or switch (see section 351(k)(4) of the PHS Act).

Interchangeable products may be substituted for the reference product without the intervention of the prescribing healthcare provider (see section 351(i)(3) of the PHS Act) In estimating the information collection burden for 351(k) biosimilar product applications and interchangeable product applications or supplements, we reviewed the number of 351(k) applications FDA has received in fiscal years 2015, 2016, and 2017, considered responses to a survey of biosimilar sponsors and applicants regarding projected future 351(k) submission volumes, as well as the collection of information regarding the general licensing provisions for biologics license applications under section 351(a) of the PHS Act submitted to OMB (approved under OMB control number 0910-0338).

To submit an application seeking licensure of a proposed biosimilar product under sections 351(k)(2)(A)(i) and (iii) of the PHS Act, the estimated burden hours (FDA believes) would be approximately the same as noted under OMB control number 0910-0338 for a 351(a) application—860 hours. The burden estimates for seeking licensure of a proposed biosimilar product that meets the standards for interchangeability under sections 351(k)(2)(B) and (k)(4) would also be 860 hours per application. FDA believes these estimates are appropriate for 351(k) applications because the paperwork burden for a 351(k) application is expected to be comparable to the paperwork burden for a 351(a) application.

In addition to the collection of information regarding the submission of a 351(k) application for a proposed biosimilar or interchangeable biological product, section 351(l) of the BPCI Act establishes procedures for identifying and resolving patent disputes involving applications submitted under section 351(k) of the PHS Act. The burden estimate for the patent notification provisions under section 351(l)(6)(C) of the BPCI Act are included in table 1 and are based on the estimated number of 351(k) applicants. Based on similar reporting requirements, FDA estimates this notification will take 2 hours.

In the **Federal Register** of July 3, 2018 (83 FR 31152), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN ¹

| 351(k) Applications (42 U.S.C. 262(k)) | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|-----------------------|------------------------------------|------------------------|-----------------------------|--------------|
| 351(k)(2)(A)(i) and 351(k)(2)(A)(iii) Biosimilar Product Applications | 4 | 2.25 | 9 | 860 | 7,740 |
| 351(k)(2)(B) and (k)(4) Interchangeable Product Applications or Supplements | 2 | 1 | 2 | 860 | 1,720 |
| 351(l)(6)(C) Patent Infringement Notifications | 4 | 2.25 | 9 | 2 | 18 |
| Total | | | | | 9,478 |

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, the estimated burden for the information collection reflects an overall increase in total hours and responses. We attribute this adjustment to an increase in the number of submissions received over the last few years and additional interest in the biosimilars program.

Dated: November 14, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018-25232 Filed 11-19-18; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Meeting for the Interdepartmental Serious Mental Illness Coordinating Committee (ISMICC)

AGENCY: Substance Abuse and Mental Health Services Administration, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Secretary of Health and Human Services (Secretary) announces a meeting of the Interdepartmental Serious Mental Illness Coordinating Committee (ISMICC).

The ISMICC is open to the public and members of the public can attend the meeting via telephone or webcast only, and not in person. Call-in information will be posted on the ISMICC website prior to the meeting, under the agenda section.

The meeting will include information on federal efforts related to serious mental illness (SMI) and serious emotional disturbance (SED), including federal coordination, strategies, data evaluation, and recommendations for action. Committee members will also discuss federal implementation of ISMICC recommendations.

The ISMICC will conduct five breakout sessions on the following focus areas: Data, Access, Treatment and Recovery, Justice, and Finance.

Committee name: Interdepartmental Serious Mental Illness Coordinating Committee.

Date/Time/Type: December 11, 2018/ 9:00 a.m.–5:00 p.m. (EDT)/OPEN.

ADDRESSES: The meeting will be held at SAMHSA Headquarters, 5600 Fishers Lane, Rockville, Maryland 20857.

The meeting can be accessed via webcast at <https://2020archive>.

1capapp.com/event/ismicc/ or by joining the teleconference at the toll-free, dial-in number at 1-800-369-3143; passcode 4784259.

The public comment section is scheduled for 1:00 p.m. Eastern Daylight Time (EDT), and individuals interested in submitting a comment, must notify the Designated Federal Official, Ms. Pamela Foote, on or before November 26, 2018 via email to: Pamela.Foote@samhsa.hhs.gov.

Two minutes will be allotted for each approved public comment as time permits. Written comments received in advance of the meeting will be included in the official record of the meeting.

Substantive meeting information and a roster of Committee members is available at the Committee's website <https://www.samhsa.gov/about-us/advisory-councils/smi-committee>.

SUPPLEMENTARY INFORMATION:

I. Background and Authority

The ISMICC was established on March 15, 2017, in accordance with section 6031 of the 21st Century Cures Act, and the Federal Advisory Committee Act, 5 U.S.C. App., as amended, to report to the Secretary, Congress, and any other relevant federal department or agency on advances in serious mental illness (SMI) and serious emotional disturbance (SED), research related to the prevention of, diagnosis of, intervention in, and treatment and recovery of SMIs, SEDs, and advances in access to services and support for adults with SMI or children with SED. In addition, the ISMICC will evaluate the effect federal programs related to serious mental illness have on public health, including public health outcomes such as (A) rates of suicide, suicide attempts, incidence and prevalence of SMIs, SEDs, and substance use disorders, overdose, overdose deaths, emergency hospitalizations, emergency room boarding, preventable emergency room visits, interaction with the criminal justice system, homelessness, and unemployment; (B) increased rates of employment and enrollment in educational and vocational programs; (C) quality of mental and substance use disorders treatment services; or (D) any other criteria as may be determined by the Secretary. Finally, the ISMICC will make specific recommendations for actions that agencies can take to better coordinate the administration of mental health services for adults with SMI or children with SED. Not later than 1 (one) year after the date of enactment of the 21st Century Cures Act, and 5 (five) years after such date of enactment, the ISMICC shall submit a report to

Congress and any other relevant federal department or agency.

II. Membership

This ISMICC consists of federal members listed below or their designees, and non-federal public members.

Federal Membership: Members include, The Secretary of Health and Human Services; The Assistant Secretary for Mental Health and Substance Use; The Attorney General; The Secretary of the Department of Veterans Affairs; The Secretary of the Department of Defense; The Secretary of the Department of Housing and Urban Development; The Secretary of the Department of Education; The Secretary of the Department of Labor; The Administrator of the Centers for Medicare and Medicaid Services; and The Commissioner of the Social Security Administration.

Non-federal Membership: Members include, 14 non-federal public members appointed by the Secretary, representing psychologists, psychiatrists, social workers, peer support specialists, and other providers, patients, family of patients, law enforcement, the judiciary, and leading research, advocacy, or service organizations. The ISMICC is required to meet at least twice per year.

FOR FURTHER INFORMATION CONTACT: Pamela Foote, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, 14E53C, Rockville, MD 20857; telephone: 240-276-1279; email: pamela.foote@samhsa.hhs.gov.

Dated: November 15, 2018.

Carlos Castillo,

Committee Management Officer.

[FR Doc. 2018-25310 Filed 11-19-18; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG-2018-1044]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625-0103

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) 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: 1625–0103, Mandatory Ship Reporting System for the Northeast and Southeast Coasts of the United States; without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before January 22, 2019.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2018–1044] to the Coast Guard using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public participation and request for comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at <https://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: 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. In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2018–1044], and must be received by January 22, 2019.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://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 <https://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 <https://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).

Information Collection Request

Title: Mandatory Ship Reporting System for the Northeast and Southeast Coasts of the United States.

OMB Control Number: 1625–0103.

Summary: The information is needed to reduce the number of ship collisions with endangered northern right whales. Coast Guard rules at 33 CFR part 169 establish two mandatory ship-reporting systems off the northeast and southeast coasts of the United States.

Need: The collection involves ships’ reporting by radio to a shore-based authority when entering the area covered by the reporting system. The ship will receive, in return, information to reduce the likelihood of collisions between themselves and northern right whales—an endangered species—in the areas established with critical-habitat designation.

Forms: None.

Respondents: Operators of certain vessels.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has decreased from 188 hours to 137 hours a year due to a decrease in the estimated annual number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: November 8, 2018.

James D. Roppel,

U.S. Coast Guard, Acting Chief, Office of Information Management.

[FR Doc. 2018–25213 Filed 11–19–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2018–0050]

Towing Safety Advisory Committee

AGENCY: U.S. Coast Guard, Department of Homeland Security.

ACTION: Notice of Federal Advisory Teleconference meeting.

SUMMARY: The Towing Safety Advisory Committee will meet, via teleconference, to discuss the three current tasks assigned to the Committee. The Committee is expected to receive the final reports from the Subcommittee on Load Line Exemption for River Barges on Lakes Erie and Ontario. The Subcommittees on Implementation of Subchapter M and Towing of Liquefied Natural Gas Barges are expected to provide an update on their work. This teleconference will be open to the public.

DATES:

Meeting. The full Committee will meet via teleconference on Wednesday, December 5, 2018, from 1 p.m. until 3 p.m. Eastern Standard Time. Please note that this meeting may close early if the Committee has completed its business. To be able to join the teleconference, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section no later than 1 p.m. on November 28, 2018. To be able to physically attend the meeting at the U.S. Coast Guard Headquarters, pre-register no later than 5 p.m. on November 28, 2018, with the individual listed in the **FOR FURTHER INFORMATION CONTACT**.

Comments and supporting documentation. To ensure your comments are reviewed by the Committee members before the teleconference, submit your written comments no later than November 28, 2018.

ADDRESSES: The meeting will be held via teleconference. To join the teleconference, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section no later than 1 p.m. on November 28, 2018, to obtain the needed information. The number of teleconference lines is limited and will be available on a first-come, first-served basis. If you prefer to join in person at U.S. Coast Guard Headquarters, it will be hosted in Room 6K15-15, 2703 Martin Luther King Jr. Ave. SE, Washington, DC 20593.

Pre-registration Information. To pre-register contact Mr. Douglas W. Scheffler at Douglas.W.Scheffler@uscg.mil, with TSAC in the subject line and provide your name, company and telephone number; if a foreign national, also provide your country of citizenship, and passport number and expiration date. All attendees will be required to provide a REAL ID Act-compliant, government-issued picture identification card in order to gain admittance to the building. For details about identification required, visit <https://www.dhs.gov/real-id>.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** as soon as possible.

Written comments must be submitted using Federal eRulemaking Portal: <http://www.regulations.gov>. If you encounter technical difficulties when trying to submit a comment, contact the individual in the **FOR FURTHER INFORMATION CONTACT** section of this document.

Instructions: You are free to submit comments at any time, including orally at the teleconference, but if you want Committee members to review your comments before the teleconference, please submit your comments no later than November 28, 2018. We are particularly interested in comments on the issues in the "Agenda" section below. To facilitate public participation, written comments on the issues to be considered by the Committee as listed in the "Agenda" section below. You must include the words "Department of Homeland Security" and the docket number [USCG-2018-0050]. For more information about the privacy and the docket, review the Privacy and Security Notice for the Federal Docket Management System at <http://www.regulations.gov/privacyNotice>.

Docket Search: For access to the docket to read documents or comments related to this notice, go to <http://www.regulations.gov>, type USCG-2018-

0050 in the Search box, press Enter, and then click on the item you wish to view.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas W. Scheffler, Alternate Designated Federal Officer of the Towing Safety Advisory Committee, 2703 Martin Luther King Jr. Ave. SE, Stop 7509, Washington, DC 20593-7509, telephone 202-372-1087, fax 202-372-8382 or Douglas.W.Scheffler@uscg.mil.

SUPPLEMENTARY INFORMATION: Notice of this meeting is in compliance with the *Federal Advisory Committee Act*, (Title 5, U.S.C. Appendix). As stated in 33 U.S.C. 1231a, the Towing Safety Advisory Committee provides advice and recommendations to the Department of Homeland Security on matters related to shallow-draft inland and coastal waterway navigation and towing safety.

Agenda

The agenda for the December 5, 2018, teleconference is as follows:

- (1) Final report from the Load Line Exemption Review Subcommittee, "Recommendations on Load Line Exemption for River Barges on Lakes Erie and Ontario (Task 17-02)"
- (2) Additional tasking for the Subcommittee working on "Recommendations on the Implementation of 46 Code of Federal Regulations Subchapter M—Inspection of Towing Vessels (Task 16-01)"
- (3) Progress reports from the other active Subcommittee, the one working on "Recommendations on the Towing of Liquefied Natural Gas Barges (Task 16-03)"
- (4) Discussion of manning levels as a new task.
- (5) Public Comment period.

A copy of the task statements, draft final reports, and the agenda will be available at <https://www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Prevention-Policy-CG-5P/Commercial-Regulations-standards-CG-5PS/Office-of-Operating-and-Environmental-Standards/vfos/TSAC/>.

During the December 5, 2018 teleconference, a public comment period will be held from approximately 2:45 p.m. to 3 p.m. Speakers are requested to limit their comments to 3 minutes. Please note that this public comment period may start before 2:45 p.m. if all other agenda items have been covered and may end before 3 p.m. if all of those wishing to comment have done so.

Please contact Mr. Douglas W. Scheffler, listed in the **FOR FURTHER INFORMATION CONTACT** section to register as a speaker.

Dated: November 14, 2018.

Jeffrey G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2018-25243 Filed 11-19-18; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG-2018-0789]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625-0069

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: 1625-0069, Ballast Water Management for Vessels with Ballast Tanks Entering U.S. Waters; without change. Our ICR describe 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 December 20, 2018.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG-2018-0789] to the Coast Guard using the Federal eRulemaking Portal at <https://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 <https://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: 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-2018-0789], and must be received by December 20, 2018.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://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 <https://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 <https://www.regulations.gov>

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 <https://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: 1625-0069.

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 45266, September 6, 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: Ballast Water Management for Vessels with Ballast Tanks Entering U.S. Waters.

OMB Control Number: 1625-0069.

Summary: This collection requires the master of a vessel to provide information that details the vessel operator's ballast water management efforts.

Need: The information is needed to ensure compliance with 16 U.S.C. 4711 and the requirements in 33 CFR part 151, subparts C and D regarding the management of ballast water, to prevent the introduction and spread of aquatic nuisance species into U.S. waters. The information is also used for research and periodic reporting to Congress.

Forms: Ballast Water Management Report; and Ballast Water Management (BWM) Equivalent Reporting Program Application.

Respondents: Owners and operators of certain vessels.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has increased from 61,819 hours to 83,337 hours a year due to an increase in the estimated annual number of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: November 14, 2018.

James D. Roppel,

U.S. Coast Guard, Acting Chief, Office of Information Management.

[FR Doc. 2018-25215 Filed 11-19-18; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG-2018-0881]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625-0003

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) 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: 1625-0003, Boating Accident Report; without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before January 22, 2019.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG-2018-0881] to the Coast Guard using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the "Public participation and request for comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at <https://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: 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. In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG-2018-0881], and must be received by January 22, 2019.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://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 <https://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 <https://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).

Information Collection Request

Title: Boating Accident Report.
OMB Control Number: 1625-0003.

Summary: The Coast Guard Boating Accident Report form (CG-3865, OMB

Control Number 1625-0003) is the data collection instrument that ensures compliance with the implementing regulations and Title 46 U.S.C. 6102 (b) that requires the Secretary to collect, analyze and publish reports, information, and statistics on marine casualties.

Need: Title 46 U.S.C. 6102 (a) requires a uniform marine casualty reporting system, with regulations prescribing casualties to be reported and the manner of reporting. The statute requires a State to compile and submit to the Secretary (delegated to the Coast Guard) reports, information, and statistics on casualties reported to the State. Implementing regulations are contained in Title 33 CFR Subchapter S—Boating Safety, Part 173—Vessel Numbering and Casualty and Accident Reporting, Subpart C—Casualty and Accident Reporting and Part 174—State Numbering and Casualty Reporting Systems, Subpart C—Casualty Reporting System Requirements, and Subpart D—State reports.

States are required to forward copies of the reports or electronically transmit accident report data to the Coast Guard within 30 days of their receipt of the report as prescribed by 33 CFR 174.121 (Forwarding of casualty or accident reports). The accident report data and statistical information obtained from the reports submitted by the State reporting authorities are used by the Coast Guard in the compilation of national recreational boating accident statistics.

Forms: CG-3865, Recreational Boating Accident Report.

Respondents: Federal regulations (33 CFR 173.55) require the operator or any uninspected vessel that is numbered or used for recreational purposes to submit an accident report to the State authority when:

- (1) A person dies; or
- (2) A person is injured and requires medical treatment beyond first aid; or
- (3) Damage to the vessel and other property totals \$2,000 or more, or there is a complete loss of the vessel; or
- (4) A person disappears from the vessel under circumstances that indicate death or injury.

Frequency: On occasion.

Hour Burden Estimate: The estimated annual burden remains 2,500 hours a year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: November 14, 2018.

James D. Roppel,

U.S. Coast Guard, Acting Chief, Office of Information Management.

[FR Doc. 2018-25212 Filed 11-19-18; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651-0019]

Agency Information Collection Activities: Vessel Entrance or Clearance Statement

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than January 22, 2019) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651-0019 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email.* Submit comments to: CBP_PRA@cbp.dhs.gov.

(2) *Mail.* Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229-1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, Telephone number (202) 325-0056 or via email CBP_PRA@cbp.dhs.gov. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP website at <https://www.cbp.gov/>.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other

Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) 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) 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) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Vessel Entrance or Clearance Statement.

OMB Number: 1651-0019.

Form Number: CBP Form 1300.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information being collected.

Type of Review: Extension (without change).

Abstract: CBP Form 1300, *Vessel Entrance or Clearance Statement*, is used to collect essential commercial vessel data at time of formal entrance and clearance in U.S. ports. The form allows the master to attest to the truthfulness of all CBP forms associated with the manifest package, and collects information about the vessel, cargo, purpose of entrance, certificate numbers, and expiration for various certificates. It also serves as a record of fees and tonnage tax payments in order to prevent overpayments. CBP Form 1300 was developed through agreement by the United Nations Intergovernmental Maritime Consultative Organization (IMCO) in conjunction with the United States and various other countries. This form is authorized by 19 U.S.C. 1431, 1433, and

1434, and provided for by 19 CFR part 4, and accessible at <http://www.cbp.gov/newsroom/publications/forms?title=1300>.

Affected Public: Businesses.

Estimated Number of Respondents: 12,000.

Estimated Number of Responses per Respondent: 22.

Estimated Total Annual Responses: 264,000.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 132,000.

Dated: November 15, 2018.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2018-25263 Filed 11-19-18; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R8-ES-2018-N096;

FXES1114080000-189-FF08EVEN00]

Habitat Conservation Plan for the Morro Shoulderband Snail; Categorical Exclusion for the Seascape Place Single-Family Residence; Community of Los Osos, San Luis Obispo County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from Drs. Matthew Lotysch and Claire Amurao for an incidental take permit under the Endangered Species Act of 1973, as amended. The permit would authorize take of the federally endangered Morro shoulderband snail incidental to otherwise lawful activities associated with the construction of a single-family residence addressed in the draft habitat conservation plan prepared for the project. We invite public comment.

DATES: Written comments should be received on or before December 20, 2018.

ADDRESSES: *To obtain documents:* You may download a copy of the draft habitat conservation plan and draft low-effect screening form and environmental action statement at <http://www.fws.gov/ventura/>, or you may request copies of the documents by sending U.S. mail to our Ventura office, or by phone (see **FOR FURTHER INFORMATION CONTACT**).

To submit written comments: Please send us your written comments using one of the following methods:

- *U.S. mail:* Send your comments to Stephen P. Henry, Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003.

- *Facsimile:* Fax your comments to 805-644-3958.

FOR FURTHER INFORMATION CONTACT: Julie M. Vanderwier, Fish and Wildlife Biologist, 805-677-3400 (phone), or at the Ventura address in **ADDRESSES**.

SUPPLEMENTARY INFORMATION: We have received an application for an incidental take permit (ITP) pursuant to section 10(a)(1)(B) of the Endangered Species Act, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicants have developed a draft habitat conservation plan for the project that includes measures to mitigate and avoid/minimize impacts to the federally endangered Morro shoulderband snail (*Helminthoglypta walkeriana*). The permit would authorize take of the Morro shoulderband snail incidental to otherwise lawful activities associated with the Seascape Place Single-Family Residence Habitat Conservation Plan (HCP). We invite public comment on the application, the draft HCP, draft low-effect screening form, and environmental action statement.

Background

The Morro shoulderband snail was listed as endangered on December 15, 1994 (59 FR 64613). Section 9 of the ESA and its implementing regulations prohibit the take of fish or wildlife species listed as endangered or threatened. "Take" is defined under the ESA to include the following activities: "[T]o harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct" (16 U.S.C. 1532); however, under section 10(a)(1)(B) of the ESA, we may issue permits to authorize incidental take of listed species. "Incidental take" is defined by the ESA as take that is incidental to, and not the purpose of, carrying out of an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are in the Code of Federal Regulations (CFR) at 50 CFR 17.32 and 17.22, respectively. Under the ESA, protections for federally listed plants differ from the protections afforded to federally listed animals. Issuance of an incidental take permit also must not jeopardize the existence of federally listed fish, wildlife, or plant species. The permittees would receive assurances under our "No Surprises"

regulations ((50 CFR 17.22(b)(5) and 17.32(b)(5)) regarding conservation activities for the Morro shoulderband snail.

Applicants' Proposed Activities

The applicants have applied for a permit for incidental take of the Morro shoulderband snail. Take is likely to occur in association with activities necessary to construct a single-family residence. The site contains 2.79 acres of suitable upland habitat for the Morro shoulderband snail, all of which is in critical habitat designated for the species. The HCP includes measures to minimize take of Morro shoulderband snail in the form of injury and mortality. Mitigation for unavoidable take of the species consists of the permanent protection of 1.37 acres of suitable and occupied onsite habitat as a conservation easement to be dedicated to the County of San Luis Obispo.

Our Preliminary Determination

The Service made a preliminary determination that issuance of the incidental take permit is neither a major Federal action that will significantly affect the quality of the human environment within the meaning of section 102(2)(C) of NEPA (42 U.S.C. 4321 *et seq.*), nor will it individually or cumulatively have more than a negligible effect on the species covered in the HCP. The Service considers the effects of the taking of the Morro shoulderband snail to be minor as the affected area is small (approximately 1.42 acres) and includes the permanent protection of 1.37 acres of suitable, occupied habitat in a conservation easement. Therefore, based on this preliminary determination, the permit qualifies for a categorical exclusion under NEPA.

Public Comments

If you wish to comment on the permit application, draft HCP, and associated documents, you may submit comments by one of the methods in **ADDRESSES**.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public view, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the ESA (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Dated: November 9, 2018.

Stephen P. Henry,

Field Supervisor, Ventura Fish and Wildlife Office, Ventura, California.

[FR Doc. 2018-25222 Filed 11-19-18; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

[178D0102DM, DS6OS00000, DLSN00000.000000, DX6CS25]

Women's Suffrage Centennial Commission; Notification of Public Meeting

AGENCY: Women's Suffrage Centennial Commission, Department of the Interior.

ACTION: Meeting notice.

SUMMARY: Notice of this meeting is being provided according to the requirements of the Federal Advisory Committee Act. This notice provides the schedule and agenda for the December 7, 2018, meeting of the Women's Suffrage Centennial Commission (Commission).

DATES: *Meeting date:* The meeting will be held on Friday, December 7, 2018, beginning at 9 a.m., and ending no later than 5 p.m. (Eastern Standard Time).

ADDRESSES: The meeting will be held at the Belmont-Paul Women's Equality National Monument, 144 Constitution Avenue NE, Washington, DC 20002; in the Allender Gallery on the 2nd floor.

FOR FURTHER INFORMATION CONTACT: Kim Oliver, Designated Federal Officer, Women's Suffrage Centennial Commission, 1849 C Street, NW, Room 7313, Washington, DC 20240; phone: (202) 912-7510; fax: (202) 219-2100; email: kmoliver@blm.gov.

SUPPLEMENTARY INFORMATION:

Background

Congress passed legislation to create the Women's Suffrage Centennial Commission Act, a bill, "to ensure a suitable observance of the centennial of the passage and ratification of the 19th Amendment of the Constitution of the United States providing for women's suffrage."

The duties of the Commission, as written in the law, include: (1) To encourage, plan, develop, and execute programs, projects, and activities to commemorate the centennial of the passage and ratification of the 19th Amendment; (2) To encourage private organizations and State and local Governments to organize and participate

in activities commemorating the centennial of the passage and ratification of the 19th Amendment; (3) To facilitate and coordinate activities throughout the United States relating to the centennial of the passage and ratification of the 19th Amendment; (4) To serve as a clearinghouse for the collection and dissemination of information about events and plans for the centennial of the passage and ratification of the 19th Amendment; and (5) To develop recommendations for Congress and the President for commemorating the centennial of the passage and ratification of the 19th Amendment.

Meeting Agenda

Welcome and Introductions
Ethics briefing
FACA Briefing
FACA Records Briefing
Summary of NPS 19th Amendment Commemoration Planning
Overview of Women's Suffrage Movement
Establish Vision/Mission
Discuss informative speakers/research/articles
Establish subcommittees
Public Comment Period
2019 Meeting Schedule
Adjourn

The meeting is open to the public, but preregistration is required. Any individual who wishes to attend the meeting should register via email at kmoliver@blm.gov or telephone (202) 912-7510. Interested persons may choose to make a public comment at the meeting during the designated time for this purpose. Members of the public may also choose to submit written comments by mailing them to Kim Oliver, Designated Federal Officer, 1849 C Street NW, Room 7313, Washington, DC 20240, or via email at kmoliver@blm.gov. Please contact Ms. Oliver at the email address above to obtain meeting materials. All written comments received will be provided to the Commission.

Individuals requiring special accommodations to access the public meeting should contact Ms. Oliver no later than December 3, 2018, so that appropriate arrangements can be made.

Public Disclosure of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we

cannot guarantee that we will be able to do so.

Authority: 5 U.S.C. Appendix 2

Margaret Triebusch,

Program Analyst.

[FR Doc. 2018-25331 Filed 11-19-18; 8:45 am]

BILLING CODE 4334-63-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-1203 (Review)]

Xanthan Gum From China

Determination

On the basis of the record¹ developed in the subject five-year review, the United States International Trade Commission (“Commission”) determines, pursuant to the Tariff Act of 1930 (“the Act”), that revocation of the antidumping duty order on xanthan gum from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission, pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)), instituted this review on June 1, 2018 (83 FR 25485) and determined on September 4, 2018 that it would conduct an expedited review (83 FR 48653, September 26, 2018).

The Commission made this determination pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determination in this review on November 15, 2018. The views of the Commission are contained in USITC Publication 4839 (November 2018), entitled *Xanthan Gum from China: Investigation No. 731-TA-1203 (Review)*.

By order of the Commission.

Issued: November 15, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018-25290 Filed 11-19-18; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1059]

Certain Digital Cameras, Software, and Components Thereof; Commission Determination To Review-In-Part a Final Initial Determination Finding a Violation of Section 337; Request for Written Submissions; Extension of Target Date for Completion of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part the presiding administrative law judge’s (“ALJ”) final initial determination (“Final ID”) issued on August 17, 2018, finding a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”) in the above-captioned investigation. The Commission has also determined to extend the target date for completion of the above-captioned investigation to February 1, 2019.

FOR FURTHER INFORMATION CONTACT:

Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708-2301. 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 (<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 this investigation on June 2, 2017, based on a complaint filed by Carl Zeiss AG of Oberkochen, Germany, and ASML Netherlands B.V. of Veldhoven, Netherlands. 82 FR 25627-28. The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), in the importation into the United States, the sale for importation, and the sale within the

United States after importation of certain digital cameras, software, and components thereof that infringe U.S. Patent Nos. 6,301,440 (“the ‘440 patent”); 6,463,163 (“the ‘163 patent”); 6,714,241 (“the ‘241 patent”); 6,731,335 (“the ‘335 patent”); 6,834,128 (“the ‘128 patent”); 7,297,916 (“the ‘916 patent”); and 7,933,454 (“the ‘454 patent”). *Id.* The complaint further alleges that a domestic industry exists in the United States. The Commission’s Notice of Investigation named as respondents Nikon Corporation of Tokyo, Japan; Sendai Nikon Corporation of Natori, Japan; Nikon Inc. of Melville, New York; Nikon (Thailand) Co., Ltd. of Ayutthaya, Thailand; Nikon Imaging (China) Co., Ltd. of Wuxi, China; and PT Nikon Indonesia of Jakarta, Indonesia. *Id.* at 25627. The Office of Unfair Import Investigations is not participating in this investigation. *Id.* The Commission later terminated respondent PT Nikon from the investigation. Order No. 36 (Dec. 27, 2017) (unreviewed Notice (Jan. 19, 2018)). The Commission also subsequently terminated from the investigation all claims of the ‘163 and ‘335 patents and certain claims of the ‘440, ‘241, ‘128, ‘916, and ‘454 patents. Order No. 23 (Oct. 3, 2017) (unreviewed Notice (Oct. 17, 2017)); Order No. 32 (Nov. 22, 2017) (unreviewed Notice (Dec. 19, 2017)); Order No. 45 (Feb. 5, 2018) (unreviewed Notice (Mar. 6, 2018)); Order No. 65 (Mar. 27, 2018) (unreviewed Notice (Apr. 25, 2018)); Order No. 67 (Apr. 13, 2018) (unreviewed Notice (May 4, 2018)).

On August 17, 2018, the ALJ issued her Final ID, finding a violation of section 337 with respect to asserted claims 1 and 8 of the ‘916, asserted claims 6, 35, and 39 of the ‘440 patent, and asserted claim 22 of the ‘454 patent. The final ID finds no violation as to asserted claims 1, 12, and 16 of the ‘128 patent, asserted claim 10 of the ‘241 patent, and asserted claims 37, 46, and 50 of the ‘440 patent.

In particular, the Final ID finds that asserted claims 1 and 8 of the ‘916 patent read on the accused products under the DOE. The Final ID also finds that asserted claims 1 and 8 are not invalid for obviousness under 35 U.S.C. 103. The Final ID further finds that Zeiss has satisfied the technical prong of the domestic industry (“DI”) requirement with respect to the ‘916 patent.

The Final ID finds that asserted claims 6, 35, 37, 39, 46, and 50 of the ‘440 patent read on the accused products. The Final ID also finds that asserted claim 37 is invalid as anticipated under 35 U.S.C. 102, but that asserted claims 6, 35, 39, 46, and

¹ The record is defined in sec. 207.2(f) of the Commission’s Rules of Practice and Procedure (19 CFR 207.2(f)).

50 are not invalid as anticipated under 35 U.S.C. 102 or for obviousness under 35 U.S.C. 103. The Final ID further finds that Zeiss has satisfied the technical prong of the DI requirement with respect to the '440 patent.

The Final ID finds that asserted claim 22 of the '454 patent reads on the accused products. The Final ID also finds that asserted claim 22 is not invalid as anticipated under 35 U.S.C. 102 or for obviousness under 35 U.S.C. 103. The Final ID further finds that Zeiss has satisfied the technical prong of the DI requirement with respect to the '454 patent.

The Final ID finds that asserted claims 1, 12, and 16 of the '128 patent do not read on the accused products. The Final ID also finds that asserted claims 1, 12, and 16 are invalid for obviousness under 35 U.S.C. 103 or as indefinite under 35 U.S.C. 112. The Final ID further finds that Zeiss has not satisfied the technical prong of the DI requirement with respect to the '128 patent.

The Final ID finds that asserted claim 10 of the '241 patent reads on one of the accused products—the D610 camera. The Final ID also finds that asserted claim 10 is not invalid for obviousness under 35 U.S.C. 103. The Final ID finds that Zeiss has not satisfied the technical prong of the DI requirement with respect to the '241 patent.

In addition, the Final ID finds that Zeiss proved direct infringement by Nikon of only the asserted apparatus and system claims and failed to prove third-party direct infringement or indirect infringement with respect to asserted method claims 46 and 50 of the '440 patent and asserted method claims 12 and 16 of the '128 patent.

The Final ID finds that Zeiss has shown, with respect to the '916, 440, and '454 patent, that it has a domestic industry in the process of being established pursuant to section 337(a)(2) and has satisfied the economic prong of the DI requirement pursuant to section 337(a)(3)(B) (significant employment of labor or capital) and/or (C) (substantial investment in exploitation of the asserted patents).

The Final ID also contains the ALJ's recommended determination on remedy and bonding. The ALJ recommended that the appropriate remedy is a limited exclusion order, including a certification provision, and cease and desist orders against each of the Nikon respondents. The ALJ recommended the imposition of a bond of 0% (no bond) during the period of Presidential review.

On September 4, 2018, the parties each filed petitions for review of numerous aspects of the Final ID. On

September 12, 2018, the parties filed responses to the respective petitions for review.

On September 19, 2018, Zeiss filed a post-RD statement on the public interest pursuant to Commission Rule 210.50(a)(4). Nikon did not submit a public interest statement. No public interest submissions were filed by the public in response to the post-RD Commission Notice issued on August 20, 2018. See Notice of Request for Statements on the Public Interest (Aug. 20, 2018); 83 FR 42938–39 (Aug. 24, 2018).

Having examined the record of this investigation, including the Final ID, the petitions for review, and the responses thereto, the Commission has determined to review the Final ID in part.

With respect to the '916 patent, the Commission has determined to review the Final ID's construction of the limitation "wherein a thickness of the second set of layers is larger than a thickness of the first set of layers to reduce size of the sensor die."

Accordingly, the Commission has determined to review the Final ID's findings regarding whether asserted claims 1 and 8 read on the accused products, as well as the Final ID's findings concerning validity and the technical prong of the DI requirement with respect to those claims.

With respect to the '440 patent, the Commission has determined to review the Final ID's finding that the limitation "photographic expert unit which adjusts image capture parameters" recited in unasserted independent claim 1 is not a means-plus-function claim under 35 U.S.C. 112 ¶ 6. Accordingly, the Commission has determined to review the Final ID's findings regarding whether asserted claims 6, 35, 37, and 39 read on the accused products, as well as the Final ID's findings concerning validity and the technical prong of the DI requirement with respect to those claims.

With respect to the '454 patent, the Commission has determined to review the Final ID's findings regarding whether asserted claim 22 reads on the accused products, as well as the Final ID's findings concerning validity and the technical prong of the DI requirement with respect to that claim.

With respect to the '128 patent, the Commission has determined to review the Final ID's construction of the limitations "coarse motion vector" and "refined mosaic" recited in asserted claim 1. The Commission has also determined to review the Final ID's finding that claim 1, in particular the limitation "means for generating a refined mosaic," is invalid as indefinite

under 35 U.S.C. 112. The Commission has further determined to review the Final ID's findings regarding whether asserted claim 1 reads on the accused products as well as the Final ID's findings concerning obviousness and the technical prong of the DI requirement with respect to that claim.

The Commission has determined to review the Final ID's finding that Zeiss has satisfied the economic prong of the DI requirement under section 337(a)(3)(B) and (C) with respect to the '440 patent.

The Commission has determined not to review the remaining issues decided in the Final ID. In particular, the Commission has determined not to review the ID's findings that Zeiss failed to show use in the United States of the steps of the asserted claimed methods—*i.e.*, claims 46 and 50 of the '440 patent and claims 12 and 16 of the '128 patent. See Final ID at 282, 285. Zeiss has abandoned these method claims by failing to seek Commission review of these findings. Under Commission Rule 210.43(b) "[a]ny issue not raised in a petition for review will be deemed to have been abandoned by the petitioning party and may be disregarded by the Commission" 19 CFR 210.43(b). The Commission's determination not to review the ALJ's findings that Zeiss failed to show use of the steps of the asserted claimed methods in the United States results in a determination of no violation based on those claims. The Commission also reviews and strikes the sentence that traverses pages 276–277 in the Final ID, which is the last sentence just prior to heading XII.A.

The parties are requested to brief their positions on the issues under review with reference to the applicable law and the evidentiary record. In connection with its review, the Commission is particularly interested in responses to the following questions:

1. If the Commission were to construe the limitation "photographic expert unit which adjusts image capture parameters" recited in claim 1 of the '440 patent as a means-plus-function claim under 35 U.S.C. 112 ¶ 6, please explain whether the patent specification discloses sufficient structure to preclude a finding of indefiniteness under 35 U.S.C. 112.

2. Please address whether, under Zeiss's proposed construction, the limitation "refined mosaic" recited in claim 1 of the '128 patent is invalid under 35 U.S.C. 112 for indefiniteness.

The parties have been invited to brief only these discrete issues, as enumerated above, with reference to the applicable law and evidentiary record. The parties are not to brief other issues

on review, which are adequately presented in the parties' existing filings.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. See Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues identified in this notice. Parties to the investigation, interested government

agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. Complainant is also requested to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to state the dates that the patents expire, the HTSUS numbers under which the accused products are imported, and any known importers of the accused products. The written submissions and proposed remedial orders must be filed no later than close of business on November 26, 2018. Initial submissions are limited to 30 pages, not including any attachments or exhibits related to discussion of the public interest. Reply submissions must be filed no later than the close of business on December 3, 2018. Reply submissions are limited to 15 pages, not including any attachments or exhibits related to discussion of remedy, the public interest, and bonding. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1059") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, https://www.usitc.gov/secretary/documents/handbook_on_filing_procedures.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for

developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel¹, solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The Commission has also determined to extend the target date for completion of the above-captioned investigation to February 1, 2019.

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: November 15, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018-25291 Filed 11-19-18; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1012]

Consolidated Modification and Enforcement Proceeding; Certain Magnetic Data Storage Tapes and Cartridges Containing the Same; Commission Determination Not To Review an Initial Determination Terminating the Modification Portion of the Consolidated Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") (Order No. 49) issued by the presiding administrative law judge ("ALJ") granting a motion of respondents Sony Corporation of Tokyo, Japan, Sony Corporation of America of New York, New York, and Sony Electronics Inc. of San Diego, California (collectively, "the Sony respondents") to terminate the modification portion of the consolidated enforcement and modification proceeding. The modification portion of the consolidated proceeding is terminated.

¹ All contract personnel will sign appropriate nondisclosure agreements.

FOR FURTHER INFORMATION CONTACT:

Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708-2301. 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 the original investigation on July 1, 2016, based on a complaint filed by Fujifilm Corporation of Tokyo, Japan, and Fujifilm Recording Media U.S.A., Inc. of Bedford, Massachusetts (collectively, "Fujifilm"). 81 FR 43243-44 (July 1, 2016). Pertinent to this action, the complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 ("section 337"), in the sale for importation, importation, and sale within the United States after importation of certain magnetic data storage tapes and cartridges containing the same by reason of infringement of, *inter alia*, claims 1, 4-9, 11 and 14 of U.S. Patent No. 6,641,891 ("the '891 patent"). The Commission's Notice of Investigation named the Sony respondents as respondents. The Office of Unfair Import Investigations ("OUII") was also named as a party to the investigation.

On March 8, 2018, the Commission found a section 337 violation as to the '891 patent and issued a limited exclusion order ("LEO") and cease and desist orders ("CDOs") to each of the Sony respondents. 83 FR 11245-47 (March 14, 2018). The LEO generally prohibits the Sony respondents from importing certain magnetic data storage tapes and cartridges containing the same that infringe the '891 patent, with certain exceptions related to service and repair and verification testing. The CDOs prohibit the Sony respondents from importing, selling, marketing, advertising, distributing, transferring (except for exportation) certain magnetic data storage tapes and cartridges

containing the same that infringe the '891 patent, and soliciting United States agents or distributors for these activities.

On June 13, 2018, the Commission instituted a formal enforcement proceeding, pursuant to Commission Rule 210.75(a) (19 CFR 210.75(a)), to determine whether a violation of the March 8, 2018 CDOs issued in the original investigation has occurred and to determine what, if any, enforcement measures are appropriate. 83 FR 27626-27 (June 13, 2018). The named respondents are Sony and Sony Storage Media Solutions Corporation of Tokyo, Japan; Sony Storage Media Manufacturing Corporation of Miyagi, Japan; Sony DADC US Inc. of Terre Haute, Indiana; and Sony Latin America Inc. of Miami, Florida. OUII was also named as a party.

On August 23, 2018, the Commission instituted a modification proceeding, pursuant to Commission Rule 210.76(b) (19 CFR 210.76(b)), to determine whether the LEO and CDOs issued in the underlying investigation should be modified to exclude certain of Sony's redesigned tape products. 83 FR 42690 (Aug. 23, 2018). The Commission consolidated the modification and ongoing enforcement proceedings and delegated the consolidated proceeding to the ALJ.

On October 10, Sony filed a motion to terminate the modification portion of the consolidated proceeding based on withdrawal of its request for a determination that its redesigned products do not infringe the '891 patent. The motion indicated that Fujifilm does not oppose the requested termination. On October 11, 2018, OUII filed a response supporting the motion.

On October 19, 2018, the ALJ issued the subject ID granting Sony's motion pursuant to Commission Rule 210.21(a)(1) (19 CFR 210.21(a)(1)). The ID finds that Sony's motion complies with the Commission's rules and that there are no extraordinary circumstances that might justify denying the motion. No party petitioned for review of the ID.

The Commission has determined not to review the subject ID.

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: November 14, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018-25254 Filed 11-19-18; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Pistoia Alliance, Inc.

Notice is hereby given that, on October 26, 2018, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Pistoia Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Andrew Hughes (individual member), Wilmslow, UNITED KINGDOM; Indiana Biosciences Research Institute, Indianapolis, IN; CAS, Columbus, OH; Genialis, Inc., Houston, TX; Catalytic Data Science, Wilton, CT; Incedo, Inc., Santa Clara, CA; Sanofi, Cambridge, MA; and Cancer Epigenetics Society, Vienna, AUSTRIA, have been added as parties to this venture.

Also, WuXi AppTec, Shanghai, PEOPLE'S REPUBLIC OF CHINA; and BioRAFT, Cambridge, MA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Pistoia Alliance, Inc. intends to file additional written notifications disclosing all changes in membership.

On May 28, 2009, Pistoia Alliance, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 15, 2009 (74 FR 34364).

The last notification was filed with the Department on August 10, 2018. A notice was published in the **Federal Register** pursuant to Section 6(b) of the

Act on September 4, 2018 (83 FR 44903).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2018–25241 Filed 11–19–18; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Application: Patheon API Manufacturing, Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before January 22, 2019.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Assistant Administrator of the DEA Diversion Control Division (“Assistant Administrator”) pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on September 26, 2018, Patheon API Manufacturing, Inc., 309 Delaware St., Greenville, South Carolina 29605 applied to be registered as a bulk manufacturer for the basic classes of controlled substances:

| Controlled substance | Drug code | Schedule |
|----------------------|-----------|----------|
| Thebaine | 9333 | II |
| Noroxymorphone | 9668 | II |

The company plans to manufacture the above-listed controlled substances

as an Active Pharmaceutical Ingredient (API) for supply to its customers.

Dated: November 2, 2018.

John J. Martin,

Assistant Administrator.

[FR Doc. 2018–25228 Filed 11–19–18; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 18–36]

Eldor Brish, M.D.; Decision and Order

On June 25, 2018, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Eldor Brish, M.D. (Respondent), of Houston, Texas. The Show Cause Order proposed the revocation of Respondent’s DEA Certificate of Registration No. FB2033049 on the ground that he has “no state authority to handle controlled substances.” Order to Show Cause, at 1 (citing 21 U.S.C. 824(a)(3)). For the same reason, the Order also proposed the denial of any of Respondent’s “applications for renewal or modification of such registration and any applications for any other DEA registrations.” *Id.*

With respect to the Agency’s jurisdiction, the Show Cause Order alleged that Respondent is the holder of Certificate of Registration No. FB2033049, pursuant to which he is authorized to dispense controlled substances as a practitioner in schedules II through V, at the registered address of 5400 Pinemont Drive, #108, Houston, Texas. *Id.* The Order also alleged that this registration does not expire until July 31, 2019. *Id.*

Regarding the substantive grounds for the proceeding, the Show Cause Order alleged that on May 18, 2018, the Texas Medical Board (TMB) “issued an Order of Temporary Suspension suspending” Respondent’s Texas medical license, and Respondent is therefore “without authority to practice medicine or handle controlled substances in Texas, the [S]tate in which [he is] registered with DEA.” *Id.* at 2. Based on his “lack of authority to [dispense] controlled substances in . . . Texas,” the Order asserted that “DEA must revoke” Respondent’s registration. *Id.* (citing 21 U.S.C. 824(a)(3); 21 CFR 1301.37(b)).

The Show Cause Order notified Respondent of (1) his right to request a hearing on the allegations or to submit a written statement in lieu of a hearing, (2) the procedure for electing either

option, and (3) the consequence for failing to elect either option. *Id.* (citing 21 CFR 1301.43). The Order also notified Respondent of his right to submit a corrective action plan. *Id.* at 2–3 (citing 21 U.S.C. 824(c)(2)(C)).

On July 23, 2018, Respondent, through counsel, filed a letter requesting a hearing on the allegations. July 23, 2018 Letter from Respondent’s Counsel to Hearing Clerk (hereinafter, Hearing Request). In his Hearing Request, Respondent “requests a hearing be conducted to contest all of the legal issues and factual allegations raised in the DEA’s Order in support of its proposed revocation.” *Id.* at 1. Respondent specifically requested a hearing “to determine whether the DEA is authorized to revoke” Respondent’s registration and, “even if the DEA has authority to revoke, whether a revocation in the instant case represents an abuse of power and/or a failure to exercise appropriate discretion.” *Id.* at 1–2.

The matter was placed on the docket of the Office of Administrative Law Judges and assigned to Administrative Law Judge Mark M. Dowd (hereinafter, ALJ). On July 31, 2018, the ALJ ordered the Government to “file evidence to support the allegation that the Respondent lacks state authority to handle controlled substances” and file “any motion for summary disposition” no later than August 3, 2018. Order Directing the Filing of Government Evidence of Lack of State Authority Allegation and Briefing Schedule, at 1. The ALJ also directed Respondent to file his response to any summary disposition motion no later than August 8, 2018. *Id.* at 2.

On August 3, 2018, the Government filed its Motion for Summary Disposition. In its Motion, the Government argued that Respondent lacks authority to handle controlled substances in Texas because the TMB “suspended Respondent’s Texas Medical License” on May 18, 2018. Government’s Motion for Summary Disposition (hereinafter Government’s Motion or Govt. Mot.) at 3; Government Exhibit (GX) 2 to Govt. Mot. The Government also noted that the TMB conducted a hearing on June 25, 2018 and then “issued a second suspension order” on June 27, 2018. Govt. Mot. at 3 (citing GX 3 to Govt. Mot.). The Government further argued that, “[a]bsent authority by the State of Texas to dispense controlled substances, Respondent is not authorized to possess a DEA registration in that state.” *Id.* Lastly, the Government argued that under Agency precedent, revocation is warranted even where a State has

temporarily suspended a practitioner's state authority with the possibility of future reinstatement. *Id.* at 4 (citations omitted). As support for its summary disposition request, the Government attached, *inter alia*, a copy of the TMB's June 27, 2018 Order directing that Respondent's license "is hereby temporarily suspended . . . effective on the date rendered [June 27, 2018, and] shall remain in effect until it is superseded by an Order of the Board." GX 3 to Govt. Mot., at 5.

In his responsive pleading, Respondent did not dispute that "the TMB's temporary suspension order issued on June 27, 2018 is currently in effect." Respondent's Aug. 13, 2018¹ Response to Government's Motion for Summary Disposition and Respondent's Request in the Alternative to Stay Proceedings Until November 1, 2018 (hereinafter, Resp. Br.), at 3. Instead, Respondent argued that "DEA failed to observe any level of discretion when it resolved to issue revocation (rather than suspension)" because 21 U.S.C. 824(a) "do[es] not represent grounds for mandatory revocation." *Id.* at 2 (emphasis in original). Respondent also argued that DEA issued its Show Cause Order "in the absence of crucial facts" because DEA did not "wait[] to learn whether the underlying temporary suspension order would be overturned or upheld" by the TMB *Id.* at 2–3. Respondent further argued that DEA's proposed revocation of Respondent's DEA registration "would functionally eradicate Respondent's due process rights" and "would fundamentally undermine his ability to avail himself of the procedural safeguards guaranteed by [Texas] law as part of the process leading up to and including the" TMB's Informal Show Compliance and Settlement Conference (ISC) scheduled for October 1, 2018. *Id.* at 3–4. Finally, Respondent argued that "granting the Government's Motion before Respondent has had an opportunity to fully participate in the upcoming ISC would preclude Respondent from fully participating in that . . . process and would stifle the parties' ability to reach an agreement without trial." *Id.* at 4. In the alternative, Respondent requested that "the ALJ stay proceedings and delay issuing a ruling on the

Government's Motion until November 1, 2018." *Id.* at 4.

After considering these pleadings, the ALJ issued an Order on August 27, 2018 denying Respondent's stay request because "Respondent fail[ed] to cite adequate and sufficient grounds for these proceedings to be stayed pending completion of the state medical board's proceedings" and "fail[ed] to provide sufficient reasons why his ability to fully participate in these proceedings would be hindered by the subsequent state proceedings." Order Denying Respondent's Request to Stay Proceedings, at 2. The ALJ concluded that "Agency precedent dictates that a stay of proceedings should not be granted based on the possible outcome of state proceedings." *Id.*

On September 12, 2018, the ALJ issued an order recommending that I find that there was no dispute "over the fact that Respondent currently lacks state authority to handle controlled substances in the State of Texas because the Texas Medical Board has suspended his medical license." Order Granting the Government's Motion for Summary Disposition, and Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge (hereinafter "Recommended Decision" or "R.D."), at 6. As a result, the ALJ granted the Government's motion for summary disposition and recommended that I revoke Respondent's DEA registration. *Id.* at 7.

Neither party filed exceptions to the ALJ's Recommended Decision. Thereafter, the record was forwarded to my Office for Final Agency Action. Having reviewed the record, I find that Respondent is currently without authority to handle controlled substances in Texas, the State in which he holds his registration with the Agency, and thus is not entitled to maintain his DEA registration. I adopt the ALJ's recommendation that I revoke Respondent's registration. I make the following factual findings.

Findings of Fact

Respondent is the holder of DEA Certificate of Registration No. FB2033049, pursuant to which he is authorized to dispense controlled substances in schedules II through V as a practitioner. GX 1 (Certification of Registration History) to Govt. Mot. On May 18, 2018, the TMB issued an Order temporarily suspending Respondent's Texas Medical License No. N–5593 that "shall remain in effect until such time as a hearing on the Application for Temporary Suspension (With Notice of Hearing) is conducted and a

Disciplinary Panel enters an order, or until superseded by a subsequent order of the [TMB]." GX 2 (May 18, 2018 Order of Temporary Suspension) to Govt. Mot., at 6–7.² On June 27, 2018, after a hearing conducted on June 25, 2018, the TMB issued a second Order temporarily suspending Respondent's medical license and found that "Respondent's continuation in the practice of medicine would constitute a continuing threat to the public welfare." GX 3 (June 27, 2018 Order of Temporary Suspension) to Govt. Mot., at 5.³ In that Order, the TMB ordered that the suspension of Respondent's Texas medical license "shall remain in effect until it is superseded by an Order of the Board." *Id.* There is no evidence in the record establishing that the TMB ever issued a superseding order lifting this suspension.

Accordingly, I find that Respondent currently does not possess a license to practice medicine in the State of Texas, the State in which he is registered with the DEA. *See id.* at 5.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (CSA), "upon a finding that the registrant . . . has had his State license . . . suspended [or] revoked . . . by competent State authority and is

² In its May 18, 2018 Order, the TMB found that "Respondent suffers from an impairment that prohibits him from safely practicing medicine." GX 2 to Govt. Mot., at 1. Specifically, the TMB's Order included findings that "[c]ontemporaneous eyewitness accounts from co-workers noted that Respondent was injecting patients with needles with his eyes closed or almost closed" and "exhibited slurred speech and difficulty staying focused, and he aimlessly staggered around the unit." *Id.* at 2. The TMB also found that Respondent "pre-signed several triplicate prescriptions and gave them to a co-worker to refill" for patients. *Id.* The TMB concluded that "Respondent's continuation in the practice of medicine would constitute a continuing threat to the public welfare" and that Respondent "violated various sections of the Medical Practices Act," including "Texas Health and Safety Code § 481.129(c), related to prescribing controlled substances without a valid medical purpose." *Id.* at 5, 6.

³ The TMB reached this conclusion based, *inter alia*, on its findings that Respondent (1) "has a recent history of impairment due to the abuse of drugs and alcohol, including controlled substances;" (2) "was diverting the drugs for personal recreational use;" (3) "was impaired while treating patients . . . due to the use of controlled substances;" and (4) with respect to 15 patients, "failed to meet the standard of care and non-therapeutically prescribed opioids and Soma." GX 3 to Govt. Mot., at 1–3. As it did in its earlier Order, the TMB again concluded that Respondent "violated various sections of the Medical Practices Act," including "Texas Health and Safety Code § 481.129(c), related to prescribing controlled substances without a valid medical purpose." *Id.* at 3, 4.

¹ On August 8, 2018, Respondent filed an "Unopposed Motion for Continuance" requesting that the ALJ continue Respondent's deadline to file his response to the Government's Motion to August 13, 2018. Respondent's Unopposed Motion for Continuance. On the same day, the ALJ issued an Order granting Respondent's unopposed continuance motion. Order Granting the Respondent's Motion for Continuance for Response to Government's Motion for Summary Disposition, at 1.

no longer authorized by State law to engage in the . . . dispensing of controlled substances.” Also, DEA has long held that the possession of authority to dispense controlled substances under the laws of the State in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner’s registration. *See, e.g., James L. Hooper*, 76 FR 71371 (2011), *pet. for rev. denied*, 481 Fed. Appx. 826 (4th Cir. 2012); *see also Frederick Marsh Blanton*, 43 FR 27616 (1978) (“State authorization to dispense or otherwise handle controlled substances is a prerequisite to the issuance and maintenance of a Federal controlled substances registration.”).

This rule derives from the text of two provisions of the CSA. First, Congress defined “the term ‘practitioner’ [to] mean[] a . . . physician . . . or other person licensed, registered or otherwise permitted, by . . . the jurisdiction in which he practices . . . to distribute, dispense, [or] administer . . . a controlled substance in the course of professional practice.” 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner’s registration, Congress directed that “[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.” 21 U.S.C. 823(f).

As already noted, the TMB temporarily suspended Respondent’s Texas license to practice medicine. Under the Texas Controlled Substances Act, a “practitioner” includes a “physician” who is licensed “to dispense . . . or administer a controlled substance in the course of professional practice.” Tex. Controlled Substances Act § 481.002(39)(A). Under the Texas Medical Practice Act, a “physician” is “a person licensed to practice medicine,” Tex. Occ. Code § 151.002(a)(12), and “practicing medicine” means the “diagnosis, treatment, or offer to treat a . . . disease . . . by any system or method.” *Id.* § 151.002(a)(13). Moreover, a “person may not practice medicine in th[e] state unless the person holds a license issued under” the Medical Practice Act, *id.* § 155.001, and “[a] person commits an offense if the person practices medicine in this state in violation of” the Act. *Id.* § 165.152(a). As the ALJ correctly noted, the TMB found in both of its Temporary Suspension Orders that Respondent had violated several provisions of Section 164 of the Texas Occupational Code. *See R.D.*, at 5. Thus, I find that Respondent is currently without

authority to dispense controlled substances under the laws of Texas, the State in which he is registered with the DEA. *Accord Gazelle A. Craig, D.O.*, 83 FR 27628, 27631 (2018).

Moreover, because “the controlling question” in a proceeding brought under 21 U.S.C. 824(a)(3) is whether the holder of a DEA registration “is currently authorized to handle controlled substances in the [S]tate,” *Hooper*, 76 FR at 71371 (quoting *Anne Lazar Thorn*, 62 FR 12847, 12848 (1997)), the Agency has also long held that revocation is warranted even where a practitioner has lost his state authority by virtue of the State’s use of summary process and the State has yet to provide a hearing to challenge the suspension. *Bourne Pharmacy*, 72 FR 18273, 18274 (2007); *Wingfield Drugs*, 52 FR 27070, 27071 (1987). Thus, it is of no consequence that the TMB has suspended Respondent’s medical license and that Respondent may prevail in a future state hearing.⁴ What is consequential is the fact that Respondent is not currently authorized to dispense controlled substances in Texas, the State in which he is registered. *See GX3 to Govt. Mot.*, at 5.

Here, there is no dispute over the material fact that Respondent is no longer currently authorized to dispense controlled substances in Texas, the State in which he is registered. Accordingly, Respondent is not entitled to maintain his DEA registration. I will therefore adopt the ALJ’s recommendation that I revoke Respondent’s registration. R.D., at 7. I will also deny any pending application to renew or to modify his registration, or any pending application for any other DEA registration in Texas, as requested in the Show Cause Order. Order to Show Cause, at 1.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 28 CFR 0.100(b), I order that DEA

⁴ Similarly, and contrary to Respondent’s claim, Due Process does not require the ALJ to delay summary disposition of the case until after completion of his Texas State Informal Show Compliance and Settlement Conference. Resp. Br. at 3–4. Rather, Due Process required the ALJ to provide Respondent the opportunity to respond to the Order to Show Cause and the Government’s Request for Summary Disposition. The ALJ did provide Respondent such an opportunity, and the Respondent did so respond. Respondent provided no authority for the notion that the ALJ violated Respondent’s right to Due Process by, in fact, providing Respondent an opportunity to be heard instead of delaying such opportunity. Respondent’s claim that the ALJ should have delayed his recommended decision is particularly unavailing where, as here, there are no controlling facts in dispute. *Accord Emmanuel O. Nwaokocha, M.D.*, 82 FR 26516, 26518 n.3 (2017); *see also Kenneth N. Woliner, M.D.*, 83 FR 7223, 7225 n.6 (2018).

Certificate of Registration No. FB2033049, issued to Eldor Brish, M.D., be, and it hereby is, revoked. I further order that any pending application of Eldor Brish to renew or modify the above registration, or any pending application of Eldor Brish for any other DEA registration in the State of Texas, be, and it hereby is, denied. This Order is effective immediately.⁵

Dated: October 31, 2018.

Uttam Dhillon,

Acting Administrator.

[FR Doc. 2018–25223 Filed 11–19–18; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: Janssen Pharmaceuticals Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before December 20, 2018. Such persons may also file a written request for a hearing on the application on or before December 20, 2018.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152. Comments and requests for hearings on applications to import narcotic raw material are not appropriate. 72 FR 3417 (January 25, 2007)

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of

⁵ For the same reasons which led the TMB to suspend Respondent’s Texas medical license, I conclude that the public interest necessitates that this Order be effective immediately. 21 CFR 1316.67.

the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Assistant Administrator of the DEA Diversion Control Division ("Assistant Administrator") pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on September 13, 2018, Janssen Pharmaceuticals Inc., 1440 Olympic Drive, Bldgs. 1–5 & 7–14, Athens, Georgia 30601–1645, applied to be registered as an importer of the following basic classes of controlled substances:

| Controlled substance | Drug code | Schedule |
|-------------------------------|-----------|----------|
| Thebaine | 9333 | II |
| Poppy Straw Concentrate | 9670 | II |
| Tapentadol | 9780 | II |

The company plans to import an intermediate form of tapentadol (9780) to bulk manufacture tapentadol for distribution to its customers. The company plans to import thebaine (9333) derivatives as reference standards. The company plans to import concentrated poppy straw (9670) to bulk manufacture other controlled substances. No other activity for these drug codes is authorized for this registration.

Dated: November 6, 2018.

John J. Martin,

Assistant Administrator.

[FR Doc. 2018–25226 Filed 11–19–18; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Edward A. Ridgill, M.D.; Decision and Order

On May 15, 2018, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Edward A. Ridgill, M.D., (Applicant), of Whittier, California. The Show Cause Order proposed the denial of Applicant's application for a DEA Certificate of Registration, "Application Number W15031876C," as a practitioner on the

grounds that Applicant "ha[s] been convicted of a felony relating to controlled substances" and because granting Respondent a "registration would be inconsistent with the public interest." Appendix (App.) 1 to Government's Request for Final Agency Action (RFAA), at 1 (citing 21 U.S.C. 823(f), 824(a)(2), (a)(4)).

With respect to the Agency's jurisdiction, the Show Cause Order alleged that on May 4, 2015, Applicant submitted an application for a DEA registration "to handle controlled substances in Schedules II–IV, with Application Number W15031876C, at 4130 Eadhill Place, Whittier, CA." *Id.* at 2.¹

As to the substantive grounds for the proceeding, the Show Cause Order alleged that "[o]n or about December 4, 2017, a jury convicted" Applicant of 26 counts of unlawful distribution of controlled substances (specifically, hydrocodone, alprazolam, and carisoprodol) in violation of 21 U.S.C. 841(a)(1) and 18 U.S.C. 2 and that the "[j]udgment was entered on April 23, 2018." *Id.* The Order asserted that Respondent's "[c]onviction of a felony relating to controlled substances warrants denial of [his] application for registration." *Id.* (citing 21 U.S.C. 824(a)(2)). The Order also asserted that granting Respondent's application would be "inconsistent with the public interest" in light of his felony convictions. *Id.* (citing 21 U.S.C. 823(f), 824(a)(4)).

The Show Cause Order notified Applicant of (1) his right to request a hearing on the allegations or to submit a written statement in lieu of a hearing, (2) the procedure for electing either option, and (3) the consequence for failing to elect either option. *Id.* at 2–3. (citing 21 CFR 1301.43). The Order also notified Applicant of his right to submit a corrective action plan. *Id.* at 3–4 (citing 21 U.S.C. 824(c)(2)(C)).

With respect to service, a Diversion Investigator (DI) with DEA's Los Angeles Field Division executed a Declaration on September 19, 2018 stating that she "learned that following his conviction, [Applicant] was incarcerated at Victorville Federal Prison . . . in Adelanto, CA." App. 4 (Declaration of DI) to RFAA, at 2. As a

¹ The Show Cause Order also alleged that Applicant was previously "registered with the DEA as a practitioner authorized to handle controlled substances in Schedules II–V" under DEA Certificate of Registration No. FR3094997 at 3625 E. Martin Luther King Boulevard, Suite 9, Lynwood, California. *Id.* at 1. The Order alleged that Applicant "voluntarily surrendered" this registration on March 12, 2015 "during [his] arrest for conspiracy to distribute controlled substances." *Id.*

result, the DI stated in her Declaration that she mailed a copy of the Show Cause Order by certified mail and addressed it to Applicant at the Victorville United States Penitentiary in Adelanto, California. *Id.*² In her Declaration, the DI attached and authenticated a return receipt from the U.S. Postal Service confirming that the mailing was so addressed and was delivered to that penitentiary on June 15, 2018. *Id.*; see Attachment A to App. 4. I therefore find that the Government accomplished service on June 15, 2018. See *Warren B. Dailey, M.D.*, 82 FR 46525, 46526 (2017) (holding that sending Show Cause Order to Respondent by certified mail at U.S. penitentiary and with proof of return receipt was sufficient to establish that Government lawfully accomplished service).

On October 3, 2018, the Government forwarded its Request for Final Agency Action and evidentiary record to my Office. In its Request, the Government represents that more than 30 days had passed since Applicant had been served and that "DEA had not received a request for hearing or any other reply" from him during that time. RFAA, at 3. Based on the Government's representation and the record, I find that more than 30 days have passed since the Order to Show Cause was served on the Applicant, and he has neither requested a hearing nor submitted a written statement in lieu of a hearing. See 21 CFR 1301.43(d). Accordingly, I find that Applicant has waived his right to a hearing or to submit a written statement and issue this Decision and Order based on relevant evidence submitted by the Government. See *id.* I make the following findings.

² The DI also stated in her Declaration that the Show Cause Order "was emailed to [Applicant's] criminal defense attorney" by a Task Force Officer "on or about June 11, 2018." *Id.* However, this attempt at service of the Order pursuant to 21 U.S.C. 824(c), standing alone, would be insufficient for at least two reasons. First, the Government failed to establish that the attorney had "the power to accept service" on behalf of the Applicant in this proceeding. *Warren B. Dailey, M.D.*, 82 FR 46525, 46526 (2017) (internal citations and quotations omitted). Second, assuming the attorney had such authority, the record does not contain (1) a statement that explains whether the DI had independent personal knowledge of the email, (2) a declaration from the Task Force Officer or another declarant who has personal knowledge of the email, or (3) any other evidence corroborating the DI's statement that the Task Force Officer had emailed the attorney. Cf. *Richard Hauser, M.D.*, 83 FR 26308, 26309 n.5 (2018) (finding that a DI's declaration that he "verified" a document's authenticity by conferring with another DI was insufficient absent a declaration from a DI with personal knowledge of the document's authenticity or other evidence to corroborate its authenticity).

Findings of Fact

On or about May 1, 2015, Applicant applied for a practitioner's registration seeking authority to dispense controlled substances in schedules II through IV at the proposed address of 4130 Eadhill Place, Whittier, California. App. 2 (Certification of Registration History) to RFAA, at 1.³ DEA assigned "control number W15031876C" to the application. *Id.* The application is in a "new pending status" with DEA. *Id.*

On September 6, 2016, a federal grand jury returned an indictment against Applicant charging him with (1) seven counts of unlawful prescribing and distribution of hydrocodone when it was a schedule III controlled substance, in violation of 21 U.S.C. 841(a)(1), (b)(1)(E) and 18 U.S.C. 2(b); (2) six counts of unlawful prescribing and distribution of hydrocodone when it was a schedule II controlled substance, in violation of 21 U.S.C. 841(a)(1), (b)(1)(C) and 18 U.S.C. 2(b); (3) nine counts of unlawful prescribing and distribution of alprazolam, a schedule IV controlled substance, in violation of 21 U.S.C. 841(a)(1), (b)(2) and 18 U.S.C. 2(b); and (4) four counts of unlawful prescribing and distribution of carisoprodol, a schedule IV controlled substance, in violation of 21 U.S.C. 841(a)(1), (b)(2) and 18 U.S.C. 2(b). App. 3 to RFAA, at 1–5. On December 4, 2017, a federal jury found Applicant guilty on all counts. *Id.* at 8. On April 23, 2018, a federal district judge in the U.S. District Court for the Central District of California entered a Judgment and Probation/Commitment Order, Case No. CR16–0631 (C.D. Cal.), sentencing Applicant to a term of imprisonment "of 60 months on each of Counts 1 to 26 of the Indictment, to be served concurrently." *Id.* at 9. Thus, I find that Respondent has been convicted of felony offenses under the Controlled Substances Act (CSA) "relating to [] substance[s] defined in [the CSA] as a controlled substance." 21 U.S.C. 824(a)(2); *see also id.*, § 841(a)(1), (b)(1)–(2) (prescribing for various felony sentences of more than one year).

³ Although the Government states in its Request that Applicant submitted his DEA application "[o]n or about May 4, 2015," RFAA, at 2, the Government attached to its Request a Certification of Registration History, which was sworn to and certified on September 27, 2018 by DEA's Associate Chief of Registration and Program Support Section, stating that Applicant submitted his DEA "online application . . . on/about May 1, 2015." App. 2, at 1. In addition, the certification included a copy of the online application which states: "Submission Date: 05–01–2015." *Id.* at 3. Thus, I find that Applicant submitted his DEA application on or about May 1, 2015.

Discussion

Section 303(f) of the Controlled Substances Act provides that an application for a practitioner's registration may be denied upon a determination "that the issuance of such registration would be inconsistent with the public interest." 21 U.S.C. 823(f). In making the public interest determination, the CSA requires the consideration of the following factors:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing . . . controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

Id. "These factors are . . . considered in the disjunctive." *Robert A. Leslie, M.D.*, 68 FR 15227, 15230 (2003). I "may rely on any one or a combination of factors, and may give each factor the weight [I] deem[] appropriate in determining whether . . . an application for registration [should be] denied." *Id.* Moreover, it is well established that I am "not required to make findings as to all of the factors." *Hoxie v. DEA*, 419 F.3d 477, 482 (6th Cir. 2005); *see also Kevin Dennis, M.D.*, 78 FR 52787, 52974 (2013); *MacKay v. DEA*, 664 F.3d 808, 816 (10th Cir. 2011).

Furthermore, under Section 304(a) of the CSA, a registration may be revoked or suspended "upon a finding that the registrant . . . has been convicted of a felony under this subchapter . . . or any other law of the United States, or of any State, relating to any substance defined in this subchapter as a controlled substance." 21 U.S.C. 824(a)(2). *See John P. Moore, III, M.D.*, 82 FR 10398, 10401 (2017) (revocation warranted for conviction of felony offense); *Algirdas J. Krisciunas, M.D.*, 76 FR 4940, 4944 (2011) (revocation warranted for conviction of felony offense under CSA); *Hung Thien Ly, M.D.*, 75 FR 49955, 49956 (2010) (same). Under the same section of the CSA, a registration may also be revoked or suspended if the registrant "has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section." 21 U.S.C. 824(a)(4).

"DEA has long held that the various grounds for revocation or suspension of an existing registration that Congress enumerated in section 304(a), 21 U.S.C.

824(a), are also properly considered in deciding whether to grant or deny an application under section 303." *Richard D. Vitalis, D.O.*, 79 FR 68701, 68708 (2014) (citing *Anthony D. Funches*, 64 FR 14267, 14268 (1999); *Alan R. Schankman*, 63 FR 45260 (1998); *Kuen H. Chen*, 58 FR 65401, 65402 (1993)). Thus, the allegation that Applicant was convicted of a felony relating to a controlled substance under the CSA is properly considered in this proceeding. *Thomas G. Easter II, M.D.*, 69 FR 5579, 5580 (2004) (denial of application because applicant was "convicted of eight State felonies relating the distribution or dispensing of controlled substances . . . is independently appropriate under 21 U.S.C. 823(f) and 824(a)(2)"); *Brady Kortland Fleming*, 46 FR 45841, 45842 (1981) (finding that respondent's conviction of a felony offense related to controlled substances that would justify revocation under 21 U.S.C. 824(a)(2) also provides a statutory basis for denial of respondent's registration under 21 U.S.C. 823(f)); *see also Samuel S. Jackson*, 72 FR 23848, 23852 (2007). The Government bears the burden of proof in showing that the issuance of a registration is inconsistent with the public interest. 21 CFR 1301.44(d). I conclude that there are two separate and independent grounds to deny Applicant's application.

First, as found above, a federal district judge in the United States District Court for the Central District of California entered a judgment convicting Applicant of 26 counts of unlawful distribution of controlled substances under the CSA (hydrocodone, alprazolam, and carisoprodol) in violation of 21 U.S.C. 841(a)(1). Each count of conviction was for a felony offense under the CSA. *See* App. 3 to RFAA, at 9 (citing 21 U.S.C. 841(a)(1), (b)(1)(C) ("[i]n the case of a controlled substance in schedule I or II . . . such person shall be sentenced to a term of imprisonment of not more than 20 years"), (b)(1)(E) ("in the case of any controlled substance in schedule III, such person shall be sentenced to a term of imprisonment of not more than 10 years"), (b)(2) ("[i]n the case of a controlled substance in schedule IV, such person shall be sentenced to a term of imprisonment of not more than 5 years")). Thus, I find that Applicant "has been convicted of a felony offense . . . relating to any substance defined in [the CSA] as a controlled substance." 21 U.S.C. 824(a)(2). This finding alone provides reason to deny Applicant's application for a DEA Certificate of Registration.

Second, Applicant's aforementioned conviction is both relevant and adverse

to Applicant regarding factors three and four of the public interest determination. *Easter*, 69 FR at 5581 (finding that felony convictions related to distribution of controlled substances “are relevant and adverse to” applicant regarding public interest factors two, three, four, and five). Specifically, I may deny Applicant’s pending application pursuant to factor three (21 U.S.C. 823(f)(3)) alone because he has been convicted for unlawful distribution of controlled substances under the CSA. *Trenton F. Horst, D.O.*, 80 FR 41079, 41090 (2015) (holding that pursuant to 21 U.S.C. 823(f)(3), DEA “may deny a pending application for a certificate of registration upon a finding that the applicant has been convicted of a felony related to controlled substances under state or federal law”). In the same vein, Applicant’s conviction for violating the CSA also reflects his lack of “[c]ompliance with applicable . . . Federal . . . laws relating to controlled substances” under factor four, 21 U.S.C. 823(f)(4). Accordingly, I find that the Government’s evidence of Applicant’s convictions is adverse to Applicant with respect to public interest factors three and four and thus establishes that granting Applicant’s application “would be inconsistent with the public interest.” 21 U.S.C. 823(f); *Arvinder Singh, M.D.*, 81 FR 8247–48 & n.2 (2016) (affirming ALJ’s finding that respondent’s felony convictions in violation of the CSA implicated multiple public interest factors (including factors three and four) and thus warranted denial of his application as inconsistent with the public interest).

For all these reasons, and because Applicant failed to respond to the Show Cause Order and thus has failed to offer any evidence to the contrary, I will order that his application be denied.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f), as well as 28 CFR 0.100(b), I order that the application of Edward A. Ridgill, M.D., for a DEA Certificate of Registration as a practitioner be, and it hereby is, denied. This Order is effective immediately.

Dated: October 31, 2018.

Uttam Dhillon,

Acting Administrator.

[FR Doc. 2018–25224 Filed 11–19–18; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Application: Organix, Inc.

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before January 22, 2019.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been re delegated to the Assistant Administrator of the DEA Diversion Control Division (“Assistant Administrator”) pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on September 26, 2018, Organix Inc., 240 Salem Street, Woburn, Massachusetts 01801–2029, applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

| Controlled substances | Drug code | Schedule |
|-------------------------------|-----------|----------|
| Gamma Hydroxybutyric Acid | 2010 | I |
| Lysergic acid diethylamide .. | 7315 | I |
| Marihuana | 7360 | I |
| Tetrahydrocannabinols | 7370 | I |
| Dimethyltryptamine | 7435 | I |
| Psilocybin | 7437 | I |
| Psilocyn | 7438 | I |
| Heroin | 9200 | I |
| Morphine | 9300 | II |

The company plans to synthesize the above-listed controlled substances for distribution to its research and forensics customers.

Dated: November 2, 2018.

John J. Martin,

Assistant Administrator.

[FR Doc. 2018–25229 Filed 11–19–18; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Application: Lipomed

ACTION: Notice of application.

DATES: Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before December 20, 2018. Such persons may also file a written request for a hearing on the application on or before December 20, 2018.

ADDRESSES: Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/LJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152. Comments and requests for hearings on applications to import narcotic raw material are not appropriate. 72 FR 3417, (January 25, 2007).

SUPPLEMENTARY INFORMATION: The Attorney General has delegated his authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been re delegated to the Assistant Administrator of the DEA Diversion Control Division (“Assistant Administrator”) pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on June 18, 2018, Lipomed, 150 Cambridge Park

Dr., Suite 705, Cambridge, Massachusetts 02140 applied to be registered as an importer of the

following basic classes of controlled substances:

| Controlled substance | Drug code | Schedule |
|---|-----------|----------|
| Cathinone | 1235 | |
| Methcathinone | 1237 | |
| Mephedrone (4-Methyl-N-methylcathinone) | 1248 | |
| N-Ethylamphetamine | 1475 | |
| N,N-Dimethylamphetamine | 1480 | |
| Fenethylamine | 1503 | |
| Aminorex | 1585 | |
| 4-Methylaminorex (cis isomer) | 1590 | |
| Gamma Hydroxybutyric Acid | 2010 | |
| Methaqualone | 2565 | |
| Mecloqualone | 2572 | |
| JWH-250 (1-Pentyl-3-(2-methoxyphenylacetyl) indole) | 6250 | |
| SR-18 (Also known as RCS-8) (1-Cyclohexylethyl-3-(2-methoxyphenylacetyl) indole) | 7008 | |
| JWH-019 (1-Hexyl-3-(1-naphthoyl)indole) | 7019 | |
| JWH-081 (1-Pentyl-3-(1-(4-methoxynaphthoyl) indole) | 7081 | |
| SR-19 (Also known as RCS-4) (1-Pentyl-3-[(4-methoxy)-benzoyl] indole | 7104 | |
| JWH-018 (also known as AM678) (1-Pentyl-3-(1-naphthoyl)indole) | 7118 | |
| JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl) indole) | 7122 | |
| JWH-073 (1-Butyl-3-(1-naphthoyl)indole) | 7173 | |
| JWH-200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole) | 7200 | |
| AM2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl) indole) | 7201 | |
| JWH-203 (1-Pentyl-3-(2-chlorophenylacetyl) indole) | 7203 | |
| Alpha-ethyltryptamine | 7249 | |
| Ibogaine | 7260 | |
| CP-47,497 (5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl-phenol) | 7297 | |
| CP-47,497 C8 Homologue (5-(1,1-Dimethyloctyl)-2-[(1R,3S)3-hydroxycyclohexyl-phenol) | 7298 | |
| Lysergic acid diethylamide | 7315 | |
| 2,5-Dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7) | 7348 | |
| Marihuana | 7360 | |
| Tetrahydrocannabinols | 7370 | |
| Parahehyl | 7374 | |
| Mescaline | 7381 | |
| 2-(4-Ethylthio-2,5-dimethoxyphenyl) ethanamine (2C-T-2) | 7385 | |
| 3,4,5-Trimethoxyamphetamine | 7390 | |
| 4-Bromo-2,5-dimethoxyamphetamine | 7391 | |
| 4-Bromo-2,5-dimethoxyphenethylamine | 7392 | |
| 4-Methyl-2,5-dimethoxyamphetamine | 7395 | |
| 2,5-Dimethoxyamphetamine | 7396 | |
| JWH-398 (1-Pentyl-3-(4-chloro-1-naphthoyl) indole) | 7398 | |
| 2,5-Dimethoxy-4-ethylamphetamine | 7399 | |
| 3,4-Methylenedioxyamphetamine | 7400 | |
| 5-Methoxy-3,4-methylenedioxyamphetamine | 7401 | |
| N-Hydroxy-3,4-methylenedioxyamphetamine | 7402 | |
| 3,4-Methylenedioxy-N-ethylamphetamine | 7404 | |
| 3,4-Methylenedioxymethamphetamine | 7405 | |
| 4-Methoxyamphetamine | 7411 | |
| 5-Methoxy-N,N-dimethyltryptamine | 7431 | |
| Alpha-methyltryptamine | 7432 | |
| Bufotenine | 7433 | |
| Psilocybin | 7437 | |
| Psilocyn | 7438 | |
| 5-Methoxy-N,N-diisopropyltryptamine | 7439 | |
| N-Ethyl-1-phenylcyclohexylamine | 7455 | |
| 1-[1-(2-Thienyl)cyclohexyl]piperidine | 7470 | |
| 1-[1-(2-Thienyl)cyclohexyl]pyrrolidine | 7473 | |
| N-Ethyl-3-piperidyl benzilate | 7482 | |
| N-Methyl-3-piperidyl benzilate | 7484 | |
| N-Benzylpiperazine | 7493 | |
| 2-(2,5-Dimethoxy-4-methylphenyl) ethanamine (2C-D) | 7508 | |
| 2-(2,5-Dimethoxy-4-ethylphenyl) ethanamine (2C-E) | 7509 | |
| 2-(2,5-Dimethoxyphenyl) ethanamine (2C-H) | 7517 | |
| 2-(4-iodo-2,5-dimethoxyphenyl) ethanamine (2C-I) | 7518 | |
| 2-(4-Chloro-2,5-dimethoxyphenyl) ethanamine (2C-C) | 7519 | |
| 2-(2,5-Dimethoxy-4-nitro-phenyl) ethanamine (2C-N) | 7521 | |
| 2-(2,5-Dimethoxy-4-(n)-propylphenyl) ethanamine (2C-P) | 7524 | |
| 2-(4-Isopropylthio)-2,5-dimethoxyphenyl) ethanamine (2C-T-4) | 7532 | |
| MDPV (3,4-Methylenedioxypropylvalerone) | 7535 | |
| Methylone (3,4-Methylenedioxy-N-methylcathinone) | 7540 | |
| AM-694 (1-(5-Fluoropentyl)-3-(2-iodobenzoyl) indole) | 7694 | |
| Acetyldihydrocodeine | 9051 | |

| Controlled substance | Drug code | Schedule |
|--|-----------|----------|
| Benzylmorphine | 9052 | I |
| Codeine-N-oxide | 9053 | I |
| Cyprenorphine | 9054 | I |
| Desomorphine | 9055 | I |
| Etorphine (except HCl) | 9056 | I |
| Codeine methylbromide | 9070 | I |
| Dihydromorphine | 9145 | I |
| Difenoxin | 9168 | I |
| Heroin | 9200 | I |
| Hydromorphenol | 9301 | I |
| Methyldesorphine | 9302 | I |
| Methyldihydromorphine | 9304 | I |
| Morphine methylbromide | 9305 | I |
| Morphine methylsulfonate | 9306 | I |
| Morphine-N-oxide | 9307 | I |
| Myrophine | 9308 | I |
| Nicocodeine | 9309 | I |
| Nicomorphine | 9312 | I |
| Normorphine | 9313 | I |
| Pholcodine | 9314 | I |
| Thebacon | 9315 | I |
| Acetorphine | 9319 | I |
| Acetylmethadol | 9601 | I |
| Allylprodine | 9602 | I |
| Alphacetylmethadol except levo-alphaacetylmethadol | 9603 | I |
| Alphamethadol | 9605 | I |
| Dioxaphetyl butyrate | 9621 | I |
| Dipipanone | 9622 | I |
| Ethylmethylthiambutene | 9623 | I |
| Etonitazene | 9624 | I |
| Etoxidine | 9625 | I |
| Furethidine | 9626 | I |
| Hydroxypethidine | 9627 | I |
| Ketobemidone | 9628 | I |
| Levomoramide | 9629 | I |
| Levophenacetylmorphan | 9631 | I |
| Morpheridine | 9632 | I |
| Noracetylmethadol | 9633 | I |
| Norlevorphanol | 9634 | I |
| Normethadone | 9635 | I |
| Norpipanone | 9636 | I |
| Phenadoxone | 9637 | I |
| Phenampromide | 9638 | I |
| Phenoperidine | 9641 | I |
| Piritramide | 9642 | I |
| Proheptazine | 9643 | I |
| Properidine | 9644 | I |
| Racemoramide | 9645 | I |
| Trimeperidine | 9646 | I |
| Phenomorphane | 9647 | I |
| Propiram | 9649 | I |
| Tilidine | 9750 | I |
| Para-Fluorofentanyl | 9812 | I |
| 3-Methylfentanyl | 9813 | I |
| Acetyl-alpha-methylfentanyl | 9815 | I |
| Beta-hydroxy-3-methylfentanyl | 9831 | I |
| Amphetamine | 1100 | II |
| Methamphetamine | 1105 | II |
| Lisdexamfetamine | 1205 | II |
| Phenmetrazine | 1631 | II |
| Methylphenidate | 1724 | II |
| Amobarbital | 2125 | II |
| Pentobarbital | 2270 | II |
| Secobarbital | 2315 | II |
| Glutethimide | 2550 | II |
| Nabilone | 7379 | II |
| 1-Phenylcyclohexylamine | 7460 | II |
| Phencyclidine | 7471 | II |
| 4-Anilino-N-phenethyl-4-piperidine (ANPP) | 8333 | II |
| Phenylacetone | 8501 | II |
| 1-Piperidinocyclohexanecarbonitrile | 8603 | II |
| Alphaprodine | 9010 | II |
| Anileridine | 9020 | II |
| Cocaine | 9041 | II |

| Controlled substance | Drug code | Schedule |
|---|-----------|----------|
| Codeine | 9050 | II |
| Etorphine HCl | 9059 | II |
| Dihydrocodeine | 9120 | II |
| Oxycodone | 9143 | II |
| Hydromorphone | 9150 | II |
| Diphenoxylate | 9170 | II |
| Ecgonine | 9180 | II |
| Ethylmorphine | 9190 | II |
| Hydrocodone | 9193 | II |
| Levomethorphan | 9210 | II |
| Levorphanol | 9220 | II |
| Isomethadone | 9226 | II |
| Meperidine | 9230 | II |
| Meperidine intermediate-B | 9233 | II |
| Metazocine | 9240 | II |
| Methadone | 9250 | II |
| Methadone intermediate | 9254 | II |
| Metopon | 9260 | II |
| Dextropropoxyphene, bulk (non-dosage forms) | 9273 | II |
| Morphine | 9300 | II |
| Thebaine | 9333 | II |
| Dihydroetorphine | 9334 | II |
| Levo-alphaacetylmethadol | 9648 | II |
| Oxymorphone | 9652 | II |
| Noroxymorphone | 9668 | II |
| Phenazocine | 9715 | II |
| Piminodine | 9730 | II |
| Racemethorphan | 9732 | II |
| Racemorphan | 9733 | II |
| Alfentanil | 9737 | II |
| Remifentanil | 9739 | II |
| Sufentanil | 9740 | II |
| Carfentanil | 9743 | II |
| Tapentadol | 9780 | II |
| Bezitramide | 9800 | II |
| Fentanyl | 9801 | II |

The company plans to import analytical reference standards for distribution to its customers for research and analytical purposes. Placement of these drug codes onto the company's registration does not translate into automatic approval of subsequent permit applications to import controlled substances. Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2).

Authorization will not extend to the import of FDA approved or non-approved finished dosage forms for commercial sale.

Dated: November 2, 2018.

John J. Martin,

Assistant Administrator.

[FR Doc. 2018-25227 Filed 11-19-18; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Oil Pollution Act

On November 9, 2018, the Department of Justice lodged a proposed Consent

Decree with the United States District Court for the Eastern District of Louisiana in the lawsuit entitled *United States of America and State of Louisiana v. Hess Corporation*, Civil Action No. 2:18-cv-10727. The United States is acting at the request of the designated federal trustee: The United States Department of the Interior, through the United States Fish and Wildlife Service. The State of Louisiana (the "State") is acting through its designated State trustees: The Louisiana Oil Spill Coordinator's Office, Department of Public Safety, Louisiana Department of Natural Resources, Louisiana Department of Environmental Quality, Louisiana Department of Wildlife and Fisheries, and the Coastal Protection and Restoration Authority.

The United States and the State have filed a Complaint against Hess Corporation ("Hess") under Section 1002 of the Oil Pollution Act ("OPA"), 33 U.S.C. 2702, and Section 2480 of the Louisiana Oil Spill Prevention and Response Act ("OSPR"), La. Rev. Stat. 30:2480, for the recovery of damages for injury to, destruction of, loss of, or loss of use of natural resources, plus the unreimbursed costs of assessing such

injuries, resulting from Hess's crude oil discharge into the Gulf of Mexico from its offshore platform in Block 51 of Breton Sound, Plaquemines Parish, Louisiana, on or about June 12, 2005.

Under the proposed Consent Decree, Hess will pay a total of \$8,723,394.88. Of this total, Hess will pay \$8.630 million to the trustees to restore, replace, or acquire the equivalent of the natural resources allegedly injured, destroyed, or lost as a result of the oil spill and \$93,394.88 to reimburse the trustees for all remaining unpaid assessment costs.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America and State of Louisiana v. Hess Corporation*, D.J. Ref. No. 90-11-3-11785. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted by either email or by mail:

| | |
|----------------------------|---|
| <i>To submit comments:</i> | <i>Send them to:</i> |
| By email | <i>pubcomment-ees.enrd@usdoj.gov.</i> |
| By mail | Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611. |

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for \$7.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Thomas Carroll,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2018–25211 Filed 11–19–18; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

U.S. Marshals Service

[OMB Number 1105–0094]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension With Change, of a Previously Approved Collection; Applications for Special Deputation

AGENCY: U.S. Marshals Service, Department of Justice.

ACTION: 60-day notice.

SUMMARY: The Department of Justice (DOJ), U.S. Marshals Service (USMS), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until January 22, 2019.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, particularly with respect to the estimated public burden or associated response time, have suggestions, need a copy of the proposed information collection instrument with instructions, or desire any additional information, please contact Nicole Timmons either

by mail at CG–3, 10th Floor, Washington, DC 20530–0001, by email at Nicole.Timmons@usdoj.gov, or by telephone at 202–236–2646.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

1. *Type of Information Collection* (check justification or form 83):

Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Applications for Special Deputation.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): USM–3A and USM–3C.

Component: U.S. Marshals Service, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Federal government and State/local government.

Abstract: The collection of information for these forms is authorized by 28 U.S.C. 562. The USMS is authorized to deputize selected persons to perform the functions of a Special Deputy U.S. Marshal whenever the law enforcement needs of the USMS so require and as designated by the Associate Attorney General pursuant to 28 CFR 0.19(a)(3). USMS Special Deputation files serve as a centralized record of the special deputations

granted by the USMS to assist in tracking, controlling and monitoring the Special Deputation Program.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 6,000 respondents will complete a 15 minute form (Form USM–3A) and 5,500 respondents will complete a 10 minute form (Form USM–3C).

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 2,417 hours. It is estimated that applicants will take 15 minutes to complete a Form USM–3A and 10 minutes to complete a Form USM–3C. In order to calculate the public burden for Form USM–3A, USMS multiplied 15 by 6,000 and divided by 60 (the number of minutes in an hour), which equals 1,500 total annual burden hours. In order to calculate the public burden for Form USM–3C, USMS multiplied 10 by 5,500 and divided by 60 (the number of minutes in an hour), which equals 917 total annual burden hours. In sum there are an estimated 2,417 total annual public burden hours associated with this collection.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: November 15, 2018.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2018–25309 Filed 11–19–18; 8:45 am]

BILLING CODE 4410–FY–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (18–093)]

NASA Advisory Council; STEM Engagement Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Science, Technology, Engineering and Mathematics (STEM) Engagement Committee of the NASA Advisory

Council (NAC). This Committee reports to the NAC.

DATES: Tuesday, December 4, 2018, 12:30 p.m. to 5:00 p.m., Eastern Time.

ADDRESSES: NASA Headquarters, Room 4U25, 300 E Street SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Beverly Girtten, Designated Federal Officer, Office of STEM Engagement, NASA Headquarters, Washington, DC 20546, (202) 358-0212, or beverly.e.girtten@nasa.gov.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public to the capacity of the room. This meeting will also be available telephonically and by WebEx. You must use a touch-tone phone to participate in this meeting. Any interested person may dial the toll-free access number 1-844-467-6272 or toll access number 1-720-259-6462, passcode 634012, followed by the # sign, to participate in this meeting by telephone. To join via WebEx on December 4, the link is <https://nasaenterprise.webex.com/>, the meeting number is 905 805 195 and the password is Advisory2018\$ (case sensitive). *Note:* If dialing in, please “mute” your telephone. The agenda for the meeting will include the following:

- Opening Remarks by Chair
- STEM Education Advisory Panel Update
- Committee on STEM 5 Year Strategic Plan Overview
- STEM Engagement Update
- Space STEM Forum Summary
- Performance and Evaluation Update
- Discussion on Recommendations and Findings
- Other Related Topics

Attendees will be required to sign a register and to comply with NASA security requirements including the presentation of a valid picture ID before receiving access to NASA Headquarters. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee; and home address to Dr. Beverly Girtten via email at beverly.e.girtten@nasa.gov or by telephone at (202) 358-0212. To expedite admittance, U.S. citizens and Permanent Residents (green card holders) are requested to submit their

name and affiliation no less than 3 working days prior to the meeting to Dr. Beverly Girtten. It is imperative that this meeting be held on this day to accommodate the scheduling priorities of the key participants.

Patricia Rausch,

*Advisory Committee Management Officer,
National Aeronautics and Space
Administration.*

[FR Doc. 2018-25208 Filed 11-19-18; 8:45 am]

BILLING CODE 4510-13-P

NUCLEAR REGULATORY COMMISSION

659th Meeting of the Advisory Committee on Reactor Safeguards (ACRS)

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold meetings on December 5-8, 2018, Three White Flint North, 11601 Landsdown Street, North Bethesda, MD 20852.

Wednesday, December 5, 2018, Conference Room 1C3 & 1C5, Three White Flint North, 11601 Landsdown Street, North Bethesda, MD 20852

8:30 a.m.–8:35 a.m.: *Opening Remarks by the ACRS Chairman* (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:15 a.m.: *Technology-Inclusive, Risk-Informed, Performance-Based Approach for Approving Non-Light-Water Reactors* (Open)—The Committee will have briefings by and discussion with representatives of the NRC staff regarding the subject topic.

10:30 a.m.–12:00 p.m.: *Clinch River Early Site Permit* (Open)—The Committee will have briefings by and discussion with representatives of the NRC staff and Tennessee Valley Authority regarding the safety evaluation associated with the subject early site permit application.

1:00 p.m.–3:00 p.m.: *Seabrook License Renewal Application* (Open/Closed)—The Committee will have informational briefings by and discussion with representatives of the NRC staff and NextEra Energy Seabrook, LLC regarding the safety evaluation associated with the subject license renewal application. [*Note:* A portion of this session may be closed in order to discuss and protect information designated as

proprietary, pursuant to 5 U.S.C. 552b(c)(4)].

3:15 p.m.–6:00 p.m.: *Preparation of ACRS Reports* (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [*Note:* A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)].

Thursday, December 6, 2018, Conference Room 1C3 & 1C5, Three White Flint North, 11601 Landsdown Street, North Bethesda, MD 20852

8:30 a.m.–9:45 a.m.: *Preparation for Commission Meeting* (Open)—The Committee will prepare for the meeting with the Commission.

10:00 a.m.–12:00 p.m.: *Meeting with the Commission* (Open)—The Committee will have a discussion of mutual topics of interest with the Commission.

1:00 p.m.–6:00 p.m.: *Preparation of ACRS Reports* (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [*Note:* A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)].

Friday, December 7, 2018, Conference Room 1C3 & 1C5, Three White Flint North, 11601 Landsdown Street, North Bethesda, MD 20852

8:30 a.m.–10:00 a.m.: *Future ACRS Activities/Report of the Planning and Procedures Subcommittee and Reconciliation of ACRS Comments and Recommendations* (Open/Closed)—The Committee will hear discussion of the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS meetings. [*Note:* A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy].

10:15 a.m.–12:00 p.m.: *Preparation of ACRS Reports* (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [*Note:* A portion of this session may be closed in order to discuss and protect information

designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)].

2:00 p.m.–6:00 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [Note: A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)].

Saturday, December 8, 2018, Conference Room 1C3 & 1C5, Three White Flint North, 11601 Landsdown Street, North Bethesda, MD 20852

8:30 a.m.–12:00 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [Note: A portion of this session may be closed in order to discuss and protect information designated as proprietary, pursuant to 5 U.S.C. 552b(c)(4)].

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 4, 2017 (82 FR 46312). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Quynh Nguyen, Cognizant ACRS Staff (Telephone: 301-415-5844, Email: Quynh.Nguyen@nrc.gov), 5 days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience. The bridgeline number for the meeting is 866-822-3032, passcode 8272423#.

Thirty-five hard copies of each presentation or handout should be provided 30 minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the Cognizant ACRS Staff one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Cognizant ACRS Staff with a CD containing each presentation at least 30 minutes before the meeting.

In accordance with Subsection 10(d) of Public Law 92-463 and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting

may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agendas, meeting transcripts, and letter reports are available through the NRC Public Document Room at pdr.resource@nrc.gov, or by calling the PDR at 1-800-397-4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC website at <http://www.nrc.gov/reading-rm/adams.html> or <http://www.nrc.gov/reading-rm/doc-collections/#ACRS/>.

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service should contact Mr. Theron Brown, ACRS Audio Visual Technician (301-415-6702), between 7:30 a.m. and 3:45 p.m. (ET), at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: November 14, 2018.

Russell E. Chazell,

Federal Advisory Committee Management Officer, Office of the Secretary.

[FR Doc. 2018-25250 Filed 11-19-18; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2018-0266]

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 October 23, 2018, to November 5, 2018. The last biweekly notice was published on November 6, 2018.

DATES: Comments must be filed by December 20, 2018. A request for a hearing must be filed by January 22, 2019.

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-2018-0266. Address questions about Docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301-287-9127; email: Jennifer.Borges@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Mail comments to:* 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-2018-0266, 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-2018-0266.

- *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–2018–0266, 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 <http://www.nrc.gov/site-help/e-submittals/getting-started.html>. Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's

public 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. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2 (Catawba), York County, South Carolina

Date of amendment request: July 19, 2018. A publicly-available version is in ADAMS under Accession No. ML18200A252.

Description of amendment request: The amendments would modify the Catawba Updated Final Safety Analysis Report (UFSAR), Section 6.2.4.2.2, "Containment Valve Injection Water System [CVIWS]," to remove the CVIWS supply from specified Safety Injection (NI) and Containment Spray (NS) Containment Isolation Valves (CIVs),

and to exempt these CIVs from Type C Local Leak Rate Testing (LLRT). Additionally, the amendments would modify UFSAR, Table 6-77, "Containment Isolation Valve Data," to make corresponding changes.

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 amendment request is to remove select Containment Isolation Valves from the Local Leak Rate Test (LLRT) program. These valves were originally included in the LLRT under 10 CFR 50, Appendix J, in what is now Option A. [Catawba] has been approved for 10 CFR 50, Appendix J, Option B under License Amendment No. 192/184. Under Option B, valves may be exempted from LLRT Type C testing if they are not a potential containment atmosphere leakage path. Based on the design and operation of the NI and NS Systems, the valves do not constitute a containment atmospheric leakage path as covered in the Safety Evaluation. Since the valves are not a leakage path, there is no impact on the consequence of an accident. Moreover, the valves are not a part of the Reactor Coolant Pressure Boundary, thus they do not affect the probability of an accident.

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 systems design and operation are not changing. This test exemption does not change the way the valves are used as a part of the NI and NS Systems. A detailed Failure Modes and Effects Analysis was completed to confirm the system operation would meet the containment isolation design function.

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 the margin of safety?

Response: No.

The test exemption is within existing regulatory requirements. The application of a closed loop outside of containment is appropriate and consistent with regulatory positions. With containment integrity maintained within the allowable regulatory framework, there is no reduction in the margin of safety.

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: Kate B. Nolan, Deputy General Counsel, Duke Energy Carolinas, LLC, 550 South Tryon Street—DEC45A, Charlotte, NC 28202-1802.

NRC Branch Chief: Michael T. Markley.

Exelon FitzPatrick, LLC and Exelon Generation Company, LLC, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant (FitzPatrick), Oswego County, New York

Date of amendment request: October 2, 2018. A publicly-available version is in ADAMS under Accession No. ML18275A060.

Description of amendment request: The amendment would modify the Technical Specifications concerning a change to the method of calculating core reactivity for the purpose of performing the reactivity anomaly surveillance at FitzPatrick.

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 Technical Specification change does not affect any plant systems, structures, or components designed for the prevention or mitigation of previously evaluated accidents. The amendment would only change how the reactivity anomaly surveillance is performed. Verifying that the core reactivity is consistent with predicted values ensures that accident and transient safety analyses remain valid. This amendment changes the Technical Specification requirements such that, rather than performing the surveillance by comparing predicted to actual control rod density, the surveillance is performed by a direct comparison of k_{eff} . Present day online core monitoring systems, such as the one in use at the James A. FitzPatrick Nuclear Power Plant [(JAFNPP)], Unit 1 are capable of performing the direct measurement of reactivity.

Therefore, since the reactivity anomaly surveillance will continue to be performed by a viable method, the proposed amendment does not involve a significant increase in the probability or consequence of a previously evaluated accident.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This Technical Specifications amendment request does not involve any changes to the operation, testing, or maintenance of any safety-related, or otherwise important to safety systems. All systems important to safety will continue to be operated and maintained within their design bases. The proposed changes to the reactivity anomaly Technical Specifications will only provide a new, more efficient method of detecting an unexpected change in core reactivity.

Since all systems continue to be operated within their design bases, no new failure modes are introduced and the possibility of a new or different kind of accident is not created.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

This proposed Technical Specifications amendment proposes to change the method for performing the reactivity anomaly surveillance from a comparison of predicted to actual control rod density to a comparison of predicted to actual k_{eff} . The direct comparison of k_{eff} provides a technically superior method of calculating any differences in the expected core reactivity. The reactivity anomaly surveillance will continue to be performed at the same frequency as is currently required by the Technical Specifications, only the method of performing the surveillance will be changed. Consequently, core reactivity assumptions made in safety analyses will continue to be adequately verified.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Donald P. Ferraro, Assistant General Counsel, Exelon Generation Company, LLC, 200 Exelon Way, Suite 305, Kennett Square, PA 19348.

NRC Branch Chief: James G. Danna.

Exelon Generation Company (EGC), LLC, Docket No. 50-461, Clinton Power Station (CPS), Unit No. 1, DeWitt County, Illinois

Date of amendment request: September 28, 2018. A publicly-available version is in ADAMS under Accession No. ML18271A217.

Description of amendment request: The amendment would make Technical Specification (TS) changes that are consistent with NRC-approved Industry Technical Specification Task Force (TSTF) Standard Technical

Specification Change Traveler, TSTF-476, Revision 1. The availability of this TS improvement was announced in the **Federal Register** on May 23, 2007 (72 FR 29004).

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 modifies the TS to allow the use of the improved BPWS [Banked Position Withdrawal Sequence] during shutdowns if the conditions of NEDO-33091-A, Revision 2, "Improved BPWS Control Rod Insertion Process," July 2004 [ADAMS Accession No. ML042230366], have been satisfied. The justifications to support the specific TS changes are consistent with the approved topical report and TSTF-476, Revision 1. Since the change only involves changes in control rod sequencing, the probability of an accident previously evaluated is not significantly increased, if at all. The consequences of an accident after adopting TSTF-476 are no different than the consequences of an accident prior to adopting TSTF-476. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. Therefore, this 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 will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The control rod drop accident (CRDA) is the design basis accident for the subject TS changes. This change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change, TSTF-476, Revision 1, incorporates the improved BPWS, previously approved in NEDO-33091-A, into the CPS TS. The CRDA is the design basis accident for the subject TS changes. In order to minimize the impact of a CRDA, the BPWS process was developed to minimize control rod reactivity worth for boiling water reactor plants. The proposed improved BPWS further simplifies the shutdown control rod insertion process, and in order to evaluate it, the NRC followed the guidelines of Standard Review Plan Section 15.4.9, and referred to General Design Criterion 28 of Appendix A to 10 CFR part 50 as its regulatory

requirement. The TSTF stated the improved BPWS provides the following benefits: (1) Allows the plant to reach the all-rods-in condition prior to significant reactor cool down, which reduces the potential for recriticality as the reactor cools down; (2) reduces the potential for an operator reactivity control error by reducing the total number of control rod manipulations; (3) minimizes the need for manual scrams during plant shutdowns, resulting in less wear on control rod drive (CRD) system components and CRD mechanisms; and (4) eliminates unnecessary control rod manipulations at low power, resulting in less wear on reactor manual control and CRD system components. The addition of procedural requirements and verifications specified in NEDO-33091-A, along with the proper use of the BPWS will prevent a CRDA from occurring while power is below the low power setpoint (LPSP). The net change to the margin of safety is insignificant. Therefore, this 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: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: David J. Wrona.

Exelon Generation Company, LLC (Exelon), Docket No. 50-289, Three Mile Island Nuclear Station, Unit 1 (TMI-1), Dauphin County, Pennsylvania

Date of amendment request: July 25, 2018. A publicly-available version is in ADAMS under Accession No. ML18206A545.

Description of amendment request: The amendment would revise the TMI-1 Renewed Facility Operating License (RFOL) and associated Technical Specifications (TSs) to the Permanently Defueled Technical Specifications (PDTs), consistent with the permanent cessation of reactor operation and permanent defueling of the reactor. By letter dated June 20, 2017 (ADAMS Accession No. ML17171A151), Exelon provided formal notification to the NRC of Exelon's contingent determination to permanently cease operations at TMI-1 no later than September 30, 2019. The amendment would eliminate those TSs applicable in operating mode or modes where fuel is placed in the reactor vessel. The amendment would change other TS limiting conditions for operation (LCOs), definitions, surveillance requirements, and administrative controls, as well as several license conditions. The

amendment would also modify the licensing basis mitigation strategies for flood mitigation and aircraft impact protection in the air intake tunnel.

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 changes would not take effect until TMI has certified to the NRC that it has permanently ceased operation and entered a permanently defueled condition. Because the 10 CFR part 50 license for TMI will no longer authorize operation of the reactor, or emplacement or retention of fuel into the reactor vessel with the certifications required by 10 CFR part 50.82(a)(1) submitted, as specified in 10 CFR part 50.82(a)(2), the occurrence of postulated accidents associated with reactor operation is no longer credible.

The remaining UFSAR [Updated Final Safety Analysis Report] Chapter 14 postulated design basis accident (DBA) events that could potentially occur at a permanently defueled facility would be a Fuel Handling Accident (FHA) in the Spent Fuel pool (SFP), Waste Gas Tank Rupture (WGTR), and Fuel Cask Drop Accident (FCDA). The FHA analyses for TMI shows that, following 60 days of decay time after reactor shutdown and provided the SFP water level requirements of proposed TS LCO 3/4.1.1 are met, the dose consequences are acceptable without relying on SSCs [structures, systems, and components] to remain functional for accident mitigation during and following the event. The one exception to this is the continued function of the passive SFP structure. The remaining DBAs that support permanently shutdown and defueled condition do not rely on any active safety system for mitigation.

The probability of occurrence of previously evaluated accidents is not increased, since extended operation in a defueled condition and safe storage and handling of fuel will be the only operations performed, and therefore, bounded by the existing analyses. Additionally, the occurrence of postulated accidents associated with reactor operation will no longer be credible in a permanently defueled reactor. This significantly reduces the scope of applicable accidents.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes to delete and/or modify certain [requirements of the] TMI RFOL, TS, or CLB [Current Licensing Basis] have no impact on facility SSCs affecting the

safe storage of spent irradiated fuel, or on the methods of operation of such SSCs, or on the handling and storage of spent irradiated fuel itself. The removal of TS that are related only to the operation of the nuclear reactor, or only to the prevention, diagnosis, or mitigation of reactor related transients or accidents, cannot result in different or more adverse failure modes or accidents than previously evaluated because the reactor will be permanently shutdown and defueled and TMI will no longer be authorized to operate the reactor.

The proposed modification or deletion of requirements of the TMI RFOL, TS, and CLB [does] not affect systems credited in the accident analysis for the remaining credible DBAs at TMI. The proposed RFOL and PDTs will continue to require proper control and monitoring of safety significant parameters and activities. The TS regarding SFP water level and spent fuel storage is retained to preserve the current requirements for safe storage of irradiated fuel.

The proposed amendment does not result in any new mechanisms that could initiate damage to the remaining relevant safety barriers for defueled plants (fuel cladding, spent fuel racks, SFP integrity, and SFP water level). Since extended operation in a defueled condition and safe fuel handling will be the only operation allowed, and therefore bounded by the existing analyses, such a condition does not create the possibility of a new or different kind of accident.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes involve deleting and/or modifying certain [requirements of the] RFOL, TS, and CLB once the TMI facility has been permanently shutdown and defueled. Because the 10 CFR part 50 license for TMI [will] no longer [authorize] operation of the reactor, or emplacement or retention of fuel into the reactor vessel with the certifications required by 10 CFR part 50.82(a)(1) submitted, as specified in 10 CFR part 50.82(a)(2), the occurrence of postulated accidents associated with reactor operation is no longer credible. The remaining postulated DBA events that could potentially occur at a permanently defueled facility would be a FHA, WGTR, and FCDA. The proposed amendment does not adversely affect the inputs or assumptions of any of the design basis analyses.

The proposed changes are limited to those portions of the RFOL, TS, and CLB that are not related to the safe storage of irradiated fuel. The requirements that are proposed to be revised or deleted from the RFOL, TS, and CLB are not credited in the existing accident analysis for the remaining applicable postulated accidents; and as such, do not contribute to the margin of safety associated with the accident analysis. Postulated design basis accidents involving the reactor will no longer be possible because the reactor will be permanently shutdown and defueled and TMI will no longer be authorized to operate the reactor.

Therefore, the proposed changes do 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: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: James G. Danna.

Exelon Generation Company, LLC and PSEG Nuclear LLC, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania

Date of amendment request: September 27, 2018. A publicly-available version is in ADAMS under Accession No. ML18271A009.

Description of amendment request: The amendment would modify the applicability for Technical Specification (TS) Section 3.3.6.2, "Secondary Containment Isolation Instrumentation," Functions 3 and 4, related to reactor building and refueling floor ventilation exhaust, respectively. This change would be implemented in the fall of 2019.

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 requested changes to TS Section 3.3.6.2 to revise the applicability of Functions 3 and 4 as proposed does not eliminate the design function associated with the radiation monitoring instrumentation. The Secondary Containment Isolation Instrumentation will continue to automatically initiate closure of appropriate Secondary Containment Isolation Valves (SCIVs) and start the Standby Gas Treatment (SGT) system as designed to limit fission product release during any postulated Design Basis Accidents (DBAs). These systems are not accident initiators. The proposed changes will continue to assure that these systems perform their design functions, which includes mitigating accidents. The proposed changes do not alter the physical design of any plant Structure, System, or Components (SSC); therefore, the proposed changes have no adverse effect on plant operation, or the availability or operation of any accident mitigation equipment. The plant response to

DBAs does not change and remains as analyzed in the Updated Final Safety Analysis Report (UFSAR).

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 requested changes to TS Section 3.3.6.2 to revise the applicability of Functions 3 and 4 as proposed does not adversely affect the design function associated with the radiation monitoring instrumentation. The proposed changes do not change any system operations or maintenance activities that would create the possibility of a new or different kind of accident from one previously evaluated. The Secondary Containment Isolation Instrumentation and SGT system will continue to function as designed. The proposed changes will continue to assure that these systems perform their design functions, which includes mitigating accidents. The proposed changes do not create new failure modes or mechanisms and no new accident precursors are created. The proposed changes do not alter the plant configuration (no new or different type of equipment is being installed) or require any new or unusual Operator actions. The proposed changes do not alter the safety limits or safety analysis assumptions associated with the operation of the plant. The proposed changes do not introduce any new failure modes or mechanisms that could result in a new accident. The proposed changes do not reduce or adversely affect the capabilities of any plant SSC in the performance of their safety function. Also, the response of the plant and the Operators following any DBA is unaffected by the proposed changes.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The requested changes to TS Section 3.3.6.2 to revise the applicability of Functions 3 and 4 as proposed does not alter the design capability associated with the radiation monitoring instrumentation. The proposed changes have no adverse effect on plant operation, or the availability or operation of any accident mitigation equipment. The plant response to DBAs does not change. The proposed changes do not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analyses. There is no change being made to safety analysis assumptions, safety limits or limiting safety system settings that would adversely affect plant safety as a result of the proposed changes.

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: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Rd., Warrenville, IL 60555.

NRC Branch Chief: James G. Danna.

Exelon Generation Company, LLC, Docket No. 50-289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of amendment request: September 20, 2018. A publicly-available version is in ADAMS under Accession No. ML18263A199.

Description of amendment request: The amendment would make administrative changes to Technical Specification 4.4.2.1, "Inservice Tendon Surveillance Requirements." The amendment would add the words "except where an alternative, exemption, or relief has been authorized by the NRC" to allow NRC-approved exceptions to the 10 CFR 50.55a requirements. Also, the amendment would add a note to exempt from the requirements of Surveillance Requirement 4.0.1.

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 addition of the words "except where an alternative, exemption, or relief has been authorized by the NRC" to Technical Specification (TS) 4.4.2.1 ("Inservice Tendon Surveillance Requirements") and the addition of the wording "The surveillance interval extension allowed per Surveillance Requirement 4.0.1 is not permitted" are administrative changes that have no impact on the accidents analyzed and are not an accident initiator. Since the changes do not impact any conditions that would initiate an accident, the probability or consequences of previously analyzed events is not increased.

The proposed changes do not involve the modification of any plant equipment or affect plant operation. The proposed changes will have no impact on any safety-related structures, systems, or components.

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.

No safety-related equipment, safety function, or plant operation will be altered as a result of these proposed administrative changes. No new operator actions are created as a result of the proposed changes. These administrative changes have no impact on the accidents analyzed in the Updated Final Safety Analysis Report (UFSAR) and are not accident initiators. These proposed changes do not impact the U.S. Nuclear Regulatory Commission Staff's authority to review and grant exceptions. The addition of the wording "The surveillance interval extension allowed per Surveillance Requirement 4.0.1 is not permitted" has been added to address the concerns identified in the U.S. Nuclear Regulatory Commission's Safety Evaluation Report (Reference 3 of the licensee's letter dated September 20, 2018)].

Since these proposed changes do not impact any conditions that would initiate an accident, there is no possibility of a new or different kind of accident resulting from these changes. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed administrative changes do not affect any margins of safety. The margins of safety presently provided by the Technical Specifications remain unchanged. The proposed amendment does not affect the design of the facility or system operating parameters, does not physically alter safety-related systems, structures, or components (SSCs) and does not affect the method in which safety-related systems perform their functions.

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: Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: James G. Danna.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1 (FCS), Washington County, Nebraska

Date of amendment request: September 28, 2018. A publicly-available version is in ADAMS under Accession No. ML18275A323.

Description of amendment request: The proposed amendment would revise

the Renewed Facility License and the Permanently Defueled Technical Specifications (PDTs) for FCS to reflect the requirements after removal of all remaining spent nuclear fuel from the spent fuel pool (SFP) and its transfer to dry cask storage within an Independent Spent Fuel Storage Installation (ISFSI).

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 amendment would modify the FCS renewed facility operating license and PDTs by deleting the portions of the license and PDTs that are no longer applicable to a facility with no spent nuclear fuel stored in the spent fuel pool, while modifying the remaining portions to correspond to all nuclear fuel stored within an ISFSI. This amendment becomes effective upon removal of all spent nuclear fuel from the FCS SFP and its transfer to dry cask storage within an ISFSI. The definition of safety-related structures, systems, and components (SSCs) in 10 CFR 50.2 states that safety-related SSCs are those relied on to remain functional during and following design basis events to assure:

1. The integrity of the reactor coolant boundary;
2. The capability to shutdown the reactor and maintain it in a safe shutdown condition; or
3. The capability to prevent or mitigate the consequences of accidents which could result in potential offsite exposures comparable to the applicable guideline exposures set forth in 10 CFR 50.34(a)(1) or § 100.11.

The first two criteria (integrity of the reactor coolant pressure boundary and safe shutdown of the reactor) are not applicable to a plant in a permanently defueled condition. The third criterion is related to preventing or mitigating the consequences of accidents that could result in potential offsite exposures exceeding limits. However, after all nuclear spent fuel assemblies have been transferred to dry cask storage within an ISFSI, none of the SSCs at FCS are required to be relied on for accident mitigation. Therefore, none of the SSCs at FCS meet the definition of a safety-related SSCs stated in 10 CFR 50.2. The proposed deletion of requirements in the FCS PDTs does not affect systems credited in any accident analysis at FCS.

Chapter 14 of the FCS Defueled Safety Analysis Report (DSAR) described the design basis accident related to the SFP. These postulated accidents are predicated on spent fuel being stored in the SFP. With the removal of the spent fuel from the SFP, there are no remaining spent fuel assemblies to be monitored and there are no credible

accidents that require the actions of a Shift Manager, Certified Fuel Handler, or a Non-certified Operator to prevent occurrence or mitigate the consequences of an accident associated with nuclear fuel. The proposed changes do not have an adverse impact on the remaining decommissioning activities or any of their postulated consequences. The proposed changes related to the relocation of certain administrative requirements do not affect operating procedures or administrative controls that have the function of preventing or mitigating any accidents applicable to the safe management of irradiated fuel or decommissioning of the facility. Therefore, the proposed amendment 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 eliminate the operational requirements and certain design requirements associated with the storage of the spent fuel in the SFP, and relocate certain administrative controls to the Quality Assurance Topical Report which is a licensee-controlled document. After the removal of the spent fuel from the SFP and transfer to the ISFSI, there are no spent fuel assemblies that remain in the SFP. Coupled with a prohibition against storage of fuel in the SFP, the potential for fuel related accidents is removed. The proposed changes do not introduce any new failure modes.

Therefore, the proposed amendment does 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 removal of all spent nuclear fuel from the SFP into storage in casks within an ISFSI, coupled with a prohibition against future storage of fuel within the SFP, removes the potential for fuel related accidents.

The design basis and accident assumptions within the FCS DSAR and the PDTs relating to safe management and safety of spent fuel in the SFP are no longer applicable. The proposed changes do not affect remaining plant operations, systems, or components supporting decommissioning activities.

The requirements for SSCs that have been deleted from the FCS PDTs are not credited in the existing accident analysis for any applicable postulated accident; and as such, do not contribute to the margin of safety associated with the accident analysis.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Stephen M. Bruckner, Attorney, Fraser Stryker PC LLO, 500 Energy Plaza, 409 South 17th Street, Omaha, NE 68102.

NRC Branch Chief: Bruce A. Watson.

South Carolina Electric & Gas Company (SCE&G), South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station (VCSNS), Unit No. 1, Fairfield County, South Carolina

Date of amendment request: September 27, 2018. A publicly-available version is in ADAMS under Accession No. ML18270A360.

Description of amendment request: The proposed amendment would correct a non-conservative Technical Specification (TS) 3/4.8.2, "DC [Direct Current] Sources -Operating," by revising the inter-cell resistance value listed in Surveillance Requirements (SRs) 4.8.2.1.b.2 and 4.8.2.1.c.3.

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. [Do] the proposed change[s] involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Performing the proposed changes in battery parameter surveillance testing and verification is not a precursor of any accident previously evaluated. Furthermore, these changes will help to ensure that the voltage and capacity of the batteries is such that they will provide the power assumed in calculations of design basis accident mitigation. Therefore, SCE&G concludes that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes to the VCSNS TS SR do not involve any physical modification of the plant or how the plant is operated. No new or different type of equipment will be installed. The proposed changes involve surveillance testing and verification activities. No new failure modes/effects which could lead to an accident whose consequences exceed the consequences of accidents previously analyzed will be introduced by the changes to the TS SR.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is related to the confidence in the ability of the fission

product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The performance of the fuel cladding, reactor coolant, and containment systems will not be impacted by the proposed changes.

The proposed VCSNS revisions of the SRs ensure the continued availability and operability of the batteries. As such, sufficient DC capacity to support operation of mitigation equipment remains within the design basis. Therefore, SCE&G concludes that the proposed changes do 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: Kathryn M. Sutton, Morgan, Lewis & Bockius LLP, 1111 Pennsylvania Avenue NW, Washington, DC 20004.

NRC Branch Chief: Michael T. Markley.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station (VCSNS), Unit No. 1, Fairfield County, South Carolina

Date of amendment request: October 8, 2018. A publicly-available version is in ADAMS under Accession No. ML18281A014.

Description of amendment request: The proposed amendment would revise the Surveillance Requirement (SR) of Technical Specification (TS) 4.4.6.2.2 (a) to allow the reactor coolant system (RCS) pressure isolation valve (PIV) leakage test to be extended to a performance-based frequency not to exceed 3 refueling outages (RFOs) or 60 months following two consecutive satisfactory tests.

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 involves revising the VCSNS Unit 1, TS wording to reflect a performance-based surveillance testing interval for leakage testing of the RCS PIVs. Specifically, the proposed change revises TS surveillance requirement (SR) 4.4.6.2.2.a to test the RCS PIVs at a frequency from each RFO to a maximum of every third RFO or 60

months by verifying that each of the PIVs tested in the associated RFO based on performance are within the TS allowable leakage limits. The RCS PIVs are defined as two normally closed valves in series with the reactor coolant pressure boundary (RCPB), which separate the high-pressure RCS from an attached lower pressure system. Excessive PIV leakage could lead to overpressure of the low-pressure piping or components, potentially resulting in a LOCA [loss-of-coolant accident] outside of containment.

TS SR 4.4.6.2.2.a for RCS PIVs provides added assurance of valve integrity thereby reducing the probability of gross valve failure and consequent ISLOCA [intersystem loss-of-coolant accident]. The RCS PIV allowable leakage limit applies to each individual valve. This proposed change does not revise any of the TS RCS PIV allowable leakage limits. In addition, the RCS PIVs will continue to be tested per the VCSNS Inservice Testing Program in accordance with Title 10, *Code of Federal Regulations* (CFR), Section 50.55a, "Codes and standards." The activity does not involve a physical change to the plant or a change in the manner in which the plant is operated or controlled. By transitioning to a performance-based leakage testing interval, these valves will continue to be demonstrated operationally ready and reliable. In the event of a PIV leakage test failure, PIV testing would require the component to return to the initial interval of every RFO until good performance is re-established. Therefore, there is no impact on the assurance that the RCS PIVs will be able to perform their safety function(s).

Therefore, the proposed TS 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 involves revising the VCSNS TS wording to reflect a performance-based surveillance testing interval for leakage testing of the RCS PIVs from each RFO to a maximum of every third RFO or 60 months based on valve performance. The technical testing methodology and associated acceptance criteria remain unchanged. The change in the testing frequency is a performance-based approach, which has been demonstrated acceptable in numerous applications across the industry (RCS PIV testing, 10 CFR 50, Appendix J, Option B).

The testing requirements involved to periodically demonstrate the integrity of the RCS PIVs exist to ensure the plant's ability to mitigate the consequences of an accident. There are not any accident initiators or precursors affected by this change. The proposed TS change does not involve a physical change to the plant or the manner in which the plant is operated or controlled.

Therefore, the proposed TS 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 involves revising the TS SR 4.4.6.2.2.a and associated TS Bases to reflect a performance-based surveillance testing frequency of the RCS PIVs from each RFO to a maximum of every third RFO or 60 months. The technical testing methodology and associated TS allowable leakage limits/acceptance criteria remain unchanged. The testing frequency uses a performance based approach, which has been demonstrated acceptable in numerous applications across the industry (RCS PIV testing, 10 CFR 50, Appendix J, Option B). Thus, this amendment request does not alter the manner in which safety limits, limiting safety system set points, or limiting conditions for operation are determined. The RCS PIVs will continue to be tested per the VCSNS Inservice Testing Program in accordance with 10 CFR 50.55a.

The primary reason for performance-based PIV test intervals is to eliminate unnecessary thermal cycles. The VCSNS program for monitoring fatigue due to operational cycles and transients consists of review, evaluation, and documentation of RCS operational transients/cycles based on recorded plant operating parameters (*i.e.*, temperature, pressure, flow) for compliance with Technical Specification Sections 3.5.2, 3.5.3, and 5.7.1.

An additional reason for requesting performance-based PIV test intervals is dose reduction to conform with NRC and industry As Low As Reasonably Achievable (ALARA) radiation dose principles. The nominal fuel cycle lengths at VCSNS, Unit 1, are 18 months. However, since RFOs may be scheduled slightly beyond 18 months, a 60-month period is used to provide a bounding timeframe to encompass three RFOs. The review of recent historical data identified that PIV testing each RFO results in a total personnel dose of approximately 300 millirem (milli-Roentgen Equivalent Man, or mrem). Assuming all of the PIVs remain classified as good performers, the proposed extended test intervals would provide for a savings of approximately 600 mrem over an approximate 60-month period (three RFOs).

The proposed surveillance interval extension for the RCS PIVs is based on the performance of the PIVs. The proposed TS change does not involve a physical change to the plant or a change in the manner in which the plant is operated or controlled. The design, operation, testing methods, and acceptance criteria for the RCS PIV testing specified in applicable codes and standards will continue to be met.

Therefore, the proposed TS 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: Kathryn M. Sutton, Morgan, Lewis & Bockius LLP, 1111 Pennsylvania Avenue NW, Washington, DC 20004.

NRC Branch Chief: Michael T. Markley.

Southern Nuclear Operating Company, Inc., Docket No. 52-025, Vogtle Electric Generating Plant (VEGP), Unit 3, Burke County, Georgia

Date of amendment request: October 19, 2018. A publicly-available version is in ADAMS under Accession No. ML18292A660.

Description of amendment request: The requested amendment proposes to depart from certified AP1000 Design Control Document (DCD) Tier 2* material that has been incorporated into the Updated Final Safety Analysis Report (UFSAR). Specifically, the proposed departure consists of changes to Tier 2* information in the UFSAR (which includes the plant-specific DCD information) to change the vertical reinforcement information provided in the VEGP Unit 3 column line 1 wall from elevation 135'-3" to 137'-0".

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.

As described in UFSAR Subsection 3H.5.1.1, the exterior wall at column line 1 (Wall 1) is located at the south end of the auxiliary building. It is a reinforced concrete wall extending from the basement at elevation 66'-6" to the roof at elevation 180'-0". Deviations were identified in the constructed wall from the design requirements. The proposed change modifies the vertical reinforcement information provided in the VEGP Unit 3 Wall 1 from elevation 135'-3" to 137'-0". This change maintains conformance to the [American Concrete Institute (ACI)] 318-11 and ACI 349-01 codes and has no adverse impact on the seismic response of Wall 1. Wall 1 continues to withstand the design basis loads without loss of structural integrity or the safety-related functions. The proposed change does not affect the operation of any system or equipment that initiates an analyzed accident or alter any SSC [structures, systems, and components] accident initiator or initiating sequence of events.

This change does not adversely affect the design function of the VEGP Unit 3 Wall 1 or the SSCs contained within the auxiliary building. This change does not involve any accident initiating components or events, thus leaving the probabilities of an accident unaltered.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change modifies the vertical reinforcement information provided in the VEGP Unit 3 Wall 1 from elevation 135'-3" to 137'-0". As demonstrated by the continued conformance to the applicable codes and standards governing the design of the structures, the wall withstands the same effects as previously evaluated. The proposed change does not affect the operation of any systems or equipment that may initiate a new or different kind of accident, or alter any SSC such that a new accident initiator or initiating sequence of events is created. The proposed change does not adversely affect the design function of the auxiliary building Wall 1 or any other SSC design functions or methods of operation in a manner that results in a new failure mode, malfunction, or sequence of events that affect safety-related or non-safety-related equipment. This change does not allow for a new fission product release path, result in a new fission product barrier failure mode, or create a new sequence of events that result in significant fuel cladding failures.

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 a margin of safety?

Response: No.

The proposed change modifies the vertical reinforcement information provided in the VEGP Unit 3 Wall 1 from elevation 135'-3" to 137'-0". This change maintains conformance to the ACI 318-11 and ACI 349-01 codes. The change to the vertical reinforcement elevation 135'-3" to 137'-0" does not change the performance of the affected portion of the auxiliary building for postulated loads. The criteria and requirements of ACI 349-01 provide a margin of safety to structural failure. The design of the auxiliary building structure conforms to criteria and requirements in ACI 349-01 and therefore, maintains the margin of safety. The change does not alter any design function, design analysis, or safety analysis input or result, and sufficient margin exists to justify departure from the Tier 2* requirements for the wall. As such, because the system continues to respond to design basis accidents in the same manner as before without any changes to the expected response of the structure, no safety analysis or design basis acceptance limit/criterion is challenged or exceeded by the proposed changes. Accordingly, no significant safety margin is reduced by the change.

Therefore, the proposed changes do 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: Mr. M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203-2015.

NRC Branch Chief: Jennifer L. Dixon-Herrity.

Southern Nuclear Operating Company, Inc., Docket Nos. 52-025 and 52-026, Vogtle Electric Generating Plant (VEGP), Units 3 and 4, Burke County, Georgia

Date of amendment request: October 11, 2018. A publicly-available version is in ADAMS under Accession Nos. ML18284A447.

Description of amendment request: The requested amendment proposes changes to plant-specific Design Control Document (DCD) Tier 2 information in the Updated Final Safety Analysis Report (UFSAR) that involve changes to combined license (COL) Appendix C, and corresponding changes to plant-specific Tier 1 information. The changes would revise the COL to relocate the power operated relief valves in the COL Appendix C, Inspections, Tests, Analyses, and Acceptance Criteria and in the UFSAR. An initial **Federal Register** notice was published on September 19, 2018 (83 FR 47375), providing an opportunity to comment, request a hearing, and petition for leave to intervene for a License Amendment Request (LAR) for the VEGP COLs. The licensee has submitted a revision, dated October 11, 2018, to the original LAR that was dated August 10, 2018. This revision increases the scope of the original LAR. Pursuant to the provisions of 10 CFR 52.63(b)(1), an exemption from elements of the design as certified in the 10 CFR part 52, Appendix D, design certification rule is also requested for the plant-specific DCD Tier 1 departures.

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 changes do not affect the operation or reliability of any system, structure or component (SSC) required to maintain a normal power operating condition or to mitigate anticipated transients without safety-related systems. With the proposed changes, the PORV [Power Operated Relief Valve] block valves are still able to perform the safety-related functions of containment isolation, steam generator isolation, and steam generator relief isolation. There is no

change to the PORV block valves safety class or safety-related functions.

The relocation of the branch line in which the PORV block valves are installed allows the PORV block valves to be closer to the containment penetration and maintain compliance with General Design Criterion (GDC) 57 for locating containment isolation valves as close to the containment as practical.

There is no impact to Chapter 15 evaluations. Changes to the PORV block valve and line size do not impact the mass releases to the atmosphere during a Steam Generator Tube Rupture accident. The mass release is limited by the PORV which is more restrictive than the PORV block valve and line size.

There is no impact to any assumed leakage through the PORV line. The existing 12-inch PORV has a design function to limit leakage through the PORV line. Increasing the PORV block valve to 12 inches will increase the leakage through the PORV block valve however it will be that same leakage rate as the 12-inch PORV. Therefore, the leakage rate through the PORV line does not increase and there is no impact to radiation doses.

There is no impact to the assumptions or analysis in the completed safety analysis for radiation doses as a result of the change.

There is no impact to the conclusions of the Pipe Rupture Hazard Analysis (PRHA) because the PORV line is Break Exclusion Zone (BEZ) piping. The proposed changes do not result in any new postulated break locations. Updated analyses confirm that the integrity of the wall adjacent to the MCR [main control room] is unaffected by a postulated main steam line break that causes the PORV line to impact the wall.

There is no change to the valve motor operator. The current motor operator is sufficient to operate the new 12-inch globe valve. Therefore, there is no impact to the Class 1E dc [direct current] and UPS [uninterruptible power supply] System (IDS) battery sizing. There is no change to the valve stroke time, therefore there is no impact to valve open/closure times.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not affect the operation of systems or equipment that could initiate a new or different kind of accident, or alter any SSC such that a new accident initiator or initiating sequence of events is created. With the proposed changes, the PORV block valves are still able to perform the safety related functions of containment isolation, steam generator isolation, and steam generator relief isolation. There is no change to the PORV block valves safety class or safety-related functions.

The relocation of the branch line in which the PORV block valves are installed allows the PORV block valves to be closer to the containment penetration and maintain compliance with General Design Criterion

(GDC) 57 for locating containment isolation valves as close to the containment as practical.

There is no impact to Chapter 15 evaluations. Changes to the PORV block valve and line size do not impact the mass releases to the atmosphere during a Steam Generator Tube Rupture accident. The mass release is limited by the PORV which is more restrictive than the PORV block valve and line size.

There is no impact to any assumed leakage through the PORV line. The existing 12-inch PORV has a design function to limit leakage through the PORV line. Increasing the PORV block valve to 12 inches will increase the leakage through the PORV block valve however it will be that same leakage rate as the 12-inch PORV. Therefore, the leakage rate through the PORV line does not increase and there is no impact to radiation doses.

There is no impact to the assumptions or analysis in the completed safety analysis for radiation doses as a result of the change.

There is no impact to the conclusions of the Pipe Rupture Hazard Analysis (PRHA) because the PORV line is Break Exclusion Zone (BEZ) piping. The proposed changes do not result in any new postulated break locations. Updated analyses confirm that the integrity of the wall adjacent to the MCR is unaffected by a postulated main steam line break that causes the PORV line to impact the wall.

There is no change to the valve motor operator. The current motor operator is sufficient to operate the new 12-inch globe valve. Therefore, there is no impact to the Class 1E dc and UPS System (IDS) battery sizing. There is no change to the valve stroke time, therefore there is no impact to valve open/closure times.

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 a margin of safety?

Response: No.

The proposed changes do not affect existing safety margins. With the proposed changes, the PORV block valves are still able to perform the safety-related functions of containment isolation, steam generator isolation, and steam generator relief isolation. There is no change to the PORV block valves safety class or safety-related functions.

The relocation of the branch line in which the PORV block valves are installed allows the PORV block valves to be closer to the containment penetration and maintain compliance with General Design Criterion (GDC) 57 for locating containment isolation valves as close to the containment as practical.

There is no impact to Chapter 15 evaluations. Changes to the PORV block valve and line size do not impact the mass releases to the atmosphere during a Steam Generator Tube Rupture accident. The mass release is limited by the PORV which is more restrictive than the PORV block valve and line size.

There is no impact to any assumed leakage through the PORV line. The existing 12-inch PORV has a design function to limit leakage

through the PORV line. Increasing the PORV block valve to 12 inches will increase the leakage through the PORV block valve however it will be that same leakage rate as the 12-inch PORV. Therefore, the leakage rate through the PORV line does not increase and there is no impact to radiation doses.

There is no impact to the assumptions or analysis in the completed safety analysis for radiation doses as a result of the change.

The piping analysis for the affected piping has been revised in accordance with the requirements of the UFSAR. All stresses and interface loads remain acceptable and within the limits described in the UFSAR. The piping support calculations have been revised using the load combinations prescribed in the UFSAR, and the critical interaction ratio for each support is less than 1.0; therefore, a positive design margin exists. The proposed changes did not affect any of the piping packages chosen (as listed in the UFSAR) to demonstrate piping design for piping design acceptance criteria closure. There is no impact to the conclusions of the Pipe Rupture Hazard Analysis (PRHA) because the PORV line is Break Exclusion Zone (BEZ) piping. The proposed changes do not result in any new postulated break locations. Updated analyses confirm that the integrity of the wall adjacent to the MCR is unaffected by a postulated main steam line break that causes the PORV line to impact the wall. The piping and components downstream of the PORV are nonsafety-related and are not affected by this activity.

The structural concrete floors and walls which make up the bounds of the affected rooms were analyzed for the downstream impacts due to the proposed changes. The results conclude that the applicable acceptance criteria of the UFSAR are met. All applicable load combinations shown in the UFSAR were considered. Critical sections defined in the UFSAR within the scope of analysis remain unchanged along with the typical reinforcement configuration presented in the UFSAR. Therefore, all structural evaluations are within the bounds of the acceptance criteria and meet the licensing requirements imposed in the UFSAR.

There is no change to the valve motor operator. The current motor operator is sufficient to operate the new 12-inch globe valve. Therefore, there is no impact to the Class 1E dc and UPS System (IDS) battery sizing. There is no change to the valve stroke time, therefore there is no impact to valve open/closure times.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203-2015.

NRC Branch Chief: Jennifer L. Dixon-Herrity.

Tennessee Valley Authority (TVA), Docket No. 50-391, Watts Bar Nuclear Plant (WBN), Unit 2, Rhea County, Tennessee

Date of amendment request: May 14, 2018. A publicly available version is in ADAMS under Accession No. ML18138A232.

Description of amendment request: The proposed amendment would modify the WBN, Unit 2, Technical Specification (TS) 5.7.2.12, "Steam Generator (SG) Program," and TS 5.9.9, "Steam Generator Tube Inspection Report," to use the voltage-based alternate repair criteria (ARC) specified in the guidelines contained in Generic Letter (GL) 95-05, "Voltage-Based Repair Criteria for Westinghouse Steam Generator Tubes Affected by Outside Diameter Stress Corrosion Cracking."

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.

Allowing the use of alternate repair criteria as proposed in this amendment request does not involve a significant increase in the probability or consequence of an accident previously evaluated.

Tube burst criteria are inherently satisfied during normal operating conditions due to the proximity of the TSP [tube support plates]. Test data indicates that tube burst cannot occur within the TSP, even for tubes, which have 100% through-wall electric discharge machining (EDM) notches, 0.75 inches long, provided that the TSP is adjacent to the notched area. Because tube-to-tube support plate proximity precludes tube burst during normal operating conditions, use of the criteria must retain tube integrity characteristics, which maintain a margin of safety of 1.4 times the bounding faulted condition [*i.e.*, main steam line break (MSLB)] differential pressure of 2405 psig. GL 95-05 recommends that maintenance of a safety factor of 1.4 times the MSLB pressure differential, consistent with the structural limits in Regulatory Guide (RG) 1.121, on tube burst is satisfied by 3/4-inch diameter tubing with bobbin coil indications with signal amplitudes less than the tube structural limit (V_{SL}) of 6.03 volts, regardless of the indicated depth measurement. At the FDB [flow distribution baffles], a safety factor of three against the normal operating condition ΔP is applied. A voltage of $V_{SL} = 3.81$ volts satisfies the burst capability recommendation at the FDB.

The upper voltage repair limit (V_{URL}) will be determined prior to each outage using the

most recently approved NRC database to determine the V_{SL} . The structural limit is reduced by allowances for nondestructive examination (NDE) uncertainty (V_{NDE}) and growth (V_G) to establish V_{URL} .

Relative to the expected leakage during accident condition loadings, it has been previously established that a postulated MSLB outside of containment but upstream of the main steam isolation valves (MSIVs) represents the most limiting radiological condition relative to the alternate voltage-based repair criteria. In support of implementation of the revised repair limit, TVA will determine whether the distribution of cracking indications at the tube support plate intersections during future cycles are projected to be such that primary to secondary leakage would result in site boundary doses within a fraction of the 10 CFR 100 guidelines or control room doses within the 10 CFR 50, Appendix A, General Design Criterion (GDC) 19 limit. A separate calculation has determined this allowable MSLB leakage limit to be four gallons per minute (gpm) in the faulted loop.

The methods for calculating the radiological dose consequences for this postulated MSLB are consistent with the WBN dual-unit Updated Final Safety Analysis Report (UFSAR) Chapter 15.

In summary, the calculated radiological consequences in the control room and at the exclusion area boundary and the low population zone are in compliance with the guidelines in the Standard Review Plan, Chapter 15, and the regulations in 10 CFR 50, Appendix A, GDC 19, and 10 CFR 100 reported for the postulated steamline break event. Therefore, it is concluded that the proposed changes do not result in a significant increase in the radiological consequences of an accident previously analyzed.

Consistent with the guidance of GL 95-05, Section 2.c, the WBN Unit 2 MSLB leak rate analysis would be performed, prior to returning the SGs to service, based on either the projected next end-of-cycle (EOC) voltage distribution or the actual measured bobbin voltage distribution. The method to be used for the first outage when ODSCC [outside diameter stress corrosion cracking] indication growth rates are available will be based on the indications found during that outage. As noted in GL 95-05, it may not always be practical to complete EOC calculations prior to returning the SGs to service. Under these circumstances, it is acceptable to use the actual measured bobbin voltage distribution instead of the projected EOC voltage distribution to determine whether the reporting criteria are being satisfied.

Therefore, the voltage-based ARC at WBN Unit 2 does not adversely affect SG tube integrity and implementation is shown to result in acceptable radiological dose consequences. Therefore, the proposed TS change does not result in a significant increase in the probability or consequences of an accident previously evaluated within the WBN Unit 2 UFSAR.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Implementation of the proposed SG tube voltage-based ARC does not introduce any changes to the plant design basis. Neither a single nor multiple tube rupture event would be expected in an SG in which the repair limit has been applied (during all plant conditions).

The bobbin probe voltage-based tube repair criteria of 1.0 volt is supplemented by: enhanced eddy current inspection guidelines to provide consistency in voltage normalization, a 100 percent eddy current inspection sample size at the tube support plate elevations, and rotating probe coil (RPC) or equivalent inspection requirements for the larger indications left in service to characterize the principal degradation as ODSCC.

As SG tube integrity upon implementation of the 1.0 volt repair limit continues to be maintained through in-service inspection and primary to secondary leakage monitoring, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The use of the voltage-based bobbin probe tube support plate elevation repair criteria at WBN Unit 2 maintains SG tube integrity commensurate with the guidance of RG 1.121. RG 1.121 describes a method acceptable to the NRC for meeting GDCs 14, 15, and 32 by reducing the probability or the consequences of SG tube rupture. This reduction is accomplished by determining the limiting conditions of degradation of steam generator tubing, as established by in-service inspection, for which tubes with unacceptable cracking should be removed from service. Upon implementation of the proposed criteria, even under the worst-case conditions, the occurrence of ODSCC at the TSP elevations is not expected to lead to an SG tube rupture event during normal or faulted plant conditions. The EOC distribution of crack indications at the tube support plate elevations is confirmed to result in acceptable primary to secondary leakage during all plant conditions and that radiological consequences are not adversely impacted.

Implementation of the TSP intersection voltage-based repair criteria will decrease the number of tubes that must be plugged. The installation of SG tube plugs reduces the reactor coolant system flow margin. Thus, implementation of the 1.0 volt repair limit will maintain the margin of flow that would otherwise be reduced in the event of increased tube plugging.

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 Branch Chief: Undine S. Shoop.

Tennessee Valley Authority, Docket Nos. 50-390 and 50-391, Watts Bar Nuclear Plant (WBN), Units 1 and 2, Rhea County, Tennessee

Date of amendment request: February 28, 2018. A publicly-available version is in ADAMS under Accession No. ML18060A337.

Description of amendment request: The proposed amendments would modify the WBN, Units 1 and 2, Technical Specification (TS) 3.8.9, to add a new Condition C with an 8-hour completion for performing maintenance on the opposite unit's vital bus when the opposite unit is in Mode 5, Mode 6, or defueled. The proposed change would allow greater operational flexibility for two-unit operation at WBN.

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 modifies the Required Actions for the opposite unit's 120-volt (V) alternating current (AC) vital bus system. This change will not affect the probability of an accident, because the distribution system is not an initiator of any accident sequence analyzed in the UFSAR [updated final safety analysis report]. Rather, the opposite unit's distribution system support equipment is used to mitigate accidents. The consequences of an analyzed accident will not be significantly increased because the minimum requirements for distribution systems will be maintained to ensure the availability of the required power to mitigate accidents assumed in the UFSAR. Operation in accordance with the proposed TS will ensure that sufficient onsite electrical distribution systems are operable as required to support the unit's required features. Therefore, the mitigating functions supported by the onsite electrical distribution systems will continue to provide the protection assumed by the accident analysis. The integrity of fission product barriers, plant configuration, and operating procedures as described in the UFSAR will not be affected by the proposed changes. Thus, the consequences of previously analyzed accidents will not increase by implementing these changes.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed change modifies the Required Actions for the opposite unit's 120V AC vital bus system. This change will not physically alter the plant (no new or different type of equipment will be installed). The proposed change will maintain the minimum requirements for onsite electrical distribution systems to ensure the availability of the equipment required to mitigate accidents assumed in the UFSAR.

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 amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change modifies the Required Actions for the opposite unit's 120V AC vital bus system. The margin of safety is not affected by this change because the minimum requirements for onsite electrical distribution systems will be maintained to ensure the availability of the required power to shutdown the reactor and maintain it in a safe shutdown condition after an AOO [anticipated operational occurrence] or a postulated DBA [design-basis accident].

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 requests involve no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, 6A West Tower, Knoxville, TN 37902.

NRC Branch Chief: Undine S. Shoop.

III. 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.

Duke Energy Progress, LLC, Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: June 28, 2017, as supplemented by letters dated July 20 and September 14, 2017; and January 18, February 16, and April 13, 2018.

Brief description of amendment: The amendment revised the Technical Specifications (TSs) for fuel storage criticality to account for the use of neutron absorbing spent fuel pool rack inserts and soluble boron for the purpose of criticality control in the boiling-water reactor storage racks that currently credit Boraflex.

Date of issuance: October 22, 2018.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 167. A publicly-available version is in ADAMS under Accession No. ML18204A286; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF-63: The amendment revised the Renewed Facility Operating License and TSs.

Date of initial notice in Federal Register: December 5, 2017 (82 FR 57481). The supplemental letters dated July 20 and September 14, 2017; and January 18, February 16, and April 13, 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 October 22, 2018.

No significant hazards consideration comments received: No.

Energy Northwest, Docket No. 50-397, Columbia Generating Station, Benton County, Washington

Date of amendment request: October 23, 2017, as supplemented by letters dated November 15, 2017, and June 27, 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: October 30, 2018.

Effective date: As of its date of issuance and shall be implemented at the beginning of the next refueling outage scheduled for May 2019.

Amendment No.: 251. A publicly-available version is in ADAMS under Accession No. ML18255A350; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. NPF-21: The amendment revised the Renewed Facility Operating License and TS.

Date of initial notice in Federal Register: January 16, 2018 (83 FR 2227). The supplemental letter dated June 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 amendment is contained in a Safety Evaluation dated October 30, 2018.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit 1 (ANO-1), Pope County, Arkansas

Date of amendment request: October 2, 2017, as supplemented by letters dated April 26 and August 10, 2018.

Brief description of amendment: The amendment revised the ANO-1 Technical Specification (TS) Bases for TS 3.7.5, "Emergency Feedwater (EFW) System," to identify the conditions in which TS 3.7.5, Condition A, 7-day Completion Time (CT) and Condition C, 24-hour CT should apply to the ANO-1 turbine-driven EFW pump steam supply valves.

Date of issuance: October 24, 2018.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 261. A publicly-available version is in ADAMS under Accession No. ML18260A339; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR-51: The amendment revised the TS Bases.

Date of initial notice in Federal Register: December 5, 2017 (82 FR 57473). The supplemental letters dated April 26 and August 10, 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 October 24, 2018.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket No. 50-219, Oyster Creek Nuclear Generating Station (Oyster Creek), Ocean County, New Jersey

Date of amendment request: November 16, 2017, as supplemented by letter dated March 29, 2018.

Brief description of amendment: The amendment revised the Oyster Creek Renewed Facility Operating License and the associated Technical Specifications (TS) to Permanently Defueled Technical Specifications consistent with the permanent cessation of operations and permanent removal of fuel from the reactor vessel.

Date of issuance: October 26, 2018.

Effective date: The license amendment is effective on November 16, 2018, and shall be implemented in 60 days from the effective date.

Amendment No.: 295. A publicly-available version is in ADAMS under Accession No. ML18227A338; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR-16: The amendment revised the Renewed Facility Operating License and TS.

Date of initial notice in Federal Register: January 16, 2018 (83 FR 2229). The supplemental letter dated March 29, 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 October 26, 2018.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: June 25, 2018, as supplemented by letter dated August 29, 2018.

Brief description of amendment: The amendment revised the R. E. Ginna Nuclear Power Plant's Technical Specification (TS) 3.1.4, "Rod Group Alignment Limits"; TS 3.1.5, "Shutdown Bank Insertion Limit"; TS 3.1.6, "Control Bank Insertion Limits"; and TS 3.1.7, "Rod Position Indication," consistent with NRC-approved Technical Specifications Task Force (TSTF) Traveler TSTF-547, Revision 1, "Clarification of Rod Position Requirements," dated March 4, 2016.

Date of issuance: October 31, 2018.

Effective date: As of the date of issuance and shall be implemented within 120 days of issuance.

Amendment No.: 131. A publicly-available version is in ADAMS under Accession No. ML18295A630; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR-18: The amendment revised the Renewed Facility Operating License and TSs.

Date of initial notice in Federal Register: July 31, 2018 (83 FR 36976). The supplemental letter dated August 29, 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 October 31, 2018.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: April 25, 2018.

Brief description of amendments: The amendments revised the Technical Specification (TS) requirements for inoperable snubbers for each facility. The amendments also made other administrative changes to the TS.

Date of issuance: October 29, 2018.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: Clinton—220 (Unit 1); Dresden—259 (Unit 2), 252 (Unit 3); LaSalle—231 (Unit 1), 217 (Unit 2); and Quad Cities—271 (Unit 1), 266 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML18254A367. Documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Facility Operating License Nos. NPF-62, DPR-19, DPR-25, NPF-11, NPF-18, DPR-29, and DPR-30: The amendments revised the Facility Operating Licenses and TS.

Date of initial notice in Federal Register: June 19, 2018 (83 FR 28460).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 29, 2018.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units 2 and 3, York County, Pennsylvania

Date of amendment request: August 30, 2017, as supplemented by letters dated October 24, 2017; and May 7, June 6, August 10, and August 22, 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: October 25, 2018.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 321 (Unit 2) and 324 (Unit 3). A publicly-available version is in ADAMS under Accession No. ML18263A232; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR-44 and DPR-56: The amendments revised the Renewed Facility Operating Licenses.

Date of initial notice in Federal Register: November 21, 2017 (82 FR 55404). The supplemental letters dated May 7, June 6, August 10, and August 22, 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 October 25, 2018.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Units 1 and 2 (Calvert Cliffs), Calvert County, Maryland

Date of amendment request: February 25, 2016, as supplemented by letters dated April 3, 2017, and January 11, January 18, June 21, and August 27, 2018.

Brief description of amendments: The amendments revised the Calvert Cliffs Technical Specifications (TS) related to completion times for required actions to provide the option to calculate longer risk-informed completion times. The amendments also added a new program,

the "Risk Informed Completion Time Program," to TS Section 5.5, "Programs and Manuals."

Date of issuance: October 30, 2018.

Effective date: As of the date of its issuance and shall be implemented within 180 days.

Amendment Nos.: 326 (Unit 1) and 304 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML18270A130; documents related to these amendments are listed in the safety evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR-53 and DPR-69: The amendments revised the Renewed Facility Operating Licenses and TS.

Date of initial notice in Federal Register: September 4, 2018 (83 FR 44920). The supplemental letter dated August 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 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 October 30, 2018.

No significant hazards consideration comments received: No.

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.

Brief description of amendments: The amendments revised the Technical Specifications (TS) by removing Figure 5.1-1, "Site Area Map"; removing Technical Specification references to Figure 5.1-1; and adding a site description.

Date of issuance: November 2, 2018.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 246 (Unit No. 1) and 197 (Unit No. 2). A publicly-available version is in ADAMS under Accession No. ML18274A224; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License Nos. DPR-67 and NPF-16: The amendments revised the Renewed Facility Operating Licenses and TS.

Date of initial notice in Federal Register: August 28, 2018 (83 FR 43905).

The Commission's related evaluation of the amendments is contained in a

Safety Evaluation dated November 2, 2018.

No significant hazards consideration comments received: No.

NextEra Energy Duane Arnold, LLC, Docket No. 50-331, Duane Arnold Energy Center (DAEC), Linn County, Iowa

Date of amendment request: November 10, 2017.

Brief description of amendment: The amendment revised the Technical Specifications (TS) for DAEC to adopt Technical Specifications Task Force (TSTF) Traveler TSTF-551, Revision 3, "Revise Secondary Containment Surveillance Requirements," dated November 10, 2017 (ADAMS Accession No. ML17318A240).

Date of issuance: October 31, 2018.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 307. A publicly-available version is in ADAMS under Accession No. ML18241A383; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR-49: The amendment revised the Renewed Facility Operating License and TS.

Date of initial notice in Federal Register: February 27, 2018 (83 FR 8517).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 31, 2018.

No significant hazards consideration comments received: No.

Northern States Power Company—Minnesota, Docket No. 50-263, Monticello Nuclear Generating Plant (Monticello), Wright County, Minnesota

Date of amendment request: October 20, 2017, as supplemented by letters dated June 1 and September 11, 2018.

Brief description of amendment: The amendment revised the Monticello Technical Specification (TS) to adopt Technical Specification Task Force (TSTF) Traveler TSTF-542, "Reactor Pressure Vessel Water Inventory Control."

Date of issuance: October 29, 2018.

Effective date: As of the date of issuance and shall be implemented prior to the next refueling outage.

Amendment No.: 198. A publicly-available version is in ADAMS under Accession No. ML18250A075; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Renewed Facility Operating License No. DPR-22. The amendment revised

the Renewed Facility Operating License and TS.

Date of initial notice in Federal Register: December 19, 2017 (82 FR 60228). The supplemental letters dated June 1 and September 11, 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 amendment is contained in a Safety Evaluation dated October 29, 2018.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket No. 50-354, Hope Creek Generating Station (Hope Creek), Salem County, New Jersey

Date of amendment request: September 21, 2017, as supplemented by letters dated June 27, July 19, and September 6, 2018.

Brief description of amendment: The amendment revised the Hope Creek Technical Specifications (TS) by replacing the existing specifications related to "operation with a potential for draining the reactor vessel" with revised requirements for reactor pressure vessel water inventory control to protect Safety Limit 2.1.4. Safety Limit 2.1.4 requires reactor vessel water level to be greater than the top of active irradiated fuel. The amendment adopted changes with variations, as noted in the license amendment request, and is based on the NRC-approved safety evaluation for Technical Specifications Task Force (TSTF) Traveler TSTF-542, Revision 2, "Reactor Pressure Vessel Water Inventory Control," dated December 20, 2016.

Date of issuance: October 30, 2018.

Effective date: As of the date of issuance and shall be implemented prior to entering Operating Condition 4 for the next Hope Creek refueling outage schedule for fall 2019 (H1R22).

Amendment No.: 213. A publicly-available version is in ADAMS under Accession No. ML18260A203; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendments.

Renewed Facility Operating License No. NPF-57: The amendment revised the Renewed Facility Operating License and TS.

Date of initial notice in Federal Register: January 30, 2018 (83 FR 4294). The supplemental letters dated June 27, July 19, and September 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 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 October 30, 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 (Vogtle), Burke County, Georgia

Date of amendment request: September 12, 2017, as supplemented by letter dated April 5, 2018.

Brief description of amendments: The amendments revised Technical Specification (TS) 5.5.17, "Containment Leakage Rate Testing Program," for Vogtle to (1) increase the existing Type A integrated leakage rate test interval from 10 to 15 years; (2) extend the Type C containment isolation valve leaking testing to a 75-month frequency; (3) adopt the use of American National Standards Institute/American Nuclear Society 56.8-2002, "Containment System Leakage Testing Requirements"; and (4) adopt a more conservative grace interval for Type A, B, and C tests.

Date of issuance: October 29, 2018.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 197 (Unit 1) and 180 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML18263A039; 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: The amendments revised the Renewed Facility Operating Licenses and TS.

Date of initial notice in Federal Register: December 5, 2017 (82 FR 57474). The supplemental letter dated April 5, 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 amendment is contained in a Safety Evaluation dated October 29, 2018.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Docket Nos. 52-025 and 52-026, Vogtle Electric Generating Plant (VEGP), Units 3 and 4, Burke County, Georgia

Date of amendment request: April 13, 2018, as supplemented by letter dated August 10, 2018.

Description of amendment: The amendment authorized changes to the VEGP Units 3 and 4 Combined Operating License (COL) Appendix A, Technical Specifications (TS). The amendment authorized departures from associated Updated Final Safety Analysis Report information (which includes the plant specific design control document Tier 2 information) with changes which conform with the authorized TS changes.

Date of issuance: October 11, 2018.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment Nos.: 146 (Unit 3) and 145 (Unit 4). A publicly-available version is in ADAMS under Accession No. ML18248A137; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Combined Licenses Nos. NPF-91 and NPF-92: The amendment revised the Facility Combined Licenses and TS.

Date of initial notice in Federal Register: June 27, 2018 (83 FR 30199). The supplemental letter dated August 10, 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.

The Commission's related evaluation of the amendment is contained in the Safety Evaluation dated October 11, 2018.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50-391, Watts Bar Nuclear Plant, Unit 2, Rhea County, Tennessee

Date of amendment request: October 11, 2017.

Brief description of amendment: The amendment revised Technical Specification (TS) 3.3.1, Table 3.3.1-1, "Reactor Trip System (RPS) Instrumentation," to increase the values for the nominal trip setpoint and the allowable value for Function 14.a, "Turbine Trip - Low Fluid Oil Pressure." The changes are due to the planned replacement and relocation of the pressure switches from the low pressure auto-stop trip fluid oil header

to the high pressure turbine electrohydraulic control (EHC) oil header. The changes are needed due to the higher EHC system operating pressure.

Date of issuance: October 30, 2018.

Effective date: As of the date of issuance and shall be implemented no later than startup from the Unit 2 refueling outage scheduled for spring 2019.

Amendment No.: 22. A publicly-available version is in ADAMS under Accession No. ML18255A156; documents related to the amendment are listed in the Safety Evaluation enclosed with the amendment.

Facility Operating License No. NPF-96: The amendment revised the Facility Operating License and TS.

Date of initial notice in Federal Register: March 13, 2018 (83 FR 10924).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 30, 2018.

No significant hazards consideration comments received: No.

IV. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

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 for the amendment 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.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual notice of consideration of issuance of amendment, proposed no significant hazards consideration determination, and opportunity for a hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in

the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective 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 51.12(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 application for amendment, (2) the amendment to Facility Operating License or Combined License, as applicable, 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.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. 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 <http://www.nrc.gov/site-help/e-submittals/getting-started.html>. Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public 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.

Vistra Operations Company LLC, Docket Nos. 50-445 and 50-446, Comanche Peak Nuclear Power Plant (CPNPP), Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: September 5, 2018, as supplemented by letters dated September 20 and October 3, 2018.

Description of amendment: The amendments revised the CPNPP Technical Specification (TS) 3.8.4, "DC [Direct Current] Sources—Operating," by adding a new REQUIRED ACTION to CONDITION B and an extended COMPLETION TIME on a one-time basis to repair two affected battery cells on the CPNPP Unit 1, Train B safety-related batteries.

Date of issuance: October 25, 2018.

Effective date: As of the date of issuance and shall be implemented immediately as of its date of issuance.

Amendment Nos.: Unit 1—170; Unit 2—170. A publicly-available version is in ADAMS under Accession No. ML18267A384; documents related to the amendments are listed in the Safety Evaluation enclosed with the amendments.

Facility Operating License Nos. NPF-87 and NPF-89: The amendments revised the Facility Operating Licenses and TS.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes.

The license amendment request was originally noticed in the **Federal Register** on September 18, 2018 (83 FR 47203). Subsequently, by letters dated September 20 and October 3, 2018, the licensee provided additional information that expanded the scope of the amendment request as originally noticed in the **Federal Register**. Accordingly, on October 10, 2018 (83 FR 50971), the NRC published a second proposed NSHC determination, which superseded the original notice in its

entirety. This included an individual 14-day notice for comments and provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received. The notice also provided an opportunity to request a hearing by December 10, 2018, but indicated that if the Commission makes a final NSHC determination, any such hearing would take place after issuance of the amendments.

The Commission's related evaluation of the amendments, finding of exigent circumstances, state consultation, and final NSHC determination are contained in a Safety Evaluation dated October 25, 2018.

Attorney for licensee: Timothy P. Matthews, Esq., Morgan, Lewis and Bockius, 1111 Pennsylvania Avenue NW, Washington, DC 20004.

NRC Branch Chief: Robert J. Pascarelli.

Dated at Rockville, Maryland, this 8th day of November 2018.

For the Nuclear Regulatory Commission.

Kathryn M. Brock,

Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2018-24894 Filed 11-19-18; 8:45 am]

BILLING CODE 7590-01-P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Emergency Review: Federal Employees Dental and Vision Insurance Program (FEDVIP) Enrollment System

AGENCY: Office of Personnel Management.

ACTION: Emergency clearance notice and request for comments.

SUMMARY: The Office of Personnel Management (OPM) submitted a request to the Office of Management and Budget (OMB) for emergency clearance and review for the Federal Employees Dental and Vision Insurance Program (FEDVIP) Enrollment System, known as BENEFEDS. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104-13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104-106), OPM is soliciting comments for this collection. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of 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.

DATES: Comments on this proposal for emergency review should be received within November 26, 2018. We are requesting OMB to take action within 5 calendar days from the close of this **Federal Register** Notice on the request for emergency review. This process is conducted in accordance with 5 CFR 1320.1.

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, 725 17th Street NW, Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-6974. You must include "Emergency Submission Comment on Federal Employees Dental and Vision Insurance Program (FEDVIP) Enrollment System" in the subject line of your message.

SUPPLEMENTARY INFORMATION: The Federal Employees Dental and Vision Insurance Program Enrollment System uses BENEFEDS, which is the secure enrollment website sponsored by OPM that allows eligible individuals to enroll or change enrollment in a FEDVIP plan. Eligible individuals use the system to enroll or change enrollment during the annual Open Season or when experiencing a qualifying life event under 5 CFR 894.101. Federal Civilian and U.S. Postal Service (USPS) employees, retirees (annuitants), survivor annuitants, compensationers, and their eligible family members can enroll and be enrolled in FEDVIP. In addition, most uniformed services retirees and their families will be eligible to enroll in dental and vision insurance and most uniformed services active duty family members will be eligible to enroll in vision insurance under FEDVIP beginning during the 2018 Open Season for coverage effective January 1, 2019. OPM uses this

enrollment system to carry out its responsibility to administer the FEDVIP in accordance with 5 U.S.C. chapters 89A and 89B and implementing regulations (5 CFR part 894) but has been doing so without an OMB control number.

As required by the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. chapter 35) OPM is soliciting comments for this collection (OMB No. 3206-XXXX).

Agency: Office of Personnel Management.

Title: Federal Employees Dental and Vision Insurance Program (FEDVIP) Enrollment System.

OMB Number: 3206-XXXX.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 332,304.

Estimated Time per Respondent: 8 minutes.

Total Burden Hours: 44,307 hours.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2018-25262 Filed 11-19-18; 8:45 am]

BILLING CODE 6325-64-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84587; File No. SR-ISE-2018-93]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend ISE Rule 506, Long-Term Options Contracts

November 14, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 7, 2018, Nasdaq ISE, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend ISE Rule 506, Long-Term Options Contracts.

The text of the proposed rule change is available on the Exchange's website at

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

<http://ise.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 506, Long-Term Options Contracts, in order (i) to clarify the number of long-term option contract ("LEAPS") expiration months that may be listed on the Exchange on underlying securities under the current rule, and (ii) to expand the number of LEAPS expiration months that may be listed in options on the SPDR® S&P 500® exchange-traded fund (the "SPY ETF") in particular.

Clarification of the Number of Permitted Expiration Months

Pursuant to current Rule 506, the Exchange may list LEAPS that expire from twelve (12) to thirty-nine (39) months from the time they are listed. The rule provides that there may be up to six (6) additional expiration months. Because the rule does not specify which expiration months the six months are in addition to, and thus is ambiguous, the Exchange proposes to delete the word "additional." As amended, the rule would clearly and simply provide that the Exchange may list six expiration months having from twelve up to thirty-nine months from the time they are listed until expiration. This aspect of the proposed rule change is based upon Nasdaq PHLX, LLC ("Phlx") Rule 1012, Series of Options Open for Trading, subsection (a)(i)(D).³

³ See Securities Exchange Act Release No. 80769 (May 25, 2017), 82 FR 25472 (June 1, 2017) (SR-Phlx-2017-41).

Additional Expiration Months in SPY ETF LEAPS

The Exchange proposes to further amend Rule 506 to permit up to ten LEAPS expiration months for options on the SPY ETF in response to customer demand.⁴ The proposal will add liquidity to the SPY options market by allowing market participants to hedge risks relating to SPY ETF option positions over a longer time period with a known and limited cost. This aspect of the proposed rule change is also based upon Phlx Rule 1012, Series of Options Open for Trading, subsection (a)(i)(D), as recently amended.⁵

The SPY ETF options market today is characterized by its tremendous daily and annual liquidity. As a consequence the Exchange believes that the listing of additional SPY ETF LEAPS expiration months would be well received by investors. This proposal to expand the number of permitted SPY ETF LEAPS expiration months would not apply to LEAPS on any other security.⁶

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁸ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. First, as noted above, the proposal protects investors and the public interest by clarifying ambiguous rule language associated with permitted listings of long term options. Second, the proposal would permit the Exchange to offer market participants additional LEAPS on SPY ETF options for their investment and risk management purposes. This aspect of the proposal is intended simply to provide additional trading opportunities which have been requested by customers, thereby facilitating transactions in options and contributing to the protection of investors and the maintenance of fair and orderly markets. The proposed rule change responds to the continuing

⁴ ISE Rule 2009(b)(1)(f) currently permits the Exchange to list up to ten (10) expiration months in long term index options.

⁵ See Securities Exchange Act Release No. 84449 (October 18, 2018), 83 FR 53699 (October 24, 2018) (SR-Phlx-2018-64).

⁶ Historically, SPY ETF is the largest and most actively traded ETF in the United States as measured by its assets under management and the value of shares traded.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

needs of market participants, particularly portfolio managers and other institutional customers, by providing protection from long-term market moves and by offering an alternative to hedging portfolios with futures positions or off-exchange customized derivative instruments. The Exchange believes that the addition today of four additional expiration months for SPY ETF LEAPS does not represent a proliferation of expiration months, but is instead a very modest expansion of LEAPS in response to stated customer demand. Significantly, the proposal would feature new LEAPS expiration months in only a single class of options that are very liquid and heavily traded, as discussed above. Additionally, the Exchange notes by way of precedent that ten expiration months are already permitted for stock index LEAPS. Further, the Exchange has the necessary systems capacity to support the new SPY ETF LEAPS expiration months.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. On the contrary, the Exchange believes that the proposed amendment will benefit investors, market participants, and the marketplace in general by eliminating ambiguity in the current rules regarding the number of permitted expiration months in LEAPS generally. Additionally, the proposal merely provides investors additional investment and risk management opportunities by providing flexibility to the Exchange to list additional LEAPS expiration series, expanding the number of SPY ETF LEAPS offered on the Exchange from six expiration months to ten expiration months.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has

become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰

A proposed rule change filed under Rule 19b-4(f)(6)¹¹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹² 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 on November 16, 2018, to coincide with the effective date of Phlx's proposed rule change on which the proposal is partially based.¹³ The Exchange's proposal would clarify ambiguous rule text and would conform the Exchange's rules relating to permitted number of SPY ETF LEAPS expirations to those of Phlx. 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 proposal operative on November 16, 2018.¹⁴

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4. 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.

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 240.19b-4(f)(6)(iii).

¹³ See *supra* note 5.

¹⁴ 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).

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-ISE-2018-93 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2018-93. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2018-93 and should be submitted on or before December 11, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2018-25239 Filed 11-19-18; 8:45 am]

BILLING CODE 8011-01-P

¹⁵ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84586; File No. SR-NYSEArca-2018-79]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delete Exchange Rules That Reference Pillar Phase I Protocols

November 14, 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 November 5, 2018, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to delete Exchange rules that reference Pillar phase I protocols now that Pillar phase I protocols are no longer available for ETP Holders to communicate with the NYSE Arca Marketplace. 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.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to delete obsolete rules from the Exchange's rulebook.

As a general matter, ETP Holders enter orders and order instructions by using communication protocols that map to the order types and modifiers described in Exchange rules. Prior to the implementation of Pillar, ETP Holders communicated with the NYSE Arca Marketplace using Pillar phase I protocols. When the Exchange introduced trading on its Pillar trading platform, the Exchange also introduced new technology to support how ETP Holders communicate with the NYSE Arca Marketplace, referred to in the Exchange's rules as Pillar phase II protocols. During the Pillar implementation, there was a period of time when both Pillar phase I protocols and Pillar phase II protocols were available to ETP Holders. Effective October 1, 2018, Pillar phase I protocols are no longer available to ETP Holders. All ETP Holders now use Pillar phase II protocols to communicate with the NYSE Arca Marketplace. As a result, there is no longer a need to provide a distinction between Pillar phase I protocols and Pillar phase II protocols in the Exchange's rules.

Now that Pillar phase I protocols are no longer available, the Exchange proposes to delete references to Pillar phase I protocols from the Exchange's rulebook. Specifically, the Exchange proposes to delete the preamble to Rule 7.11-E (Limit Up-Limit Down Plan and Trading Pauses in Individual Securities Due to Extraordinary Market Volatility), which states: "Rules 7.11-E(a)(5) and (a)(6) govern order processing when ETP Holders communicate with the NYSE Arca Marketplace using Pillar phase I protocols. Rule 7.11-E(a)(5P) governs order processing when ETP Holders communicate with the NYSE Arca Marketplace using Pillar phase II protocols. The Exchange will file a separate proposed rule change to delete Rules 7.11-E(a)(5) and (a)(6) when the Pillar phase I protocols are no longer available."

The Exchange also proposes to delete Rules 7.11-E(a)(5) and (a)(6) from the rulebook since Pillar phase I protocols are no longer available on the Exchange. The preamble also states that Rule 7.11-E(a)(5P) would govern order processing when ETP Holders communicate with the NYSE Arca Marketplace using Pillar phase II protocols. Now that ETP

Holders communicate with the NYSE Arca Marketplace using Pillar phase II protocols, for purposes of Rule 7.11-E, order processing would be governed by Rule 7.11-E(a)(5P). With the proposed deletion of current text in Rules 7.11-E(a)(5) and (a)(6), the Exchange proposes to renumber current Rule 7.11-E(a)(5P) as 7.11-E(a)(5) and renumber current Rule 7.11-E(a)(7)-(9) as Rule 7.11-E(a)(6)-(8) with no changes to the rule text.

Additionally, the Exchange proposes to amend Rule 7.31-E (Orders and Modifiers). Specifically, Rule 7.31-E(c)(5) currently provides that an Imbalance Offset Order ("IO Order") is a Limit Order to buy (sell) that is to be traded only in a Trading Halt Auction. The rule further provides that IO Orders are available only to ETP Holders using Pillar phase II protocols. Now that all ETP Holders use Pillar phase II protocols, the Exchange proposes to delete the second sentence of Rule 7.31-E(c)(5), which the Exchange believes is superfluous and no longer necessary.

Further, the Exchange proposes to amend Rule 7.31-E(i)(2) which provides how the Self Trade Prevention ("STP") functionality operates on the Exchange. Current Rule 7.31-E(i)(2) provides that any incoming order designated with an STP modifier is prevented from executing against a resting opposite side order also designated with an STP modifier and from the same ETP ID. The STP modifier on the incoming order controls the interaction between two orders marked with STP modifiers. Orders marked with an STP modifier are not prevented from interacting during any auction.

As part of the Pillar implementation, the Exchange amended Rule 7.31-E(i)(2)(E) to provide that for purposes of STP, references to ETP ID mean an ETP ID when using Pillar phase I protocols to communicate with the NYSE Arca Marketplace or an MPID when using Pillar phase II protocols to communicate with the NYSE Marketplace. Now that all ETP Holders use Pillar phase II protocols, the Exchange proposes to delete Rule 7.31-E(i)(2)(E) as the distinction provided in the rule is no longer necessary. The Exchange also proposes to replace all references to ETP ID in Rule 7.31-E(i)(2)(A)-(D) with MPID to reflect that with Pillar phase II protocols in place now, the Exchange would use MPID instead of ETP ID to identify ETP Holders for purposes of STP.

Finally, the Exchange proposes to amend Rule 7.34-E (Trading Sessions). Specifically, Rule 7.34-E(b)(1) provides that any order entered into the NYSE Arca Marketplace must include a

designation for which trading session(s) the order would remain in effect. The rule further provides that for ETP Holders that communicate with the NYSE Arca Marketplace using Pillar phase II protocols, orders entered without a trading session designation would be rejected. The Exchange proposes to delete reference to ETP Holders communicating with the NYSE Arca Marketplace using Pillar phase II protocols from the current rule because such reference is not necessary since all ETP Holders now communicate with the NYSE Arca Marketplace using Pillar phase II protocols. Additionally, since ETP Holders no longer communicate with the NYSE Arca Marketplace using Pillar phase I protocols, the Exchange proposes to delete Rules 7.34-E(b)(2) and (b)(3) in their entirety because it is no longer necessary for Exchange rules to distinguish between Pillar phase I protocols and Pillar phase II protocols for purposes of designating the trading session(s) for which orders would remain in effect on the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁵ 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that amending its rules to remove references to Pillar phase I protocols would promote the protection of investors and the public interest because it would promote clarity and transparency in Exchange rules governing what rules govern trading on the Exchange because Pillar phase I protocols are no longer available for ETP Holders to communicate with the NYSE Arca Marketplace. The Exchange further believes that deleting references to Pillar phase I protocols from the Exchange's rules would remove impediments to and perfect the mechanism of a national

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

market system because these proposed changes would add greater clarity to the Exchange's rules and promote market transparency and efficiency because Pillar phase I protocols, which for a period of time were available to ETP Holders to communicate with the NYSE Arca Marketplace, are no longer available.

The Exchange believes that the proposed rule change to replace references to ETP ID with MPID for STP purposes would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed change would eliminate confusion with respect to how the Exchange identifies the identity of an ETP Holder for purposes of the Exchange's STP functionality. The Exchange further believes that this non-substantive amendment to the current rule is intended to provide clarity and eliminate confusion among market participants, which is in the interests of all investors and the general public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address competitive issues but rather is designed to ensure a fair and orderly market by removing trading rules that are no longer operative. As such, the proposed rule changes are intended to promote greater efficiency and transparency concerning trading on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁶ and Rule 19b-4(f)(6)⁷ thereunder because the proposal does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or

such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)⁸ 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 requested that the Commission waive the 30-day operative delay period. The Commission believes that waiver of the 30-day operative delay period is consistent with the protection of investors and the public interest. Specifically, the Commission believes that the proposal would delete obsolete rules from the Exchange's rulebook and thus should provide clarity and eliminate confusion. For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative upon filing with the Commission.⁹

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.¹⁰

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2018-79 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.

⁸ 17 CFR 240.19b-4(f)(6)(iii).

⁹ For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁰ 15 U.S.C. 78s(b)(3)(C).

All submissions should refer to File Number SR-NYSEArca-2018-79. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2018-79 and should be submitted on or before December 11, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2018-25238 Filed 11-19-18; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84591; File No. SR-PEARL-2018-22]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX PEARL Fee Schedule

November 14, 2018.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(6).

thereunder,² notice is hereby given that on October 31, 2018, MIAX PEARL, LLC (“MIAX PEARL” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX PEARL Fee Schedule (the “Fee Schedule”).

The text of the proposed rule change is available on the Exchange’s website at <http://www.miaxoptions.com/rule-filings/pearl> at MIAX PEARL’s principal office, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements

concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Add/Remove Tiered Rebates/Fees set forth in Section 1(a) of the Fee Schedule to decrease the “Taker” fee in Tiers 1–3 assessable to Priority Customers³ orders for options transactions in Non-Penny classes.

The Exchange currently assesses transaction rebates and fees to all market participants which are based upon the total monthly volume executed by the Member⁴ on MIAX PEARL in the relevant, respective origin type (not including Excluded Contracts)⁵ expressed as a percentage of TCV.⁶ In addition, the per contract

transaction rebates and fees are applied retroactively to all eligible volume for that origin type once the respective threshold tier (“Tier”) has been reached by the Member. The Exchange aggregates the volume of Members and their Affiliates.⁷ Members that place resting liquidity, *i.e.*, orders resting on the book of the MIAX PEARL System,⁸ are paid the specified “maker” rebate (each a “Maker”), and Members that execute against resting liquidity are assessed the specified “taker” fee (each a “Taker”). For opening transactions and ABBO uncrossing transactions, per contract transaction rebates and fees are waived for all market participants. Finally, Members are assessed lower transaction fees and receive lower rebates for order executions in standard option classes in the Penny Pilot Program⁹ (“Penny classes”) than for order executions in standard option classes which are not in the Penny Pilot Program (“Non-Penny classes”), where Members are assessed higher transaction fees and receive higher rebates. Transaction rebates and fees in Section 1(a) of the Fee Schedule are currently assessed for Priority Customer orders according to the following table:

| Origin | Tier | Volume criteria | Per contract rebates/fees for Penny classes | | | | Per contract rebates/fees for Non-Penny classes | |
|-------------------------|------|-------------------------|---|---------|-----------|---------------------|---|--------|
| | | | Maker | Taker * | SPY taker | QQQ, IWM, VXX taker | Maker | Taker |
| | | | | | | | | |
| Priority Customer | 1 | 0.00%–0.10% | (\$0.25) | \$0.48 | \$0.43 | \$0.47 | (\$0.85) | \$0.87 |
| | 2 | Above 0.10%–0.35% | (0.40) | 0.46 | 0.43 | 0.46 | (0.95) | 0.86 |
| | 3 | Above 0.35%–0.50% | (0.45) | 0.44 | 0.42 | 0.44 | (1.00) | 0.85 |
| | 4 | Above 0.50%–0.75% | (0.52) | 0.44 | 0.41 | 0.43 | (1.03) | 0.84 |
| | 5 | Above 0.75%–1.25% | (0.53) | 0.44 | 0.40 | 0.42 | (1.04) | 0.84 |
| | 6 | Above 1.25% | (0.53) | 0.43 | 0.38 | 0.40 | (1.04) | 0.84 |

* For all Penny Classes other than SPY, QQQ, IWM, and VXX.

² 17 CFR 240.19b–4.

³ “Priority Customer” means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). See Exchange Rule 100, including Interpretations and Policies .01.

⁴ “Member” means an individual or organization that is registered with the Exchange pursuant to Chapter II of the Exchange Rules for purposes of trading on the Exchange as an “Electronic Exchange Member” or “Market Maker.” Members are deemed “members” under the Exchange Act. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

⁵ “Excluded Contracts” means any contracts routed to an away market for execution. See the Definitions Section of the Fee Schedule.

⁶ “TCV” means total consolidated volume calculated as the total national volume in those classes listed on MIAX PEARL for the month for which the fees apply, excluding consolidated volume executed during the period time in which the Exchange experiences an “Exchange System Disruption” (solely in the option classes of the affected Matching Engine (as defined below)). The

term Exchange System Disruption, which is defined in the Definitions section of the Fee Schedule, means an outage of a Matching Engine or collective Matching Engines for a period of two consecutive hours or more, during trading hours. The term Matching Engine, which is also defined in the Definitions section of the Fee Schedule, is a part of the MIAX PEARL electronic system that processes options orders and trades on a symbol-by-symbol basis. Some Matching Engines will process option classes with multiple root symbols, and other Matching Engines may be dedicated to one single option root symbol (for example, options on SPY may be processed by one single Matching Engine that is dedicated only to SPY). A particular root symbol may only be assigned to a single designated Matching Engine. A particular root symbol may not be assigned to multiple Matching Engines. The Exchange believes that it is reasonable and appropriate to select two consecutive hours as the amount of time necessary to constitute an Exchange System Disruption, as two hours equates to approximately 1.4% of available trading time per month. The Exchange notes that the term “Exchange System Disruption” and its meaning have no applicability outside of the Fee Schedule, as it is used solely for purposes of calculating

volume for the threshold tiers in the Fee Schedule. See the Definitions Section of the Fee Schedule.

⁷ “Affiliate” means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm’s Form BD, Schedule A, or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An “Appointed Market Maker” is a MIAX PEARL Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an “Appointed EEM” is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAX PEARL Market Maker) that has been appointed by a MIAX PEARL Market Maker, pursuant to the process described in the Fee Schedule. See the Definitions Section of the Fee Schedule.

⁸ The term “System” means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

⁹ See Securities Exchange Act Release No. 79778 (January 12, 2017), 82 FR 6662 (January 19, 2017) (SR-PEARL-2016-01).

The Exchange proposes to decrease the Taker fee for Priority Customer orders for options in Non-Penny classes in Tier 1 from \$0.87 to \$0.84, in Tier 2 from \$0.86 to \$0.84 and in Tier 3 from \$0.85 to \$0.84. The purpose of decreasing the specified Taker fees for Priority Customer orders for options in

Non-Penny classes is for business and competitive reasons to attract greater Priority Customer order flow to the Exchange. The Exchange believes that reducing the Taker fees for Priority Customer orders for options in Non-Penny classes in Tiers 1–3 to a \$0.84 per contract fee, will incentivize Members

to send greater Priority Customer order flow to the Exchange due to favorable pricing for this liquidity type.

With all proposed changes, Section (a) of the Fee Schedule for Priority Customer orders shall be the following:

| Origin | Tier | Volume criteria | Per contract rebates/fees for Penny classes | | | | Per contract rebates/fees for Non-Penny classes | |
|-------------------------|------|-------------------------|---|---------|-----------|---------------------|---|--------|
| | | | Maker | Taker * | SPY taker | QQQ, IWM, VXX taker | Maker | Taker |
| Priority Customer | 1 | 0.00%–0.10% | (\$0.25) | \$0.48 | \$0.43 | \$0.47 | (\$0.85) | \$0.84 |
| | 2 | Above 0.10%–0.35% | (0.40) | 0.46 | 0.43 | 0.46 | (0.95) | 0.84 |
| | 3 | Above 0.35%–0.50% | (0.45) | 0.44 | 0.42 | 0.44 | (1.00) | 0.84 |
| | 4 | Above 0.50%–0.75% | (0.52) | 0.44 | 0.41 | 0.43 | (1.03) | 0.84 |
| | 5 | Above 0.75%–1.25% | (0.53) | 0.44 | 0.40 | 0.42 | (1.04) | 0.84 |
| | 6 | Above 1.25% | (0.53) | 0.43 | 0.38 | 0.40 | (1.04) | 0.84 |

* For all Penny Classes other than SPY, QQQ, IWM, and VXX.

The proposed change is scheduled to become operative November 1, 2018.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹⁰ in general, and furthers the objectives of Section 6(b)(4) of the Act,¹¹ in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and issuers and other persons using its facilities, and 6(b)(5) of the Act,¹² in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The proposed Taker fee decrease for Priority Customer orders for options in Non-Penny classes in Tiers 1–3 is reasonable, equitable, and not unfairly discriminatory, because all Priority Customer orders are subject to the same Taker fees and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange initially set its Taker fees at the various volume levels based upon business determinations and an analysis of current Taker fees and volume levels at other exchanges. For competitive and business reasons, the Exchange believes that lower Taker fees assessable to Priority Customer transactions in Non-

Penny classes in Tiers 1–3 will encourage Members to execute more volume in Non-Penny classes on behalf of Priority Customers since they will be assessed reduced fees. The Exchange believes for these reasons that offering the reduced Taker fees for Priority Customer transactions in Non-Penny classes in Tiers 1–3 is equitable, reasonable and not unfairly discriminatory, and thus consistent with the Act.

The Exchange believes that its proposal to reduce Taker fees assessable to transactions in options in Non-Penny classes and not to reduce Taker fees for transactions in options in Penny classes is consistent with other options markets that also assess different transaction fees for options in Non-Penny classes as compared to Penny classes. The Exchange believes that establishing different pricing for options in Non-Penny classes and Penny classes is reasonable, equitable, and not unfairly discriminatory because options in Penny classes are generally more liquid as compared to Non-Penny classes. Additionally, other competing options exchanges differentiate pricing in a similar manner today.¹³

Further, the Exchange believes that it is equitable and not unfairly discriminatory to assess lower fees to Priority Customer orders than to orders from origin types that are not Priority Customer. A Priority Customer is by definition not a broker or dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). This

limitation does not apply to participants on the Exchange whose behavior is substantially similar to that of market professionals, including non-Priority Customers, MIAX PEARL Market Makers, Firms, and Broker-Dealers, who will generally submit a higher number of orders (many of which do not result in executions) than Priority Customers.

Furthermore, the proposed decrease to the Taker fees in Non-Penny classes for Priority Customer transactions in Tiers 1–3 promotes just and equitable principles of trade, fosters cooperation and coordination with persons engaged in facilitating transactions in securities, and protects investors and the public interest because the proposed decrease in the fees will encourage Members to send more orders to the Exchange even if it is an order which takes liquidity since they will be assessed a reduced Taker fee in Tiers 1–3. To the extent that Priority Customer order flow in Non-Penny classes is increased by the proposal, market participants will increasingly compete for the opportunity to trade on the Exchange, including sending more orders which will have the potential to be assessed lower fees and higher rebates. The resulting increased volume and liquidity will benefit all Exchange participants by providing more trading opportunities and tighter spreads.

B. Self-Regulatory Organization’s Statement on Burden on Competition

MIAX PEARL does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed Taker fee decreases are intended to encourage liquidity. The proposed Taker fees should enable the

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4).

¹² 15 U.S.C. 78f(b)(1) and (b)(5).

¹³ See Nasdaq PHLX LLC Pricing Schedule, Section II; NYSE American Options Fee Schedule, Section I; Cboe Exchange, Inc., Fee Schedule, p. 1.

Exchange to attract and compete for order flow with other exchanges which do assess higher Taker fees, thereby adding liquidity.¹⁴

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its rebates and fees to remain competitive with other exchanges and to attract order flow. The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner that encourages market participants to continue to provide liquidity and to send order flow to the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,¹⁵ and Rule 19b-4(f)(2)¹⁶ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

- Send an email to rule-comments@sec.gov. Please include File Number SR-PEARL-2018-22 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-PEARL-2018-22. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-PEARL-2018-22 and should be submitted on or before December 11, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2018-25247 Filed 11-19-18; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84589; File No. SR-MIAX-2018-35]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing of a Proposed Rule Change To Amend Exchange Rule 100, Definitions; Rule 515, Execution of Orders and Quotes; and Rule 503, Openings on the Exchange

November 14, 2018.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 9, 2018, Miami International Securities Exchange, LLC ("MIAX Options" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 100, Definitions; Rule 515, Execution of Orders and Quotes; and Rule 503, Openings on the Exchange.

The text of the proposed rule change is available on the Exchange's website at <http://www.miaxoptions.com/rule-filings/> at MIAX Options' principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

¹⁴ See Nasdaq Stock Market LLC, Chapter XV Options Pricing, Sec. 2; Cboe C2 Exchange, Inc., Fees Schedule, p. 1.

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁶ 17 CFR 240.19b-4(f)(2).

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend certain rules in connection with the listing and trading of non-multi-listed option products on the Exchange that are proprietary to the Exchange. Specifically, the Exchange proposes to amend (i) Rule 100, Definitions, to adopt two new definitions; (ii) Rule 515, Execution of Orders and Quotes, to adopt a new price protection provision; and (iii) Rule 503, Openings on the Exchange, to adopt new rule text for processing certain orders during the Opening Process.

Specifically, the Exchange proposes to amend Exchange Rule 100, Definitions, to adopt new definitions for the terms "Proprietary Product" and "Non-Proprietary Product." The proposed definition of a Proprietary Product is, "a class of options that is listed exclusively on the Exchange and any of its affiliates," while the proposed definition of a Non-Proprietary Product is, "a class of options that is not a Proprietary Product." The Exchange believes that these proposed new definitions will add clarity, precision, and ease of reference to the Exchange's rules when such rules discuss different system functionality for a particular class of options that is a Proprietary Product versus a Non-Proprietary Product.

The Exchange also proposes to amend Exchange Rule 515, Execution of Orders and Quotes, so that it applies only to Non-Proprietary Products. (The Exchange is proposing to adopt a new price protection rule (discussed below) that will apply only to Proprietary Products.) Currently, subsection (c)(1), Price Protection on Non-Market Maker Orders, describes a price protection process for all non-Market Maker³ orders received during a trading session. The price protection process prevents an order from being executed beyond the price designated in the order's price protection instructions (the "price protection limit"). When triggered, the price protection process will cancel an order or the remaining contracts of an order.⁴ However, not all order types currently available on the Exchange are eligible for price protection, due to the nature of the order type and its intended use. Specifically, the rule currently

provides that the price protection process set forth in Rule 515(c)(1) does not apply to Intermarket Sweep Orders ("ISO"),⁵ Immediate or Cancel ("IOC") orders,⁶ or Fill-or-Kill ("FOK") orders.⁷

The Exchange now proposes to amend the heading of subsection (c)(1) to read, "Price Protection on Non-Market Maker Orders in Non-Proprietary Products" so that it only applies to Non-Proprietary Products. The Exchange believes that this change will help distinguish the price protection process provided for non-Market Maker orders in Non-Proprietary Products from the proposed price protection process for non-Market Maker orders in Proprietary Products as discussed below.

The Exchange proposes to adopt new subsection (c)(2), entitled, "Price Protection on Non-Market Maker Orders in Proprietary Products." Under this proposal the System will apply the following price protection process to all non-Market Maker orders in Proprietary Products received during a regular trading session that are larger than, and priced through, the opposite side NBBO.⁸ The price protection process provides exposure and time for market responses at defined price levels during the price protection process. To establish the price level, the System⁹ will calculate a protection price limit for each order eligible for price protection by adding (subtracting) a set number of MPVs¹⁰ if the order is a buy (sell) to (i) the opposite side NBBO, (ii) the previous protection limit price, or (iii) in certain circumstances the limit price of same side joining interest after the expiration of the liquidity exposure process timer as described more fully below. The number of MPVs will be determined by the Exchange and announced to Members¹¹ through a Regulatory Circular, provided that the minimum shall be no less than two (2) MPVs and the maximum shall be no more than twenty (20) MPVs.

The price protection process described above will not apply to

Intermarket Sweep Orders (ISOs)¹² or Auction or Cancel (AOC) orders.¹³ Intermarket Sweep Orders are a special order type designed to prevent "trade-throughs."¹⁴ ISOs are immediately executable in the System and are not eligible for routing to another exchange. An Auction or Cancel order is a limit order used to provide liquidity during a specific Exchange process (such as the Opening Imbalance process described in Rule 503) with a time in force that corresponds with that event. AOC orders are not displayed to any market participant, are not included in the MBBO¹⁵ and therefore not eligible for trading outside of the event, may not be routed, and may not trade at a price inferior to the away markets.¹⁶

Price protection is provided to orders on the Exchange to prevent executions at erroneous prices. The use of Intermarket Sweep Orders is a key component of the trade-through exemption provided by Rule 611 of Reg NMS¹⁷ and applying a price protection limit to these types of orders may prevent them from achieving their intended purpose. Similarly, Auction or Cancel orders are submitted for a specific purpose and applying a price protection limit is unnecessary. AOC orders are used to provide liquidity during a specific Exchange process with a time in force that corresponds with the event and are not eligible for trading outside of the event.

The Exchange now proposes to adopt new subsection (c)(2)(i) to provide a Liquidity Exposure Process ("LEP") for over-sized orders in Proprietary Products. Interest that would be posted, managed, or that would trade at a price more aggressive than the order's protected price will be subject to the

¹² Intermarket Sweep Order ("ISO") means a limit order for an option series that, simultaneously with the routing of the ISO, one or more additional ISOs, as necessary, are routed to execute against the full displayed size of any Protected Bid, in the case of a limit order to sell, or any Protected Offer, in the case of a limit order to buy, for the option series with a price that is superior to the limit price of the ISO. A Member may submit an Intermarket Sweep Order to the Exchange only if it has simultaneously routed one or more additional Intermarket Sweep Orders to execute against the full displayed size of any Protected Bid, in the case of a limit order to sell, or Protected Offer, in the case of a limit order to buy, for an options series with a price that is superior to the limit price of the Intermarket Sweep Order. See Exchange Rule 1400(h).

¹³ See Exchange Rule 516(b)(4).

¹⁴ Trade-through means the purchase or sale of an NMS stock during regular trading hours, either as principal or agent, at a price that is lower than a protected bid or higher than a protected offer. 17 CFR 242.600(b)(77).

¹⁵ The term "MBBO" means the best bid or offer on the Exchange. See Exchange Rule 100.

¹⁶ See Exchange Rule 516(b)(4).

¹⁷ 17 CFR 242.611(b)(5).

⁵ See Exchange Rule 516(f).

⁶ See Exchange Rule 516(c).

⁷ See Exchange Rule 516(b)(2).

⁸ The term "NBBO" means the national best bid or offer as calculated by the Exchange based on market information received by the Exchange from OPRA. See Exchange Rule 100.

⁹ The term "System" means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

¹⁰ The term MPV means Minimum Price Variation. See Exchange Rule 510.

¹¹ The term "Member" means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed "members" under the Exchange Act. See Exchange Rule 100.

³ The term "Market Makers" refers to "Lead Market Makers", "Primary Lead Market Makers" and "Registered Market Makers" collectively. See Exchange Rule 100.

⁴ See Exchange Rule 515(c)(1).

LEP for oversized orders in Proprietary Products. To begin the LEP, the System will broadcast a liquidity exposure message to all subscribers of the Exchange's data feeds which will include the symbol, side of the market, quantity of matched contracts, the imbalance quantity, "must fill" quantity, and price. Additionally, the System will start a Liquidity Exposure Process timer, not to exceed three (3) seconds, as determined by the Exchange and announced via Regulatory Circular.

All market participants can respond to the liquidity exposure broadcast message. The System will evaluate interest received during the Liquidity Exposure Process based on price and the side of the market relative to the side of the market of the initiating order. During the Liquidity Exposure Process if the Exchange receives interest on the opposite side of the market from the initiating order that locks or crosses the Book price of the interest subject to the LEP, the interest will trade, with resting liquidity executed prior to joining liquidity.

Example 1

MPV: 0.01

LEP Increment: 5

The Exchange has two orders resting on its Book:¹⁸

Order 1 is to sell 10 contracts at \$1.10.

Order 2 is to sell 20 contracts at \$1.20.

MBBO: 1.00(10) × 1.10(10)

NBBO: 1.00(10) × 1.10(10)

The Exchange receives a new order (Order 3) to buy 20 contracts at \$1.20.

When the order is received it is assigned a price protection limit that is calculated by adding 5 MPVs to the opposite side NBBO, therefore the price protection limit for Order 3 is \$1.15.

Order 3 buys 10 contracts from Order 1 at \$1.10.

Since Order 3 would now trade at a price (\$1.20) more aggressive than its protected price (\$1.15). The System will initiate the Liquidity Exposure Process at the protected price of \$1.15.

The System will broadcast a liquidity exposure message to all subscribers of the Exchange's data feed, and begin a timer, not to exceed three (3) seconds, as determined by the Exchange.

During the Liquidity Exposure Process the Exchange receives a new order (Order 4) to sell 10 contracts at \$1.15. This order locks the current same side Book Price of \$1.15 and Order 4 sells 10 contracts to Order 3 at \$1.15, filling Order 3 and ending the Liquidity Exposure Process.

Order 2, sell 20 contracts at \$1.20, remains on the Book.

During the Liquidity Exposure Process if the Exchange receives interest on the same side of the market as the initiating order that is priced more aggressively than the Book price of the interest subject to the LEP that also locks or crosses the opposite side NBBO, the System will immediately terminate the timer.

Example 2

MPV: 0.01

LEP Increment: 5

The Exchange has one order resting on its Book:

Order 1 is to sell 10 contracts at \$1.10.

MBBO: 1.00(10) × 1.10(10)

NBBO: 1.00(10) × 1.10(10)

The Exchange receives a new order (Order 2) to buy 20 contracts at \$1.20.

When the order is received it is assigned a price protection limit that is calculated by adding 5 MPVs to the opposite side NBBO, therefore the price protection limit for Order 2 is \$1.15.

Order 2 buys 10 contracts from Order 1 at \$1.10.

Since Order 2 would now trade at a price (\$1.20) more aggressive than its protected price (\$1.15). The System will initiate the Liquidity Exposure Process at the protected price of \$1.15.

During the Liquidity Exposure Process the Exchange receives a new order (Order 3) to buy 10 contracts at \$1.17. This order is more aggressive than the Book price and crosses the opposite NBBO, therefore the Liquidity Exposure Timer immediately ends.

Trade Allocation Following the End of the Liquidity Exposure Process

Proposed rule 515(c)(2)(i)(B) provides that at the end of the timer, the initiating order, resting liquidity, and any same side joining interest will (i) be handled in accordance to Exchange Rule 515, Execution of Orders and Quotes, or (ii) trade against opposite side interest in the following sequence: Resting interest will be filled first, followed by joining interest in the order it was received. Opposite side interest will be allocated in accordance to the Exchange's standard allocation, as described in Exchange Rule 514, Priority of Quotes and Orders.

The Exchange also proposes to amend subsection (f)(2)(vii)(B)(5) of Rule 503, Openings on the Exchange. Currently the rule provides that if there is an opening transaction, any unexecuted contracts from the imbalance not traded or routed will be cancelled back to the entering Member if the price for those contracts crosses the opening price,

unless the Member that submitted the original order has instructed the Exchange in writing to re-enter the remaining size, in which case the remaining size will be automatically submitted as a new order. The Exchange now proposes to amend the rule to adopt a new provision to state that unexecuted contracts that are from a non-Market Maker order in a Proprietary Product, in which case the remaining size will be placed on the Book with a protected price equal to the opening price and the Liquidity Exposure Process, as defined in Exchange Rule 515(c)(2)(i), will begin immediately after the Opening Process is complete.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act¹⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act²⁰ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms 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 adopting definitions for Proprietary Products and Non-Proprietary Products on the Exchange adds additional detail to the Exchange's Rulebook and promotes transparency and clarity in the Exchange's rules. The new proposed definitions allow the Exchange to distinguish between two separate and distinct classes of options listed on the Exchange and to describe rules that may be applicable to one class and not the other. The Exchange believes its proposal will promote just and equitable principles of trade and 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 mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest, by creating a clear distinction between Proprietary and Non-Proprietary Products on the Exchange and the rules applicable to each separately and collectively.

¹⁸ The term "Book" means the electronic book of buy and sell orders and quotes maintained by the System. See Exchange Rule 100.

¹⁹ 15 U.S.C. 78f(b).

²⁰ 15 U.S.C. 78f(b)(5).

The price protection process for non-Market Maker orders in Proprietary Products described herein removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest by providing price protection and order handling to over-sized orders in Proprietary Products. The Exchange believes that Proprietary Product and Non-Proprietary Product orders should have separate price protection processes due to the inherent differences between these classes of options. The price protection process for non-Market Maker orders in Non-Proprietary Products cancels the order or the remaining contracts of an order when triggered.²¹ Non-Proprietary Products, by definition, may be listed on multiple venues, therefore the Exchange believes returning these orders to the Member for analysis and evaluation to be in the best interest of the Member as the Member may choose to re-price and re-submit the order to the Exchange or to route the order to another market center entirely. Conversely, Proprietary Products, by definition, may be exclusively traded on the Exchange, therefore a new price protection process is warranted as canceling non-Market Maker orders in Proprietary Products whose price protection limit has been triggered may not provide a benefit to the Member, as there is no other market center from which to seek an execution.²²

The Exchange believes that its proposal promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest, as the proposed price protection process and order handling for over-sized orders in Proprietary Products is similar to drill-through price protection offered on other exchanges. The Exchange's proposed Liquidity Exposure Process operates in a similar fashion to the drill through protection provided by the Cboe Exchange.²³ The Cboe Exchange will establish a price threshold for an order for a buy as a predetermined amount of minimum price intervals above the NBO,²⁴ or if the order is a sell, as a predetermined

amount of minimum price intervals below the NBB.²⁵ (which may be no less than two minimum increment ticks in either case).²⁶ If the unexecuted portion of an order would execute at a subsequent price through the threshold price (higher for a buy and lower for a sell), also known as the drill through price, the System will not automatically execute that part of the order and will instead expose that portion at the better of the NBBO and the drill through price. The exposure period (which the Exchange determines and announces via Regulatory Circular and will not be in excess of three seconds)²⁷ provides an additional opportunity for execution of these orders (or unexecuted portion). One difference is that the Cboe will cancel the order (or any unexecuted portion) that does not execute during that time period,²⁸ whereas under the Exchange's proposal the order will not be canceled, as the Exchange does not believe it is the best interest of the Member to return an order in a Proprietary Product that ultimately may only be executed on the Exchange.

The Exchange believes that its proposed change to the Opening Process for when there is an opening transaction in a Proprietary Product to assign such unexecuted contracts with a protected price equal to the opening price and to subject the order to the Liquidity Exposure Process promotes just and equitable principles of trade, removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest. Specifically, under the Exchange's current rule, during the Exchange's Opening Process as described in Rule 503(f)(2)(vii)(B)(5), if there is an opening transaction, any unexecuted contracts from the imbalance not traded or routed are cancelled back to the entering Member if the price for those contracts crosses the opening price. The Exchange believes that in this situation canceling the unexecuted contracts back to the Member allows the Member the opportunity to reevaluate its order and possibly resubmit the order to the Exchange with a different price or to submit the order to another market center completely. If, however, the order was for a Proprietary Product, canceling the unexecuted contracts back to the Member would not be in the Member's

best interest as there may be no other market center for the Member to re-send the order. Therefore, under the proposed rule if the unexecuted contracts are from a non-Market Maker order in a Proprietary Product, the remaining contracts will be placed on the Book with a protected price equal to the opening price and the Liquidity Exposure Process will begin immediately after the Opening Process is complete. By definition Proprietary Products may be exclusively listed on the Exchange and the Exchange believes it is in the best interest of the investor to provide a mechanism by which an investors' order in a Proprietary Product may ultimately be filled.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe the proposed rule change will impose any burden on inter-market competition as the proposed rule changes are designed to facilitate the handling of orders in Proprietary Products on the Exchange. By definition Proprietary Products may be listed exclusively on the Exchange, and therefore have no impact on inter-market competition.

The Exchange's proposed adoption of definitions for Proprietary Products and Non-Proprietary Products adds clarity and precision to the Exchange's rules. The Exchange's proposed adoption of a price protection process and management process for over-sized orders in Proprietary Products is designed to benefit market participants that transact in Proprietary Products on the Exchange. The Exchange believes that the proposed rule changes will benefit investors and the marketplace as a whole.

Additionally, the Exchange does not believe the proposed rule change will impose any burden on intra-market competition as the Rules apply equally to all Exchange Members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period

²¹ See *supra* note 4.

²² The Exchange notes that a Member who believes that an execution has occurred at an erroneous price may avail themselves of the protections provided in Exchange Rule 521, Nullification and Adjustment of Options Transactions Including Obvious Errors.

²³ See Cboe Exchange Rule 6.13(b)(v)(B).

²⁴ National Best Offer.

²⁵ National Best Bid.

²⁶ See Cboe Exchange Rule 6.13(b)(v)(B)(I).

²⁷ See Cboe Exchange Rule 6.13(b)(v)(B)(III).

²⁸ See Securities Exchange Act Release No. 79244 (November 4, 2016), 81 FR 79063 (November 10, 2016) (SR-CBOE-2016-053).

up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-MIAX-2018-35 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-MIAX-2018-35. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should

submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MIAX-2018-35, and should be submitted on or before December 11, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2018-25245 Filed 11-19-18; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84583; File No. SR-NYSE-2018-53]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Price List as to Certain Credits Applicable to Supplemental Liquidity Providers

November 14, 2018.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on October 31, 2018, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List to modify (1) the incremental step up tier for Supplemental Liquidity Providers ("SLPs"), and (2) the ADV and quoting requirements for SLP Tier 1 rates for displayed and non-displayed orders in securities traded pursuant to Unlisted Trading Privileges ("UTP") (Tapes B and C). The Exchange proposes to implement these changes to its Price List effective November 1, 2018. 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.

²⁹ 17 CFR 200.30-3(a)(12).

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 its Price List to modify (1) the incremental SLP step up tier, and (2) the ADV and quoting requirements for SLP Tier 1 rates for displayed and non-displayed orders in UTP securities.

The Exchange proposes to implement these changes to its Price List effective November 1, 2018.

Incremental SLP Step Up Tier

The Exchange currently provides a credit of \$0.0002 to a SLP in addition to the SLP's tiered or non-tiered credit for adding displayed liquidity provided that such combined credits do not exceed \$0.0031 per share, if the SLP (1) meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B (quotes of an SLP-Prop and an SLMM of the same member organization shall not be aggregated) (the "Quoting Requirement"), and (2) adds liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) of an average daily trading volume ("ADV")⁴ of more than 0.15% of NYSE consolidated average daily volume ("CADV") in the billing month over the SLP's adding liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) as a percent of NYSE CADV in the second quarter of 2018.

The Exchange proposes to modify the Incremental SLP Step Up Tier to provide additional ways that SLPs

⁴ Footnote 2 to the Price List defines ADV as "average daily volume". The Exchange is not proposing to change this definition.

adding different amounts of displayed liquidity to the Exchange can qualify for a credit.

Specifically, the Exchange would provide an incremental credit of \$0.0001 to SLPs that (1) meet the Quoting Requirement, and (2) add liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) of an ADV of more than 0.10% of NYSE CADV in the billing month over the SLP's adding liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) as a percent of NYSE CADV in the second quarter of 2018.

Alternatively, the Exchange would continue provide an incremental credit of \$0.0002 to SLPs that (1) meet the Quoting Requirement, and (2) add liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) of an ADV of more than 0.15% of NYSE CADV in the billing month over the SLP's adding liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) as a percent of NYSE CADV in the second quarter of 2018.

Finally, the Exchange would provide an incremental credit of \$0.0003 to SLPs that (1) meet the Quoting Requirement, and (2) add liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) of an ADV of more than 0.25% of NYSE CADV in the billing month over the SLP's adding liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) as a percent of NYSE CADV in the second quarter of 2018.

The Exchange proposes that SLPs could only qualify for one of the three proposed credits in a billing month. Further, the combined SLP credits cannot exceed \$0.0032 per share in a billing month.

For example, assume a SLP adds liquidity of 0.50% in the second quarter of 2018 (the "Baseline"), which would qualify them for the SLP Tier 2 adding credit of \$0.0026 per share based on the SLP Tier 2 adding requirement of 0.45%. If that SLP adds liquidity in the billing month of:

- More than 0.60%, or 0.10% above the Baseline, that SLP would qualify for the Incremental Step Up credit of \$0.0001 in addition to the SLP Tier 1A credit of \$0.00275 based on the SLP Tier 1A requirement of 0.60%, for a combined SLP credit of \$0.00285 in that billing month.

- more than 0.65%, or 0.15% above the Baseline, that SLP would qualify for the Incremental Step Up credit of \$0.0002 in addition to the SLP Tier 1A credit of \$0.00275 based on the SLP Tier 1A requirement of 0.60%, for a combined SLP credit of \$0.00295 in that billing month.

- more than 0.75%, or 0.25% above the Baseline, that SLP would qualify for the Incremental Step Up credit of \$0.0003 in addition to the SLP Tier 1A credit of \$0.00275 based on the SLP Tier 1A requirement of 0.60%, for a combined SLP credit of \$0.00305 in that billing month. Further assume that same SLP adds liquidity in UTP Securities of at least 0.30% of Tape B and Tape C CADV combined, which would receive an additional \$0.0001 per share. That same SLP would then qualify for a combined credit of \$0.00315 (\$0.00275 Tier 1A credit plus the \$0.0003 Incremental Step Up credit plus the \$0.0001 credit from Tape B and C SLP Adding).

If an SLP qualified for the SLP Tier 1 credit of \$0.0029 plus the Incremental Step Up Credit of \$0.0003 and an additional credit of \$0.0001 for adding liquidity in UTP Securities of at least 0.30% of Tape B and Tape C CADV combined, or \$0.0033 in total, that SLP credit would be limited to a total credit of \$0.0032 per share.

Quoting and Adding Requirements for SLP Tiered Credits

Currently, the Exchange offers tiered rates for displayed and non-displayed orders by SLPs that add liquidity to the Exchange in UTP Securities priced at or above \$1.00. Specifically, Tier 1 provides a \$0.0032 per share credit per tape in an assigned UTP Security for SLPs adding displayed liquidity to the Exchange if the SLP (1) adds liquidity for all assigned UTP Securities in the aggregate of an CADV of at least 0.10% per tape, and (2) meets the 10% average or more quoting requirement in 500 or more assigned UTP Securities in Tapes B and C combined pursuant to Rule 107B, and (3) meets the 10% average or more quoting requirement in an assigned UTP Security pursuant to Rule 107B.

The Exchange proposes to modify the adding liquidity requirement to require the SLP to add liquidity for all assigned UTP Securities in the aggregate of an

CADV of at least 0.10% for Tape B and 0.075% for Tape C. In addition, the Exchange proposes to require SLPs to meet the 10% average or more quoting requirement in 400 or more assigned UTP Securities in Tapes B and C combined pursuant to Rule 107B.

The remaining requirements and credits for qualifying for Tier 1 would remain unchanged.

* * * * *

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any problems that member organizations would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁶ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

Incremental SLP Step Up Tier

The Exchange believes that the proposal to modify the Incremental SLP Step Up Tier to provide additional ways that SLPs adding different amounts of displayed liquidity to the Exchange can qualify for a credit is reasonable because it provides existing SLPs (including SLPs that are also DMMs) with added incentive to bring additional order flow to a public market. In particular, the Exchange believes that the new tiered rates will provide additional incentives for more active SLPs to add liquidity to the Exchange, to the benefit of the investing public and all market participants. Moreover, offering additional credits, up to a \$0.0032 per share maximum, in addition to the SLP's tiered or non-tiered credit for adding displayed liquidity for SLPs that add liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) of an ADV of more than 0.10%, 0.15% or 0.25% of NYSE CADV over that SLPs' second quarter of 2018 adding liquidity and that meet the SLP quoting requirements would provide incentives for less active SLPs to add displayed liquidity in order to meet the SLP quoting requirements, thereby contributing to additional levels

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4) & (5).

of displayed liquidity and quoting on a public exchange, which benefits all market participants. The Exchange also believes the new tiered rates, combined with higher credits from existing tiers such as the SLP Step Up Tier and credits for SLPs that are in their first two calendar months as an SLP, will also encourage member organizations that are not currently SLPs to participate in the SLP program. The Exchange also believes it is reasonable to raise the limit on combined SLP credits from \$0.0031 to \$0.0032 per share in a billing month as the Incremental SLP Step Up Tier now offers a higher credit of \$0.0001 over the current Incremental SLP Step Up Tier credit.

Finally, the Exchange believes that the proposed tier modifications are equitable and not unfairly discriminatory because they would apply equally to all SLPs that would submit additional adding liquidity to the Exchange in order to qualify for the additional credits.

Quoting and Adding Requirements for SLP Tiered Credits

The Exchange believes that retaining a 0.10% adding liquidity requirement for SLP Provide Tier 1 for Tape B securities and lowering it slightly to 0.075% for Tape C securities is reasonable, equitable and not unfairly discriminatory because the proposed requirements will encourage the SLPs to add liquidity to the market in Tape C securities, thereby providing customers with a higher quality venue for price discovery, liquidity, competitive quotes and price improvement.

The Exchange also believes that lowering the requirements for adding and quoting will encourage participation from a greater number of current and new SLPs which would promote additional liquidity in Tape C securities. Further, the Exchange believes that it reasonable, equitable and not unfairly discriminatory to lower the adding requirements for SLP Provide Tier 1 in Tape C securities while keeping the adding requirements for SLP Provider Tier 1 in Tape B securities unchanged as the Exchange's market share in Tape C securities is relatively lower than in Tape B securities.

For the same reasons, the Exchange believes that lowering the SLP Provide Tier 1 quoting requirement to 400 or more assigned UTP securities in Tapes B and C combined pursuant to Rule 107B is reasonable, equitable and not unfairly discriminatory as it will encourage additional SLPs to qualify for the higher Tier 1 SLP credit.

Finally, the Exchange believes that it is subject to significant competitive

forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,⁷ the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the proposed change would foster liquidity provision and stability in the marketplace, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations. In this regard, the Exchange believes that the transparency and competitiveness of attracting additional executions on an exchange market would encourage competition. The Exchange also believes that the proposed rule change is designed to provide the public and investors with a Price List that is clear and consistent, thereby reducing burdens on the marketplace and facilitating investor protection.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. As a result of all of these considerations, the Exchange does not believe that the proposed changes will impair the ability of member organizations or competing order execution venues to maintain their competitive standing in the financial markets.

⁷ 15 U.S.C. 78f(b)(8).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)⁸ of the Act and subparagraph (f)(2) of Rule 19b-4⁹ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁰ 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-NYSE-2018-53 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-NYSE-2018-53. 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/>

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(2).

¹⁰ 15 U.S.C. 78s(b)(2)(B).

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-NYSE-2018-53 and should be submitted on or before December 11, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2018-25235 Filed 11-19-18; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84588; File No. SR-NASDAQ-2018-088]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Chapter IV, Securities Traded on NOM, Section 8, Long-Term Options Contracts

November 14, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 7, 2018, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared

by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Chapter IV, Securities Traded on NOM, Section 8, Long-Term Options Contracts.

The text of the proposed rule change is available on the Exchange's website at <http://nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its rules at Chapter IV, Securities Traded on NOM, Section 8, Long-Term Options Contracts, in order (i) to clarify the number of long-term option contract ("LEAPS") expiration months that may be listed on the Exchange on underlying securities under the current rule, and (ii) to expand the number of LEAPS expiration months that may be listed in options on the SPDR® S&P 500® exchange-traded fund (the "SPY ETF") in particular.

Clarification of the Number of Permitted Expiration Months

Pursuant to current Chapter IV, Section 8, the Exchange may list LEAPS that expire from twelve (12) to thirty-nine (39) months from the time they are listed. The rule provides that there may be up to six (6) additional expiration months. Because the rule does not specify which expiration months the six months are in addition to, and thus is ambiguous, the Exchange proposes to delete the word "additional." As amended, the rule would clearly and

simply provide that the Exchange may list six expiration months having from twelve up to thirty-nine months from the time they are listed until expiration. This aspect of the proposed rule change is based upon Nasdaq PHLX, LLC ("Phlx") Rule 1012, Series of Options Open for Trading, subsection (a)(i)(D).³

Additional Expiration Months in SPY ETF LEAPS

The Exchange proposes to further amend Chapter IV, Section 8, to permit up to ten LEAPS expiration months for options on the SPY ETF in response to customer demand.⁴ The proposal will add liquidity to the SPY ETF options market by allowing market participants to hedge risks relating to SPY ETF option positions over a longer time period with a known and limited cost. This aspect of the proposed rule change is also based upon Phlx Rule 1012, Series of Options Open for Trading, subsection (a)(i)(D), as recently amended.⁵

The SPY ETF options market today is characterized by its tremendous daily and annual liquidity. As a consequence the Exchange believes that the listing of additional SPY ETF LEAPS expiration months would be well received by investors. This proposal to expand the number of permitted SPY ETF LEAPS expiration months would not apply to LEAPS on any other security.⁶

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁸ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. First, as noted above, the proposal protects investors and the public interest by clarifying ambiguous rule language associated with permitted listings of long term options. Second, the proposal

³ See Securities Exchange Act Release No. 80769 (May 25, 2017), 82 FR 25472 (June 1, 2017) (SR-Phlx-2017-41).

⁴ Chapter XIV, Index Rules, Section 11, Terms of Index Options Contracts, subsection (b)(1)(i) currently permits the Exchange to list up to ten (10) expiration months in long term index options.

⁵ See Securities Exchange Act Release No. 84449 (October 18, 2018), 83 FR 53699 (October 24, 2018) (SR-Phlx-2018-64).

⁶ Historically, SPY ETF is the largest and most actively traded ETF in the United States as measured by its assets under management and the value of shares traded.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

would permit the Exchange to offer market participants additional LEAPS on SPY ETF options for their investment and risk management purposes. This aspect of the proposal is intended simply to provide additional trading opportunities which have been requested by customers, thereby facilitating transactions in options and contributing to the protection of investors and the maintenance of fair and orderly markets. The proposed rule change responds to the continuing needs of market participants, particularly portfolio managers and other institutional customers, by providing protection from long-term market moves and by offering an alternative to hedging portfolios with futures positions or off-exchange customized derivative instruments. The Exchange believes that the addition today of four additional expiration months for SPY ETF LEAPS does not represent a proliferation of expiration months, but is instead a very modest expansion of LEAPS in response to stated customer demand. Significantly, the proposal would feature new LEAPS expiration months in only a single class of options that are very liquid and heavily traded, as discussed above. Additionally, the Exchange notes by way of precedent that ten expiration months are already permitted for stock index LEAPS. Further, the Exchange has the necessary systems capacity to support the [sic]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. On the contrary, the Exchange believes that the proposed amendment will benefit investors, market participants, and the marketplace in general by eliminating ambiguity in the current rules regarding the number of permitted expiration months in LEAPS generally. Additionally, the proposal merely provides investors additional investment and risk management opportunities by providing flexibility to the Exchange to list additional LEAPS expiration series, expanding the number of SPY ETF LEAPS offered on the Exchange from six expiration months to ten expiration months.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰

A proposed rule change filed under Rule 19b-4(f)(6)¹¹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),¹² 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 on November 16, 2018, to coincide with the effective date of Phlx's proposed rule change on which the proposal is partially based.¹³ The Exchange's proposal would clarify ambiguous rule text and would conform the Exchange's rules relating to permitted number of SPY ETF LEAPS expirations to those of Phlx. 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 proposal operative on November 16, 2018.¹⁴

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.

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4. 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.

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 240.19b-4(f)(6)(iii).

¹³ See *supra* note 5.

¹⁴ 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).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2018-088 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2018-088. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2018-088 and should be submitted on or before December 11, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018-25244 Filed 11-19-18; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84594; File No. SR-MIAX-2018-34]

Self-Regulatory Organizations: Notice of Filing of a Proposed Rule Change by Miami International Securities Exchange, LLC To Amend Exchange Rule 519, MIAX Order Monitor; Exchange Rule 519A, Risk Protection Monitor; and Rule 517, Quote Types Defined

November 14, 2018.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 9, 2018, Miami International Securities Exchange, LLC (“MIAX Options” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 519, MIAX Order Monitor; Exchange Rule 519A, Risk Protection Monitor; and Rule 517, Quote Types Defined.

The text of the proposed rule change is available on the Exchange’s website at <http://www.miaxoptions.com/rule-filings/> at MIAX Options’ principal office, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these

statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 28, 2018, the Exchange filed with the Securities and Exchange Commission (“SEC”) a proposal to list and trade on the Exchange, options on the SPIKES™ Index, a new index that measures expected 30-day volatility of the SPDR S&P 500 ETF Trust.³ To establish the settlement value for the Index, a settlement auction named the SPIKES Special Settlement Auction will be conducted once per month, on the day the settlement value for the Index is to be calculated. During the SPIKES Special Settlement Auction, in addition to any order types that may regularly be accepted by the Exchange, the Exchange will also accept settlement auction only orders (“SAO Orders”) and settlement auction only eQuotes (“SAO eQuotes”). (SAO Orders and SAO eQuotes are collectively referred to as “SAOs”).⁴ SAOs are specific order types that allow a Member⁵ to voluntarily tag such an order as a SPIKES strategy order.

The Exchange anticipates that market participants that actively trade SPIKES options may hedge their positions with SPY option series that will also be used to calculate the SPIKES exercise settlement/final settlement value. Market participants holding hedged SPIKES options positions may trade out of their SPY option series on the relevant SPIKES expiration/final settlement date. Specifically, market participants holding short, hedged SPIKES options could liquidate that hedge by selling their SPY options series, while traders holding long, hedged SPIKES options could liquidate their hedge by buying SPY option series. In order to seek convergence with the SPIKE exercise/final settlement value, these market participants may liquidate their hedges by submitting SPIKES

strategy orders in the appropriate SPY option series during the SPIKES Special Settlement Auction on the SPIKES expiration/final settlement date. Given that SAOs are designed for the special purpose of closing a hedged position and are available for use only during the SPIKES Special Settlement Auction, the Exchange proposes to amend its rules to remove SAO Orders from certain risk protection features offered by the Exchange.

Specifically, the Exchange proposes to amend Exchange Rule 519, MIAX Order Monitor. The MIAX Order Monitor is a risk management feature of the Exchange’s System.⁶ Pursuant to paragraph (a) of the Rule, the MIAX Order Monitor provides an order price protection for Market Orders to Sell,⁷ Market Orders to Buy or Sell,⁸ and Limit Orders to Buy or Sell,⁹ in order to avoid the occurrence of potential obvious or catastrophic errors on the Exchange. The MIAX Order Monitor will prevent certain orders from executing or being placed on the Book¹⁰ at prices outside pre-set standard limits.¹¹ The MIAX Order Monitor will also cause the System to prevent certain orders from executing or being placed on the Book if the size of the order exceeds the order size protection designated by the Member.¹² The MIAX Order Monitor will also cause the System to reject any orders that exceed the maximum number of open orders held in the System on behalf of a particular Member, as designated by the Member.¹³ The MIAX Order Monitor will also cause the System to reject any orders that exceed the maximum number of open contracts represented by orders held in the System on behalf of a particular Member, as designated by the Member.¹⁴

The Exchange now proposes to amend Exchange Rule 519, Interpretations and Policies, to adopt new subsection .03, to provide that the order protections of the MIAX Order Monitor pursuant to sections (b) (c) and (d) will not apply to Settlement Auction Only Orders (SAO Orders), as defined in Interpretations and Policies .03 of Exchange Rule 503. The Exchange does not believe that an

⁶ The term “System” means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

⁷ See Exchange Rule 519(a)(1).

⁸ See Exchange Rule 519(a)(2).

⁹ See Exchange Rule 519(a)(3).

¹⁰ The term “Book” means the electronic book of buy and sell orders and quotes maintained by the System. See Exchange Rule 100.

¹¹ See Exchange Rule 519(a).

¹² See Exchange Rule 519(b).

¹³ See Exchange Rule 519(c).

¹⁴ See Exchange Rule 519(d).

³ See Securities Exchange Act Release No. 84417 (October 12, 2018), 83 FR 52865 (October 18, 2018) (SR-MIAX-2018-14) (Order Granting Approval of a Proposed Rule Change by Miami International Securities Exchange, LLC to List and Trade Options on the SPIKES™ Index).

⁴ *Id.*

⁵ The term “Member” means an individual or organization approved to exercise the trading rights associate with a Trading Permit. Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

SAO Order should be subject to the order size protection described in Rule 519(b) as preventing the order from being placed on the Book may prevent the Member from effectively hedging or closing a hedged position in SPIKES options. Similarly, the Exchange does not believe that an SAO Order should be subject to the open order protection described in Rule 519(c) as this protection aggregates open orders held in the System and may inadvertently prevent the Member from hedging or closing a hedged position in SPIKES options by preventing the submission of an SAO Order. Lastly, the Exchange does not believe that an SAO Order should be subject to the open contract protection described in Rule 519(d) as this protection aggregates the number of open contracts represented by orders held in the System. Including SAO Orders in this protection may inadvertently prevent the Member from hedging or closing a hedged position in SPIKES options by preventing the submission of an SAO Order.

The Exchange also proposes to amend Exchange Rule 519A, Risk Protection Monitor. The Risk Protection Monitor (“RPM”) is a feature of the MIAX System which maintains a counting program (“counting program”) for each participating Member that will count the number of orders entered and the number of contracts traded via an order entered by a Member on the Exchange within a specified time period that has been established by the Member (the “specified time period”). The maximum duration of the specified time period will be established by the Exchange and announced via a Regulatory Circular. The Risk Protection Monitor maintains one or more Member-configurable Allowable Order Rate settings and Allowable Contract Execution Rate settings. When a Member’s order is entered or when an execution of a Member’s order occurs, the System will look back over the specified time period to determine if the Member has: (i) Entered during the specified time period a number of orders exceeding their Allowable Order Rate setting(s), or (ii) executed during the specified time period a number of contracts exceeding their Allowable Contract Execution Rate setting(s). Once engaged, the Risk Protection Monitor will then, as determined by the Member:

Automatically either (A) prevent the System from receiving any new orders in all series in all classes from the Member; (B) prevent the System from receiving any new orders in all series in all classes from the Member and cancel all existing orders with a time-in-force

of Day in all series in all classes from the Member; or (C) send a notification to the Member without any further preventative or cancellation action by the System. When engaged, the Risk Protection Monitor will still allow the Member to interact with existing orders entered prior to exceeding the Allowable Order Rate setting or the Allowable Contract Execution Rate setting, including sending cancel order messages and receiving trade executions from those orders. The Risk Protection Monitor shall remain engaged until the Member communicates with the Help Desk¹⁵ to enable the acceptance of new orders.¹⁶

The Exchange now proposes to amend Interpretations and Policies, to adopt new subsection .02, to state that SAO Orders, as defined in Interpretations and Policies .03 of Rule 503, are not eligible to participate in the Risk Protection Monitor. Prohibiting SAO Orders from participating in the Risk Protection Monitor ensures that these orders may be freely submitted to the Exchange and will remain active in the System once accepted. As discussed above, SAO Orders are strategy orders used for hedging or closing a hedged position in SPIKES options during the SPIKES Special Settlement Auction which is conducted only once per month. When engaged the Risk Protection Monitor may prevent the Member from submitting SAO Orders to the Exchange until the Member communicates with the Help Desk to enable the acceptance of new orders. The Exchange does not believe it is in the best interest of the Member to introduce this type of delay for SAO Orders, as they are time sensitive and are designed to participate in the SPIKES Special Settlement Auction.

Additionally, the Exchange proposes to amend Rule 517, Quote Types Defined. Specifically, subsection (d) of Rule 517 provides that bids and offers in certain limited time in force eQuote types (Auction or Cancel, Opening Only, Immediate or Cancel, Fill or Kill, and Immediate or Cancel Intermarket Sweep) will not be disseminated by the Exchange in accordance with Rule 602 of Regulation NMS. In addition, executions resulting from these eQuote types will not be used by the Exchange’s Aggregate Risk Manager to determine whether the Market Maker has exceeded

¹⁵ The term “Help Desk” means the Exchange’s control room consisting of Exchange staff authorized to make certain trading determinations on behalf of the Exchange. The Help Desk shall report to and be supervised by a senior executive officer of the Exchange. See Exchange Rule 100.

¹⁶ See Exchange Rule 519A(a).

the Allowable Exchange Percentage as more fully described in Rule 612.

Exchange Rule 612, Aggregate Risk Manager (“ARM”) describes a risk protection feature similar to the Risk Protection Manager for orders, however ARM is only available for Market Makers and provides a counting program (“counting program”) for each Market Maker who is required to submit continuous two-sided quotations pursuant to Rule 604 in each of their appointed option classes. The counting program will count the number of contracts traded by the Market Maker (the “specified time period”). The Market Maker may also establish for each option class an Allowable Engagement Percentage. The Exchange will establish a default specified time period and a default Allowable Engagement Percentage (“default settings”) on behalf of a Market Maker that has not established a specified time period and/or an Allowable Engagement Percentage.¹⁷

The System will engage the Aggregate Risk Manager in a particular option class when the counting program has determined that a Market Maker has traded during the specified time period a number of contracts equal to or above their Allowable Engagement Percentage. The Aggregate Risk Manager will then automatically remove the Market Maker’s Standard Quotations and Day eQuotes from the Exchange’s disseminated quotation in all series of that particular option class until the Market Maker sends a notification to the System of the intent to reengage quoting and submits a new revised quotation.¹⁸

The Exchange now proposes to add the Settlement Auction Only eQuote (SAO eQuote), as defined in Interpretations and Policies .03 of Exchange Rule 503, to the list of eQuotes that are not subject to the Aggregate Risk Manager. An SAO eQuote is a special purpose eQuote available only during the SPIKES Special Settlement Auction and as such should be treated similarly to other limited time in force eQuote types.

The Exchange also proposes to amend Interpretations and Policies of Rule 517 to adopt new subsection .02 which will state that an SAO eQuote will be considered a priority quote for trade allocation in accordance with Exchange Rule 514(e). To be considered a priority quote a Market Maker’s quote must meet certain conditions as stipulated in the Exchange rules, one of which is that the

¹⁷ See Exchange Rule 612(a).

¹⁸ See Exchange Rule 612(b)(1).

quote is valid width and two-sided.¹⁹ SAO eQuotes are a special purpose eQuote used to hedge or close a hedged position. A Market Maker using an SAO eQuote will not be in a position to place a quote on the opposite side of the market, as an execution of the opposite side eQuote would impair the ability of the Market Maker to hedge or close a hedged position. The Exchange does not wish to disadvantage a Market Maker for properly using an eQuote when it is not feasible for a Market Maker to otherwise meet the priority quote requirements (submission of a two-sided quote) with this type of eQuote.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act²⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act²¹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms 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 changes promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system because they seek to ensure that SAOs may be freely submitted to the Exchange and that SAOs are not encumbered by risk protections designed for order types used during the course of regular trading. Additionally, the Exchange believes that removing SAO Orders from RPM and from certain MIAAX Order Monitor features ensures that SAO Orders are available for their intended use to hedge or close a hedged position in SPIKES options. Similarly, the Exchange believes that removing SAO eQuotes from ARM ensures that SAO eQuotes are available for their intended use. Treating an SAO eQuote as a priority quote for allocation purposes ensures that a Market Maker with an SAO eQuote at the Opening Price could receive an execution without having to submit a two-sided quote. A Market Maker using an SAO eQuote to hedge or close a hedged position can not provide

an SAO eQuote on the opposite side of the market without negatively impacting their original eQuote. Therefore, the Exchange believes it is just and equitable to permit SAO eQuotes to be treated as priority quotes for allocation purposes as it is not feasible for a Market Maker to meet the requirements necessary to establish a priority quote using SAO eQuotes.

The Exchange believes that the proposed change promotes just and equitable principles of trade, and removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest, as the changes allow for SAO Orders and SAO eQuotes to be freely used for their intended purpose and will contribute to increased liquidity on the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe the proposed rule change will impose any burden on inter-market competition as the proposed rule changes are designed to ensure that SAOs may be submitted to the Exchange to participate in the SPIKES Special Settlement Auction, and that once accepted these orders remain active in the System. The Exchange does not believe that the proposed rule change will cause an unnecessary burden on inter-market competition as SAOs are only used for the SPIKES Special Settlement Auction which is a special process unique to the Exchange.

Additionally, the Exchange does not believe the proposed rule change will impose any burden on intra-market competition as the Rules apply equally to all Exchange Members, and all Members have the ability to submit SAOs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its

reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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-MIAAX-2018-34 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-MIAAX-2018-34. 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

¹⁹ See Exchange Rule 517(b)(1)(i)(A).

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(5).

Number SR-MIAX-2018-34, and should be submitted on or before December 11, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2018-25249 Filed 11-19-18; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available

From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736.

Extension:

Rules 15Fb1-1 through 15Fb6-2 and Forms SBSE, SBSE-A, SBSE-BD, SBSE-C and SBSE-W, SEC File No. 270-642, OMB Control No. 3235-0696.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the existing collection of information provided for in Rules 15Fb1-1 through 15Fb6-2 and Forms SBSE, SBSE-A, SBSE-BD, SBSE-C and SBSE-W (17 CFR 240.15Fb1-1 through 240.15Fb6-2, and 17 CFR 249.1600, 249.1600a, 249.1600b, 249.1600c and 249.1601), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

The Commission adopted Rules 15Fb1-1 through 15Fb6-2 and Forms SBSE, SBSE-A, SBSE-BD, SBSE-C and SBSE-W on August 5, 2015 to create a process to register SBS Entities. Forms SBSE, SBSE-A, and SBSE-BD and SBSE-C were designed to elicit certain information from applicants. The Commission uses the information disclosed by applicants through the SBS Entity registration rules and forms to: (1) Determine whether an applicant meets the standards for registration set forth in the provisions of the Exchange Act; and (2) develop an information resource regarding SBS Entities where members of the public may obtain relevant, up-to-date information about SBS Entities, and where the Commission may obtain information for examination and

enforcement purposes. Without the information provided through these SBS Entity registration rules and forms, the Commission could not effectively determine whether the applicant meets the standards for registration or implement policy objectives of the Exchange Act.

The information collected pursuant to Rule 15Fb3-2 and Form SBSE-W allows the Commission to determine whether it is appropriate to allow an SBS Entity to withdraw from registration and to facilitate that withdrawal. Without this information, the Commission would be unable to effectively determine whether it was appropriate to allow an SBS Entity to withdraw. In addition, it would be more difficult for the Commission to properly regulate SBS Entities if it were unable to quickly identify those that have withdrawn from the security-based swap business.

In 2017 there were approximately 55 entities that may need to register as SBS Entities. The Commission estimates that these Entities likely would incur a total burden of 9,825 hours per year to comply with Rules 15Fb1-1 through 15Fb6-2 and Forms SBSE, SBSE-A, SBSE-BD, SBSE-C and SBSE-W.

In addition, Rules 15Fb1-1 through 15Fb6-2 and Forms SBSE, SBSE-A, SBSE-BD, SBSE-C and SBSE-W may impose certain costs on non-resident persons that apply to be registered with the Commission as SBS Entities, including an initial and ongoing costs associated with obtaining an opinion of counsel indicating that it can, as a matter of law, provide the Commission with access to its books and records and submit to Commission examinations, and an ongoing cost associated with establishing and maintaining a relationship with a U.S. agent for service of process.

The staff estimates, based on internet research,¹ that it would cost each nonresident SBS Entity approximately \$176 annually to appoint and maintain a relationship with a U.S. agent for

service of process. Consequently, the total cost for all nonresident SBS Entities to appoint and maintain relationships with U.S. agents for service of process is approximately \$3,872 per year.

Non-resident SBS Entities also would incur outside legal costs associated with obtaining an opinion of counsel. The staff estimates that each of the estimated 22 non-resident persons that likely will apply to register as SBS Entities with the Commission would incur, on average, approximately \$25,000 in outside legal costs to obtain the opinion of counsel necessary to register, and that the total annualized cost for all nonresident SBS Entities to obtain this opinion of counsel would be approximately \$183,333. Nonresident SBS Entities would also need to obtain a revised opinion of counsel after any changes in the legal or regulatory framework that would impact the SBS Entity's ability to provide, or manner in which it provides, the Commission with prompt access to its books and records or that impacts the Commission's ability to inspect and examine the SBS Entity. We do not believe this would occur frequently, and therefore estimate that one non-resident entity may need to recertify annually. Thus, the total ongoing cost associated with obtaining a revised opinion of counsel regarding the new regulatory regime would be approximately \$25,000 annually. Consequently, the total annualized cost burden associated with Rules 15Fb1-1 through 15Fb6-2 and Forms SBSE, SBSE-A, SBSE-BD, SBSE-C and SBSE-W would be approximately \$212,205 per year.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

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

¹ See, e.g., <http://www.incorp.com/registered-agent-resident-agent-services.aspx> (as of September 21, 2018, \$99 per state per year), https://ct.wolterskluwer.com/registered-agent-services?mm_campaign=Enter_Campaign_Code_Here&keyword=registered%20agent&utm_source=Google&utm_medium=CPC&utm_campaign=RegisteredAgent&jadid=69563123457&jap=113&jk=registered%20agent&jklid=gc:a8a8ae4cd4a6542cf014a97541e8d183e:t1_p:k_registered%20agent:pl&jp=&js=1&jsid=35672&jt=1 (as of September 21, 2018, \$279 per year), and <https://www.ailcorp.com/services/registered-agent> (as of September 21, 2018, \$149 per year). The staff sought websites that provided pricing information and a comprehensive description of their registered agent services. We calculated our estimate by averaging the costs provided on these three websites—(\$99 + \$279 + \$149) ÷ 3 = \$176.

²² 17 CFR 200.30-3(a)(12).

Please direct your written comments to: Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549, or send an email to: PRA_Mailbox@sec.gov.

Dated: November 14, 2018.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018-25218 Filed 11-19-18; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84592; File No. SR-PEARL-2018-23]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX PEARL Fee Schedule

November 14, 2018.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 31, 2018, MIAX PEARL, LLC (“MIAX PEARL” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX PEARL Fee Schedule (the “Fee Schedule”).

The text of the proposed rule change is available on the Exchange’s website at <http://www.miaxoptions.com/rule-filings/pearl> at MIAX PEARL’s principal office, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Add/Remove Tiered Rebates/Fees set forth in Section (a) of the Fee Schedule that apply to MIAX PEARL Market Makers³ to (i) add a new, alternative Volume Criteria to Tier 2 based upon the total monthly volume executed by a MIAX PEARL Market Maker in SPY, QQQ, and IWM options (“SPY/QQQ/IWM options”) volume on MIAX PEARL, expressed as a percentage of

total consolidated national volume in SPY/QQQ/IWM options; (ii) amend the “Definitions” section of the Fee Schedule to add the following definition, “SPY/QQQ/IWM TCV” and (iii) amend the explanatory paragraph beneath the tables in Section (a) of the Fee Schedule, as described below.

The Exchange currently assesses transaction rebates and fees to all market participants which are based upon the total monthly volume executed by the Member⁴ on MIAX PEARL in the relevant, respective origin type (not including Excluded Contracts)⁵ expressed as a percentage of TCV.⁶ In addition, the per contract transaction rebates and fees are applied retroactively to all eligible volume for that origin type once the respective threshold tier (“Tier”) has been reached by the Member. The Exchange aggregates the volume of Members and their Affiliates.⁷ Members that place resting liquidity, *i.e.*, orders resting on the book of the MIAX PEARL System,⁸ are paid the specified “maker” rebate (each a “Maker”), and Members that execute against resting liquidity are assessed the specified “taker” fee (each a “Taker”). For opening transactions and ABBO uncrossing transactions, per contract transaction rebates and fees are waived for all market participants. Finally, Members are generally assessed lower transaction fees and generally receive lower rebates for order executions in standard option classes in the Penny Pilot Program⁹ (“Penny classes”) than for order executions in standard option classes which are not in the Penny Pilot Program (“Non-Penny classes”), where Members generally are assessed higher transaction fees and generally receive higher rebates.

volume for the threshold tiers in the Fee Schedule. See the Definitions Section of the Fee Schedule.

⁷ “Affiliate” means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm’s Form BD, Schedule A, or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An “Appointed Market Maker” is a MIAX PEARL Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an “Appointed EEM” is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAX PEARL Market Maker) that has been appointed by a MIAX PEARL Market Maker, pursuant to the process described in the Fee Schedule. See the Definitions Section of the Fee Schedule.

⁸ The term “System” means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

⁹ See Securities Exchange Act Release No. 79778 (January 12, 2017), 82 FR 6662 (January 19, 2017) (SR-PEARL-2016-01).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ “Market Maker” means a Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

⁴ “Member” means an individual or organization that is registered with the Exchange pursuant to Chapter II of the Exchange Rules for purposes of trading on the Exchange as an “Electronic Exchange Member” or “Market Maker.” Members are deemed “members” under the Exchange Act. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

⁵ “Excluded Contracts” means any contracts routed to an away market for execution. See the Definitions Section of the Fee Schedule.

⁶ “TCV” means total consolidated volume calculated as the total national volume in those classes listed on MIAX PEARL for the month for which the fees apply, excluding consolidated volume executed during the period time in which the Exchange experiences an “Exchange System Disruption” (solely in the option classes of the affected Matching Engine (as defined below)). The

term Exchange System Disruption, which is defined in the Definitions section of the Fee Schedule, means an outage of a Matching Engine or collective Matching Engines for a period of two consecutive hours or more, during trading hours. The term Matching Engine, which is also defined in the Definitions section of the Fee Schedule, is a part of the MIAX PEARL electronic system that processes options orders and trades on a symbol-by-symbol basis. Some Matching Engines will process option classes with multiple root symbols, and other Matching Engines may be dedicated to one single option root symbol (for example, options on SPY may be processed by one single Matching Engine that is dedicated only to SPY). A particular root symbol may only be assigned to a single designated Matching Engine. A particular root symbol may not be assigned to multiple Matching Engines. The Exchange believes that it is reasonable and appropriate to select two consecutive hours as the amount of time necessary to constitute an Exchange System Disruption, as two hours equates to approximately 1.4% of available trading time per month. The Exchange notes that the term “Exchange System Disruption” and its meaning have no applicability outside of the Fee Schedule, as it is used solely for purposes of calculating

Transaction rebates and fees in Section (a) of the Fee Schedule are currently assessed for MIAX PEARL

Market Makers according to the following table:

| Origin | Tier | Volume criteria | Per contract rebates/fees for penny classes | | Per contract rebates/fees for non-penny classes | |
|-------------------------------|------|--|---|--------|---|---------|
| | | | Maker | Taker | Maker** | Taker** |
| All MIAX PEARL Market Makers. | 1 | 0.00%–0.15% | (\$0.25) | \$0.50 | (\$0.30) | \$1.10 |
| | 2 | Above 0.15%–0.40% | (0.40) | 0.50 | (0.30) | 1.10 |
| | 3 | Above 0.40%–0.65% | (0.40) | 0.48 | (0.60) | 1.09 |
| | 4 | Above 0.65%–1.00% or Above 2.25% in SPY. | (0.47) | 0.47 | (0.65) | 1.08 |
| | 5 | Above 1.00%–1.40% | (0.48) | 0.45 | (0.70) | 1.07 |
| | 6 | Above 1.40% | (0.48) | 0.44 | (0.85) | 1.06 |

The Exchange proposes to add a new, alternative Volume Criteria to Tier 2 based upon the total monthly volume executed by a MIAX PEARL Market Maker collectively in SPY/QQQ/IWM options on MIAX PEARL, expressed as a percentage of total consolidated national volume in SPY/QQQ/IWM options. Pursuant to this alternative Volume Criteria, a Market Maker can now reach the Tier 2 threshold if the Market Maker’s total executed monthly volume, not including Excluded Contracts, in SPY/QQQ/IWM options on MIAX PEARL is above 0.45% of total consolidated national monthly volume in SPY/QQQ/IWM options. To be clear, volume that is from resting liquidity (Maker) and taking liquidity (Taker) in SPY/QQQ/IWM options is counted towards this alternative Volume

Criteria, and the 0.45% threshold does not have to be reached individually in each of the three symbols. Accordingly, a Market Maker could now qualify for Tier 2 rebates and fees which will then be applicable to all volume executed by the MIAX PEARL Market Maker on MIAX PEARL. The two Volume Criteria available for Tier 2 are now based upon either: (a) The total monthly volume executed by the Market Maker in all options classes on MIAX PEARL, not including Excluded Contracts, (as the numerator), expressed as a percentage of (divided by) TCV (as the denominator); or (b) the total monthly volume executed by the MIAX PEARL Market Maker collectively in SPY/QQQ/IWM options on MIAX PEARL, not including Excluded Contracts, (as the numerator), expressed as a percentage of (divided

by) SPY/QQQ/IWM TCV (as the denominator). Once either Volume Criteria threshold in Tier 2 is reached by the Market Maker, the Tier 2 per contract rebates and fees will apply to all volume in all options classes executed by that MIAX PEARL Market Maker on MIAX PEARL. The Exchange does not propose to make any changes to the currently existing Tier 2 Volume Criteria threshold of above 0.15% to 0.40% or to the corresponding Maker rebates or Taker fees. Instead, the Exchange is simply adding an alternative method by which a MIAX PEARL Market Maker can reach Tier 2.

With the proposed changes, Section (a) of the Fee Schedule for Market Maker orders shall be the following:

| Origin | Tier | Volume criteria | Per contract rebates/fees for penny classes | | Per contract rebates/fees for non-penny classes | |
|-------------------------------|------|--|---|--------|---|---------|
| | | | Maker | Taker | Maker** | Taker** |
| All MIAX PEARL Market Makers. | 1 | 0.00%–0.15% | (\$0.25) | \$0.50 | (\$0.30) | \$1.10 |
| | 2 | Above 0.15%–0.40% or Above 0.45% in SPY/QQQ/IWM. | (0.40) | 0.50 | (0.30) | 1.10 |
| | 3 | Above 0.40%–0.65% | (0.40) | 0.48 | (0.60) | 1.09 |
| | 4 | Above 0.65%–1.00% or Above 2.25% in SPY. | (0.47) | 0.47 | (0.65) | 1.08 |
| | 5 | Above 1.00%–1.40% | (0.48) | 0.45 | (0.70) | 1.07 |
| | 6 | Above 1.40% | (0.48) | 0.44 | (0.85) | 1.06 |

In addition to modifying the MIAX PEARL Market Maker table to insert the new, alternative Volume Criteria threshold in Tier 2, and in order to provide a clear explanation of the requirements for achieving that alternative Volume Criteria threshold in Tier 2, the Exchange is proposing to (i) amend the explanatory paragraph beneath the tables in Section 1(a) of the Fee Schedule, and (ii) add a new definition of “SPY/QQQ/IWM TCV” to the Definitions Section of the Fee Schedule. The amended explanatory

paragraph will clarify that (except as otherwise set forth in the Fee Schedule) the new, alternative Volume Criteria threshold in Tier 2 for MIAX PEARL Market Makers measures volume in SPY/QQQ/IWM options on MIAX PEARL not including Excluded Contracts, as the numerator, and the SPY/QQQ/IWM TCV as the denominator. The new definition of SPY/QQQ/IWM TCV in the Definitions Section shall provide the following: “SPY/QQQ/IWM TCV” means total consolidated volume in SPY, QQQ, and

IWM calculated as the total national volume in SPY, QQQ, and IWM for the month for which the fees apply, excluding consolidated volume executed during the period of time in which the Exchange experiences an Exchange System Disruption (solely in SPY, QQQ, or IWM options).

The Exchange believes that the proposed alternative Volume Criteria threshold in Tier 2 for MIAX PEARL Market Makers will provide another opportunity for those Market Makers that concentrate their trading activity in

specific options classes such as SPY/ QQQ/IWM options to reach a higher tier. The Exchange believes that creating this alternative Volume Criteria will extend the Tier 2 fee incentives to Market Makers that concentrate their trading activity by sending significant volume in SPY/ QQQ/IWM options as compared to other Market Makers that do trade in the broad range of products listed on the Exchange.

The proposed change is scheduled to become operative November 1, 2018.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act¹⁰ in general, and furthers the objectives of Section 6(b)(4) of the Act,¹¹ in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and issuers and other persons using its facilities, and 6(b)(5) of the Act,¹² in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange's proposal to adopt the new, alternative Volume Criteria for Tier 2 based on SPY, QQQ, and IWM volume executed on the Exchange is reasonable, equitable, and not unfairly discriminatory, as it is a form of pricing based upon trading activity in a select group of symbols, which is a common practice on many U.S. options exchanges as a means to incentivize order flow to be sent to an exchange for execution in actively traded options classes. The Exchange's affiliate, Miami International Securities Exchange, LLC ("MIAX Options"), offers differentiated pricing for transactions in options underlying certain select symbols.¹³ Other options exchanges' fee schedules distinguish by symbol and specifically assess different fees and rebates for transactions in select symbols for the same market participants.¹⁴

The Exchange is offering an alternative Tier 2 Volume Criteria

threshold based on SPY/ QQQ/IWM options volume in Tier 2 because the Exchange believes that incentivizing Market Makers that concentrate their trading activity in SPY/ QQQ/IWM options will consequently increase order flow sent to the Exchange, which will benefit all market participants through increased liquidity, tighter markets and order interaction.

The Exchange believes that the proposed non-substantive changes to (i) amend the "Definitions" section of the Fee Schedule and (ii) amend the explanatory paragraph beneath the tables in Section 1(a) of the Fee Schedule, will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system because it will add more detail and clarity to the Fee Schedule with respect to the application of the proposed method to reach the alternative Tier 2 Volume Criteria threshold. As such, the proposed change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system. In particular, the Exchange believes that the proposed rule change will provide greater clarity to Members and the public regarding the Exchange's Rules, and it is in the public interest for rules to be accurate and concise so as to eliminate the potential for confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

MIAX PEARL does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change should enable the Exchange to attract and compete for order flow with other exchanges and will encourage Market Makers to submit more volume.

Further, the Exchange believes that the proposed alternative Volume Criteria threshold in Tier 2 based on SPY/ QQQ/IWM options volume applicable to MIAX PEARL Market Makers will continue to provide incentives to those Market Makers that concentrate their trading activity in SPY/ QQQ/IWM options to send additional SPY, QQQ, and IWM orders and creates more opportunity for additional liquidity to the market.

The Exchange does not believe that the proposed rule change to make non-substantive clarifications to its rules will impose any burden on competition

not necessary or appropriate in furtherance of the purposes of the Act. The proposed clarification to the rule text is not designed to address any competitive issues but rather is designed to add additional clarity to Members and the public regarding the Exchange's Rules, and it is in the public interest for rules to be accurate and concise so as to eliminate the potential for confusion.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its rebates and fees to remain competitive with other exchanges and to attract order flow. The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner that encourages market participants to continue to provide liquidity and to send order flow to the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,¹⁵ and Rule 19b-4(f)(2)¹⁶ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁶ 17 CFR 240.19b-4(f)(2).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4).

¹² 15 U.S.C. 78f(b)(1) and (b)(5).

¹³ See MIAX Options Fee Schedule, Section 1(a)(iii).

¹⁴ See Cboe Options Exchange Fee Schedule; see also Nasdaq PHLX LLC Pricing Schedule, Chapter B, Section I; see further Nasdaq ISE, LLC Fee Schedule, Sections I and II.

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-PEARL-2018-23 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-PEARL-2018-23. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-PEARL-2018-23 and should be submitted on or before December 11, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Eduardo A. Aleman,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84580; File No. SR-ISE-2018-90]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Rules Related to Market Maker Quoting Obligations

November 14, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 30, 2018, Nasdaq ISE, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules related to Market Maker (*i.e.*, Primary Market Maker and Competitive Market Maker) quoting obligations.

The text of the proposed rule change is available on the Exchange's website at <http://ise.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Rule 804(e) to

provide greater detail regarding the quoting obligations of Market Makers and the manner in which they are calculated, and to restructure the current rules to conform to rule text used on its affiliated options market, Nasdaq Phlx ("Phlx").³ The Exchange seeks to make conforming changes to Rule 804(e) to promote structural consistency of the Exchange's rules with those of its affiliated options markets, and to allow its members to quickly compare quoting obligations across the Nasdaq, Inc. affiliated options markets.⁴ The Exchange notes that it is generally including additional detail in its rules on the existing obligations and process using the same format as Phlx Rule 1081(c). Other than one modification to allow the Exchange to announce in advance a higher percentage of quoting compliance standards as further described below, no changes to the current practice or to the current quoting obligations are being contemplated by this rule change. Accordingly, to the extent there are other differences between the proposed rule text and the current language, the Exchange is in those cases either conforming to Phlx Rule 1081(c) or codifying current practice explicitly within the proposed rule, as further discussed below.

Rule 804(e)

The Exchange first proposes to remove the word "continuous" from the title of Rule 804(e) and retitle the Rule as "Intra-day Quotes." The Exchange is replacing the word "continuous" with "intra-day" because the Exchange notes that Market Makers quote a percentage of the day and therefore the word "continuous" may not accurately reflect the manner in which Market Makers quote on ISE. The Exchange also proposes related changes to replace the word "continuous" with "intra-day" within the Rulebook, specifically in Rules 701(c)(3) and (4), Rule 702(d)(4), and Rule 1614(b)(10).⁵

The Exchange also proposes to amend Rule 804(e) by deleting the introductory sentence: "A market maker must enter continuous quotations for the options classes to which it is appointed

³ See Phlx Rule 1081(c). See also Securities Exchange Act Release No. 83209 (May 10, 2018), 83 FR 22717 (May 16, 2018) (SR-Phlx-2018-22) (order granting approval of proposed rule change to amend Phlx's quoting requirements, among other changes).

⁴ Nasdaq GEMX, LLC ("GEMX") and Nasdaq MRX, LLC ("MRX") will file similar proposals.

⁵ The Exchange notes that Chapter 16 of the ISE Rulebook, including Rule 1614, is incorporated by reference into the rulebooks of GEMX and MRX. As such, the amendment to ISE Rule 1614 as proposed herein will also apply to GEMX and MRX Rules 1614.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹⁷ 17 CFR 200.30-3(a)(12).

pursuant to the following.” The Exchange proposes to specifically detail a Market Maker’s quoting obligations in new rule text within paragraph (e) and therefore believes that the deleted language is not necessary given that the following sentences will replace this language, as described below.

The Exchange proposes to add new rule text to Rule 804(e). The first new sentence will provide, similar to Phlx Rule 1081(c): “A market maker must enter bids and offers for the options to which it is appointed, except in an assigned options series listed intra-day⁶ on the Exchange.” The Exchange believes this sentence is clearer than the current Rule 804(e) because it excepts intra-day quotes. The Exchange notes that this is the case today, where a Market Maker is not held to quote an intra-day add of a series because the options series was not available for trading the entire day. The Exchange is adding this exception to the rule text to make clear that Market Makers would not be responsible for quoting an intra-day addition on the day it was added. The Exchange does not count intra-day adds of a series that were not available for the entire day of trading because the Market Maker would not have the opportunity to trade that particular options series for the entire trading day, and therefore could not have anticipated the impact such intra-day adds would have on the calculation of its quoting obligations.

The Exchange also proposes to note within the new rule text the specific quoting obligations for each type of Market Maker by adding: “On a daily basis, a Market Maker must make markets consistent with the applicable quoting requirements specified below.” The Exchange proposes to note within the new rule text the specific quoting obligations for each type of Market Maker. The Exchange is also adding rule text to explain the interplay between the quoting obligations for Competitive Market Makers, Primary Market Makers, and Competitive Market Makers that are Preferred Market Makers.⁷ Specifically, the Exchange proposes to add, similar to

⁶ An intra-day listing or add of a series means, for purposes of this Rule 804(e), as an option series that is added manually on the same day the series begins trading. The Exchange notes that an intra-day add of a series would be counted the following trading day (next business day after the intra-day add of a series was listed) when the options series would be available for a full trading day.

⁷ Supplementary Material .03 to Rule 713 allows an Electronic Access Member to designate a “Preferred Market Maker” on orders it enters into the System (“Preferred Orders”). A Preferred Market Maker may be the Primary Market Maker appointed to the options class or any Competitive Market Maker appointed to the options class.

Phlx Rules:⁸ “A Member will be required to meet each market making obligation separately. A Competitive Market Maker who is also the Primary Market Maker will be held to the Primary Market Maker obligations in the options series in which the Primary Market Maker is assigned and will be held to Competitive Market Maker obligations in all other options series where assigned. A Competitive Market Maker who receives a Preferred Order, as described in Supplementary Material .03 to Rule 713, (“Preferred CMM”) shall be held to the standard of a Preferred CMM in the options series of any assigned options class in which it receives the Preferred Order.” This is the case today, even though the current rule text does not explicitly state that each obligation is separate. As such, the Exchange is proposing to make clear that a member who is a Competitive Market Maker, Primary Market Maker, or Preferred CMM will have quoting obligations which may need to be separately met depending on the role.

Rule 804(e)(1)

To align its rule structure with Phlx Rule 1081(c), the Exchange proposes to relocate the quoting obligations of Competitive Market Makers currently in subparagraph (2) of Rule 804(e) to subparagraph (1), and set forth the rule text currently in subparagraphs (2)(i) and (2)(ii) therein, with a non-substantive modification from the current “intraday” to “intra-day” for consistency throughout the Rule. As such, proposed Rule 804(e)(1) will read: “On any given day, a Competitive Market Maker is not required to enter quotations in the options classes to which it is appointed. A Competitive Market Maker may initiate quoting in options classes to which it is appointed intra-day.”⁹

The Exchange also proposes to remove the following sentence in Rule 804(e)(2)(iii): “Whenever a Competitive Market Maker enters a quote in an options class to which it is appointed, it must maintain continuous quotations in that class for 60% of the time the class is open for trading on the Exchange; provided, however, that a Competitive Market Maker shall be required to maintain continuous quotations for 90% of the time the class is open for trading on the Exchange in any options class in which it receives Preferred Orders (see Supplementary

⁸ See Phlx Rule 1081(c).

⁹ The quoting obligations of Primary Market Makers currently in subparagraph (1) of Rule 804(e) and Supplementary Material to Rule 804 will be set forth in new subparagraph (2) under the Exchange’s proposal, as further discussed below.

Material .03 to Rule 713 regarding Preferred Orders).” The Exchange proposes to replace this language with language in Rule 804(e)(1) that more technically defines a Competitive Market Maker’s quoting obligation.¹⁰ The Exchange proposes the following rule text: “If a Competitive Market Maker initiates quoting in an options class, the Competitive Market Maker, associated with the same Member, is collectively required to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member’s assigned options class is open for trading.” The 60% quoting requirement and the manner in which it is calculated as a percentage of time is not being amended.¹¹ The only change from current practice is to allow the Exchange to announce in advance a higher percentage than the current 60% quoting requirement, which would bring the Exchange’s rule in line with Phlx Rule 1081(c)(ii)(A). The Exchange believes it may be appropriate to apply a higher standard if doing so would be in the interest of a fair and orderly market.¹² Otherwise, the proposed amendments described above are either stylistic in nature or clarifying changes that are intended to more specifically state the current quoting obligations as 60% of the cumulative number of seconds rather than 60% of the time the class is open for trading on the Exchange.¹³ While the current rule more generally indicates that the Exchange currently reviews quoting as a percentage of the time the class is open for trading on the Exchange, the two standards are otherwise equivalent. Furthermore, the Exchange in its adopting rule filing for the 60% standard stated that it would “calculate the percentage of time a market maker quotes by dividing the number of minutes a Market Maker quotes in series of an options class (numerator) by the total minutes all series of the options class were open for trading on the

¹⁰ The proviso setting forth the 90% quoting obligation for Competitive Market Makers with Preferred Orders currently in subparagraph (2)(iii) will be replaced with more detailed language in proposed Rule 804(e)(3), as further described below.

¹¹ As further discussed below, the Exchange will go from minutes to seconds as a way to express how it will calculate this percentage of time. See note 14 below, with accompanying text.

¹² Any such higher percentage would involve appropriate advance announcement, which would then be available on the Exchange’s website.

¹³ Phlx Rule 1081(c)(ii)(A) similarly sets forth the quoting obligations as a percentage of the cumulative number of seconds.

Exchange (denominator).”¹⁴ As such, the proposed changes will explicitly state the same standard (expressed in seconds) within the rule text itself. Adding “associated with the same Member” conforms to Phlx Rule 1081(c)(ii)(A) and also makes clear that the obligation is at the firm level and that all associated Competitive Market Makers will be counted in arriving at the calculation for quoting obligations.

The Exchange also proposes to add in Rule 804(e)(1): “Notwithstanding the foregoing, a Competitive Market Maker shall not be required to make two-sided markets pursuant to this Rule 804(e)(1) in any Quarterly Options Series, any adjusted option series, and any option series with an expiration of nine months or greater for options on equities and exchange-traded funds (“ETFs”) or with an expiration of twelve months or greater for index options.” These exceptions exist today for ISE and are being carried over into proposed Rule 804(e)(1) from current Supplementary Material .02 to Rule 804 with some modifications to conform to Phlx Rule 1081(c)(ii)(A). The majority of the changes from the current rule text are stylistic in nature to conform to Phlx’s language and to define ETFs within the rule text itself. The Exchange also proposes to add Quarterly Options Series, which is defined in Rule 100(a)(55), to the list of exceptions to the quoting obligations for Competitive Market Makers. Quarterly Options Series are excluded from a Competitive Market Maker’s quoting obligations today, and the Exchange therefore seeks to codify its current practice within the proposed rule text. The Exchange notes that Quarterly Options Series are similarly excluded from the market maker quoting obligations on Phlx.¹⁵

The Exchange also proposes to add to Rule 804(e)(1): “Competitive Market Makers may choose to quote such series in addition to regular series in the options class, but such quotations will not be considered when determining whether a Competitive Market Maker has met the obligation contained in this paragraph (e)(1).” This language is being relocated from current Supplementary Material .02 to Rule 804, with a modification to update the cross-reference.

Further, the definition of adjusted options series currently within Supplementary Material .02 to Rule 804 will be relocated to subparagraph (1)(ii) of Rule 804(e), and will be defined as

“Adjusted Options Series” throughout Rule 804(e). The Exchange also proposes to use the defined term “Exchange-Traded Fund Shares,” which is defined in Rule 502(h), instead of “exchange-traded fund shares” in the proposed definition of Adjusted Options Series for consistency with the rest of the Exchange’s Rulebook.

Finally, the Exchange proposes to relocate current subparagraph (2)(iv) in Rule 804(e) to proposed subparagraph (1)(ii). The Exchange is not proposing any amendments to the rule text itself other than to replace the word “continuous” with “intra-day” for the reasons discussed above.

Rule 804(e)(2)

As noted above, the Exchange proposes to set forth the quoting obligations of Primary Market Makers in Rule 804(e)(2). Currently as set forth in Rule 804(e)(1), Primary Market Makers must enter continuous quotations in all of the series of the options classes to which they are appointed.¹⁶ Pursuant to Supplementary Material .01 to Rule 804, Primary Market Makers are deemed to have provided continuous quotes if they provide two-sided quotes for 90% of the time that an options class is open for trading on the Exchange. Similar to the quoting obligations for Competitive Market Makers, the Exchange proposes to replace this language with language in Rule 804(e)(2) that more technically defines a Primary Market Maker’s quoting obligations. Proposed Rule 804(e)(2) will provide that Primary Market Makers, associated with the same Member, are collectively required to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member’s assigned options class is open for trading.¹⁷ Similar to the proposed changes to the 60% quoting requirement for Competitive Market Makers discussed above, the 90% quoting requirement for Primary Market Makers and the manner in which it is calculated as a percentage of time is not being amended. The only change from current practice is to allow the Exchange to announce in advance a

¹⁶ This means that the Primary Market Maker quoting requirement includes all series of an appointed options class, including the options series that are currently excluded from the quoting requirements of Competitive Market Makers and Preferred CMMs (i.e., Quarterly Options Series, Adjusted Options Series, and long-term options). As discussed below, the Exchange will explicitly state that a Primary Market Maker’s quoting obligations will include these specified options series.

¹⁷ Phlx Rule 1081(c)(ii)(B) similarly sets forth the quoting obligations as a percentage of the cumulative number of seconds.

higher percentage than the current 90% quoting obligation, which would bring the Exchange’s rule in line with Phlx Rule 1081(c)(ii)(B). As discussed above for the Competitive Market Maker quoting obligations, the Exchange believes it may be appropriate to apply a higher standard if doing so would be in the interest of a fair and orderly market.¹⁸ Otherwise, the Exchange does not propose to amend the current 90% quoting requirement; rather, the Exchange proposes to more specifically state the current quoting obligations as 90% of the cumulative number of seconds rather than 90% of the time the class is open for trading on the Exchange. While the current rule in Supplementary Material .01 to Rule 804 more generally indicates that the Exchange currently reviews quoting as a percentage of the time the class is open for trading on the Exchange, the two standards are otherwise equivalent.¹⁹ Accordingly, the proposed changes will explicitly state the same standard (expressed in seconds) within the rule text itself. Adding “associated with the same Member” to the first sentence conforms to Phlx Rule 1081(c)(ii)(B) and also makes clear that the obligation is at the firm level and that all associated Primary Market Makers will be counted in arriving at the calculation for quoting obligations.

The Exchange also proposes to more specifically state within Rule 804(e)(2) that Primary Market Makers shall be required to make two-sided markets pursuant to Rule 804(e)(2) in any Quarterly Options Series, any Adjusted Options Series, and any options series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options. The proposed changes do not amend the current quoting obligations of Primary Market Makers with respect to these options series. As discussed above, Supplementary Material .02 to Rule 804 currently excludes adjusted options series and long-term options series from the quoting obligations of Competitive Market Makers and Preferred CMMs. As noted above, while the current rule in paragraph (e)(1) implicitly provides that these exceptions do not apply to Primary Market Makers and that their

¹⁸ See note 12 above.

¹⁹ See 2013 Proposal, footnote 14 (providing that to calculate whether a Primary Market Maker has maintained quotations for at least 90% of the time, the Exchange will divide the total number of minutes a Primary Market Maker maintained quotations in options series of a class (numerator) by the total minutes all series of the options class were open for trading on the Exchange (denominator)).

¹⁴ See Securities Exchange Act Release No. 69175 (March 19, 2013), 78 FR 17988 (March 25, 2013) (SR-ISE-2013-17) (“2013 Proposal”) at 17989.

¹⁵ See Phlx Rule 1081(c)(ii)(A).

quoting obligations include such series, the Exchange proposes to explicitly state that Primary Market Makers are required to make two-sided markets in the specified options series.

Furthermore, Primary Market Makers are required to make two-sided markets in Quarterly Options Series today. Accordingly, the Exchange seeks to add Quarterly Options Series to the Rule 804(e)(2) to codify its current practice. The Exchange notes that Phlx Specialists are similarly required to make two-sided markets in Quarterly Options Series.²⁰

Rule 804(e)(3)

Currently as set forth in Rule 804(e)(2)(iii), a Competitive Market Maker is required to maintain continuous quotations for 90% of the time the class is open for trading on the Exchange in any options class in which it receives the Preferred Order pursuant to Supplementary Material .03 to Rule 713. The Exchange now proposes to replace this language with language that more technically defines the quoting obligations of the Competitive Market Maker that receives the Preferred Order (*i.e.*, Preferred CMM) in new Rule 804(e)(3). The Exchange proposes to add in Rule 804(e)(3) that Preferred CMMs, associated with the same Member, are collectively required to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member's assigned options class is open for trading. A Member shall be considered preferenced in an assigned options class once the Member receives a Preferred Order in any option class in which they are assigned and shall be considered a preferenced for that day in all series for that option class in which it received the Preferred Order. Notwithstanding the foregoing, a Preferred CMM shall not be required to make two-sided markets pursuant to Rule 804(e)(3) in any Quarterly Options Series, any Adjusted Options Series, and any options series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options.

The Exchange notes that similar to the proposed language for the Competitive Market Maker and Primary Market Maker quoting obligations discussed above, the only change from current practice is to allow the Exchange to announce in advance a higher percentage than the current 90%

quoting obligation, which would bring the Exchange's rule in line with Phlx Rule 1081(c)(ii)(C). As discussed above for the Competitive Market Maker and Primary Market Maker quoting obligations, the Exchange believes it may be appropriate to apply a higher standard if doing so would be in the interest of a fair and orderly market.²¹ Otherwise, the 90% quoting requirement for Preferred CMMs and the manner in which it is calculated as a percentage of time is not being amended; rather, the Exchange proposes to more specifically express the current quoting obligations as 90% of the cumulative number of seconds rather than 90% of the time the class is open for trading on the Exchange.²² As noted above for Competitive Market Makers and Primary Market Makers, the two standards are equivalent even though the current rule more generally expresses that the Exchange reviews quoting as a percentage of time. As such, the proposed changes will explicitly state the same standard (expressed in seconds) within the rule text itself.

Adding "associated with the same Member" conforms to Phlx Rule 1081(c)(ii)(C) and also makes clear that the obligation is at the firm level and that all associated Preferred CMMs will be counted in arriving at the calculation for quoting obligations. Furthermore, the proposed language is being added to clarify when a Preferred CMM is considered to be preferenced in an assigned options class, and does not amend the Exchange's current practice. The Exchange, similar to today, will exclude any Quarterly Options Series, any Adjusted Options Series, and any options series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options from the quoting obligations of Preferred CMMs.²³ As discussed above, Supplementary Material .02 to Rule 804 currently provides an exception from the quoting obligations in adjusted options series and any long-term options series for Preferred CMMs. As such, proposed Rule 804(e)(3) makes clear that such Members are not required to make two-sided markets in these options series. In addition, Preferred CMMs are not required to make two-sided markets in Quarterly Options Series today. Accordingly, the

²¹ See note 12 above.

²² Phlx Rule 1081(c)(ii)(C) similarly sets forth the quoting obligations as a percentage of the cumulative number of seconds.

²³ This exception is currently set forth in Supplementary Material .02 to Rule 804.

Exchange seeks to add Quarterly Options Series to the list of exceptions in proposed Rule 804(e)(3) to codify its current practice.²⁴

The Exchange will add in proposed Rule 804(e)(3) similar language for Preferred CMMs as proposed for Competitive Market Makers in Rule 804(e)(1) that Preferred CMMs may choose to quote such series in addition to regular series in the options class, but such quotations will not be considered when determining whether a Preferred CMM has met the obligation contained in this paragraph (e)(3). This language is currently in Supplementary Material .02 to Rule 804, and applies to the quoting obligations for both Competitive Market Makers and Preferred CMMs. Finally, the Exchange proposes to relocate language from Supplementary Material .02 to Rule 804 into new paragraph (e)(3), with some modifications to update a cross-reference and remove redundant language, as follows: "A Preferred CMM may be preferenced in such series and receive enhanced allocations pursuant to Nasdaq ISE Rule 713, Supplementary Material .03, only if it complies with the heightened 90% quoting requirement contained in this paragraph (e)(3)."

Rule 804(e)(4)

The Exchange proposes to add new rule text at Rule 804(e)(4) to provide the method by which the Exchange will calculate the Market Maker quoting obligations contained in proposed subparagraphs (1)–(3) of Rule 804(e). The Exchange proposes to state that the Exchange will (i) take the total number of seconds the Member disseminates quotes in each assigned options series, excluding, for Competitive Market Makers and Preferred CMMs, Quarterly Option Series, any Adjusted Option Series, and any option series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options; and (ii) divide that time by the eligible total number of seconds each assigned option series in the options class is open for trading that day. Similar to Phlx Rule 1081(c)(ii)(D), the Exchange believes that the addition of this language will bring greater transparency to the manner in which the Exchange calculates the quoting obligation. The Exchange is not amending the manner in which the quoting obligation is calculated; rather the Exchange is simply adding to the

²⁴ Directed SQTs and Directed RSQTs on Phlx are similarly excluded from making two-sided markets in Quarterly Options Series. See Phlx Rule 1081(c)(ii)(C).

²⁰ See Phlx Rule 1081(c)(ii)(B).

current rule the exact manner in which the Exchange determines the quoting percentage. The Exchange also proposes to add the following in Rule 804(e)(4): “Quoting is not required in every assigned options series.” This sentence is not currently in the rule. The added language is not amending the Exchange’s current practice; rather the Exchange is clearly stating that quoting is not required in every assigned options series to make clear the current obligation (*i.e.*, the Market Maker is not required to quote every single assigned options series in order to meet its quoting obligations). Also, the Exchange proposes to state: “Compliance with this requirement is determined by reviewing the aggregate of quoting in assigned options series for the Member.” This language is similar to language presently in Supplementary Material .01 to Rule 804²⁵ and clarifies that the quoting obligations apply to all of the Market Maker’s assigned options series collectively, which is how the Exchange applies the quoting obligation today. As such, the proposed language simply conforms the text to Phlx Rule 1081(c)(ii)(D).

Rule 804(e)(5)

The Exchange proposes to adopt a new Rule 804(e)(5) to provide that ISE Regulation may consider exceptions to the above-referenced requirement to quote based on demonstrated legal or regulatory requirements or other mitigating circumstances. This language is similar to language presently in Supplementary Material .01 to Rule 804,²⁶ but specifies that ISE Regulation (*i.e.*, the Exchange’s regulatory department) may consider exceptions to the quoting obligation, which is the case today, and aligns the rule text to Phlx Rule 1081(c)(iii). The Exchange further proposes to add the following rule text to new Rule 804(e)(5): “For purposes of the Exchange’s surveillance of Member compliance with this rule, the Exchange will determine compliance on a monthly basis. The Exchange’s monthly compliance evaluation of the quoting requirement does not relieve a Member of the obligation to provide two-sided quotes on a daily basis, nor will it prohibit the Exchange from taking disciplinary action against a Member for

failing to meet the quoting obligation each trading day.” The proposed rule text is similar to language currently in Supplementary Material .01 to Rule 804,²⁷ and is merely rephrased to conform to Phlx Rule 1081(c)(iii). As such, the Exchange is not amending the manner in which the surveillance functions today, and the proposed amendments to Rule 804(e)(5) are not substantive in nature.

Rule 804(e)(6)

The Exchange proposes to adopt a new Rule 804(e)(6) that provides: “If a technical failure or limitation of a System of the Exchange prevents a Member from maintaining, or prevents a market maker from communicating to the Exchange, timely and accurate quotes, the Member shall promptly notify the Exchange and the duration of such failure or limitation shall not be included in any of the calculations under this subparagraph (e) with respect to the affected quotes.” This language is being relocated from Supplementary Material .01 to Rule 804, and modified to specifically refer to the calculations in proposed subparagraph (e), capitalize “System,” which is a defined term, and rephrased to conform to Phlx Rule 1081(c)(iv).

Clean-up Changes

The Exchange proposes to delete Supplementary Materials .01 and .02 to Rule 804, and all related cross-references throughout the Rulebook. As explained above, this rule text is being relocated within the proposed rule text with some modifications. Finally, the Exchange proposes to update all cross-references to Rule 804(e) in its Rules to reflect the proposed renumbering and expansion of rules described above.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁹ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect

investors and the public interest. The Exchange believes that its proposed rule change provides further detail as to the quoting obligations of Market Makers. As discussed above, other than one modification to allow the Exchange to announce in advance a higher percentage of quoting compliance standards, the Exchange is not amending current practice or its current quoting obligations. The Exchange believes that it is consistent with the Act to have the ability to announce a higher percentage in the interest of maintaining a fair and orderly market. As noted above, the Exchange would provide appropriate advance announcement for any such higher percentage, which would then be available on the Exchange’s website. Otherwise, the Exchange notes that to the extent that there are rule text changes from the current language, these differences are all to harmonize its rules with Phlx Rule 1081(c) to promote consistency among similar rules of the Exchange and its affiliates, or to codify its current practice within the proposed rule text to bring transparency to the Exchange’s rulebook.

Specifically, the Exchange believes that replacing “continuous” with “intra-day” throughout the rulebook is consistent with the Act because it more accurately reflects the manner in which Market Makers quote on ISE. Also in the introductory sentence to Rule 804(e), the Exchange is codifying its current practice of excluding intra-day additions of assigned options series from a Market Maker’s quoting obligations to make clear that Market Makers would not be responsible for such series on the day it was added. As noted above, for purposes of calculating the quoting obligations, the Exchange counts an intra-day add of a series the following trading day when the options series would be available for a full trading day. The Exchange believes that codifying this current exception within the rule text is consistent with the Act as it will bring transparency to the Exchange’s rulebook. The Exchange does not count intra-day adds of options series that were not available for the entire day of trading because the Market Maker would not have the opportunity to trade that particular options series for the entire trading day, and therefore could not have anticipated the impact such intra-day additions would have on the calculation of its quoting obligations. The Exchange also believes that codifying its current practice of excluding Quarterly Options Series from the quoting requirements of Competitive Market Makers and Preferred CMMs

²⁵ The current language provides: “Compliance with this Primary Market Maker quoting requirement and the Competitive Market Maker quoting requirements contained in (e)(2)(iii) above will be applied to all option classes quoted collectively on a daily basis.”

²⁶ The current language provides: “The Exchange may consider other exceptions to this continuous electronic quote obligation based on demonstrated legal or regulatory requirements or other mitigating circumstances.”

²⁷ The current language provides: “Overall compliance with market maker quoting obligations will be determined on a monthly basis. However, the ability of the Exchange to determine compliance on a monthly basis does not: (1) Relieve market makers from their obligation to meet daily quoting requirements in Rule 804; and (2) prohibit the Exchange from bringing disciplinary action against a market maker for failure to meet its daily quoting requirements set forth in Rule 804.”

²⁸ 15 U.S.C. 78f(b).

²⁹ 15 U.S.C. 78f(b)(5).

will bring clarity to the Exchange's rulebook that quotes in such series will not be considered in determining whether a Competitive Market Maker or Preferred CMM complied with their respective quoting obligations. Similar to the Adjusted Options Series and long-term options series that are currently explicitly listed as exceptions in the rule text, it is the Exchange's understanding that quoting obligations on these often less frequently traded options series impact the risk parameters acceptable to the Market Makers, and therefore the quoting obligation exceptions (including Quarterly Options Series) are to incentivize Market Makers to continue to seek assignments in these options series and thereby promote liquidity in options classes listed on the Exchange to the benefit of investors and the public interest.

The Exchange is also proposing to explicitly state that a member will be required to meet each market making obligation separately in order to make clear that a Competitive Market Maker, Primary Market Maker, or Preferred CMM will have quoting obligations which may need to be met separately, depending on the role. In addition, the Exchange is expressing each of the current quoting obligations as a percentage of the cumulative number of seconds rather than as a percentage of the time the class is open for trading on the Exchange in order to add more transparency as to the standards by which a Market Maker's quoting obligations are measured. In the same vein, the proposed rule text in Rule 804(e)(4) to describe the exact manner in which the Exchange calculates the quoting obligations by specifying the numerator and denominator calculations, as well as clarifying that quoting is not required in every assigned options series, adds transparency to the Exchange's rulebook, and allows members to better monitor whether they are in compliance with their quoting requirements.

Adding "associated with the same Member" throughout the proposed rule text conforms to Phlx Rule 1081(c)(ii) and adds clarity that the quoting obligations are at the firm level, and that all associated Market Makers will be counted in arriving at the applicable calculation for quoting obligations. Specifically stating that Primary Market Makers are required to make two-sided markets in any Quarterly Options Series, any Adjusted Options Series, and any long-term options series codifies what was implicit in the current rule text which required Primary Market Makers to enter

continuous quotations in all of the series listed on the Exchange in their assigned options classes, as further described above. Finally, adding that the Member is considered preferenced for that day in all series for that assigned options class in which it received the Preferenced Order is similarly codifying the Exchange's current practice and will bring more transparency to the Rulebook.

Overall, the Exchange believes that its proposal is consistent with the Act because the proposed rule text protects investors and the public interest by providing clear language that will be utilized on all Nasdaq, Inc.-affiliated options markets for easy comparison by common members that are engaged in market making activities on both the Exchange and its affiliates. As discussed above, the proposed changes will restructure ISE's current rules on Market Maker quoting obligations to conform to rule text used on its affiliate, Phlx. The Exchange further believes that the proposed rule changes would remove impediments to and perfect the mechanism of a free and open market by ensuring that members, regulators and the public can more easily navigate and understand the Exchange's rulebook, thereby avoiding potential confusion.

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 further of the purposes of the Act. The proposal does not impose a burden on competition because the Exchange will continue to uniformly calculate and apply the quoting obligations for all ISE Market Makers. Other than to allow the Exchange to announce in advance a higher percentage of quoting compliance standards, the Exchange's proposal does not modify the current practice or the current quoting obligations on ISE, as further discussed above.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become

operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act³⁰ and subparagraph (f)(6) of Rule 19b-4 thereunder.³¹

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-ISE-2018-90 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2018-90. 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

³⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

³¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2018-90 and should be submitted on or before December 11, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018-25240 Filed 11-19-18; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84584; File No. SR-MIAX-2018-28]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 406, Long-Term Option Contracts

November 14, 2018.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 8, 2018, Miami International Securities Exchange, LLC ("MIAX Options" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Rule 406, Long-Term Option Contracts.

The text of the proposed rule change is available on the Exchange's website at <http://www.miaxoptions.com/rule-filings/> at MIAX Options' principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend MIAX Options Rule 406, Long-Term Option Contracts, to permit the listing and trading of up to ten (10) long-term expiration months for long term options on the SPDR® S&P 500® exchange-traded fund ("SPY") in response to customer demand.³ Rule 406(a) currently provides that the Exchange may list long-term option contracts that expire from twelve (12) to thirty-nine (39) months from the time they are listed ("long-term expiration months") until expiration. There may be up to six (6) long-term expiration months per option class.⁴ The proposal will add liquidity to the SPY options market by allowing market participants to hedge risks relating to SPY positions over a

³ In contrast to Rule 406(a), Exchange Rule 1809(b) which applies to index options permits the Exchange to list long-term index options series based on either the full or reduced value of the underlying index, adding up to ten (10) expiration months. The Exchange seeks to list ten (10) long-term expiration months on SPY, just as it now may list ten (10) expiration months on long-term index options series, in order to provide investors with a wider choice of investments.

⁴ Strike price interval (Rule 404), bid/ask differential (Rule 603(b)(4)) and continuous quoting (Rule 604(e)(2) and (3)) rules shall not apply to such options series until the time to expiration is less than nine (9) months.

longer period with a known and limited cost.

The SPY options market today is characterized by its tremendous daily and annual liquidity. As a consequence the Exchange believes that the listing of additional SPY long-term expiration months would be well received by investors. This proposal to expand the number of permitted SPY long-term expiration months would not apply to long-term expiration months on any other class of options.⁵

The Exchange proposes to implement the proposed rule change on November 16, 2018.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act⁷ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms 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)⁸ 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 offers market participants additional long-term expiration months on SPY options for their investment and risk management purposes. The proposal is intended simply to provide additional trading opportunities which have been requested by customers, thereby facilitating transactions in options and contributing to the protection of investors and the maintenance of fair and orderly markets. The proposed rule change responds to the continuing needs of market participants, particularly portfolio managers and other institutional customers, by providing protection from long-term market moves and by offering an alternative to hedging portfolios with future positions or off-exchange customized derivative instruments.

⁵ Historically, SPY is the largest and most actively traded ETF in the United States as measured by its assets under management and the value of shares traded.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ *Id.*

³² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Rule 406 has permitted up to six (6) long-term expiration months in option classes since the launch of the Exchange, in 2012. Other exchanges, such as Nasdaq PHLX LLC (“Phlx”), have permitted up to six “LEAPS” since 1991, when it increased the number of permissible expiration months from four to six. As noted by Phlx (in its recent proposal to permit up to ten LEAPS expiration months for options on SPY), when the Commission approved the increase to six expiration months, the Commission stated that it did not believe that increasing the number of expiration months to six would cause, by itself, a proliferation of expiration months. The Commission also required that Phlx monitor the volume of additional options series listed as a result of the rule change, and the effect on Phlx’s system capacity and quotation dissemination displays.⁹ MIAX Options believes that the addition today of four (4) additional long-term expiration months on SPY options likewise does not represent a proliferation of expiration months, but is instead a very modest expansion of long-term options in response to stated customer demand. Significantly, the proposal would feature new long-term expiration months in only a single class of options that are very liquid and heavily traded, as discussed above. Additionally, the Exchange notes by way of precedent, that ten (10) expiration months are already permitted for long-term index options series. Further, the Exchange has the necessary systems capacity to support the new SPY long-term expiration months.

B. Self-Regulatory Organization’s Statement on Burden on Competition

MIAX Options does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal merely provides investors additional investment and risk management opportunities by providing flexibility to the Exchange to list additional long-term options expiration series, expanding the number of SPY long-term expiration months offered on the Exchange from six (6) long-term expiration months to ten (10) long-term expiration months.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹

A proposed rule change filed under Rule 19b-4(f)(6)¹² normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹³ 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 on November 16, 2018, to coincide with the effective date of Phlx’s proposed rule change on which the proposal is based.¹⁴ The Exchange’s proposal would conform the Exchange’s rules relating to permitted number of long-term expiration months on SPY options to those of Phlx. 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 proposal operative on November 16, 2018.¹⁵

At any time within 60 days of the filing of the proposed rule change, the

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4. 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.

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii).

¹⁴ See Securities Exchange Act Release No. 84449 (October 18, 2018), 83 FR 53699 (October 24, 2018) (SR-Phlx-2018-64).

¹⁵ 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).

Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-MIAX-2018-28 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-MIAX-2018-28. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission’s Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MIAX-2018-28 and should

⁹ See Securities Exchange Act Release No. 84449 (October 18, 2018), 83 FR 53699 (October 24, 2018) (SR-Phlx-2018-64). See also Securities Exchange Act Release No. 29103 (April 18, 1991), 56 FR 19132 (April 25, 1991) (approving SR-Phlx-91-18).

be submitted on or before December 11, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2018–25236 Filed 11–19–18; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84581; File No. SR–GEMX–2018–37]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Rules Related to Market Maker Quoting Obligations

November 14, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on October 30, 2018, Nasdaq GEMX, LLC (“GEMX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules related to Market Maker (*i.e.*, Primary Market Maker and Competitive Market Maker) quoting obligations.

The text of the proposed rule change is available on the Exchange’s website at <http://nasdaqgemx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the 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 the proposed rule change is to amend Rule 804(e) to provide greater detail regarding the quoting obligations of Market Makers and the manner in which they are calculated, and to restructure the current rules to conform to rule text used on its affiliated options market, Nasdaq Phlx (“Phlx”).³ The Exchange seeks to make conforming changes to Rule 804(e) to promote structural consistency of the Exchange’s rules with those of its affiliated options markets, and to allow its members to quickly compare quoting obligations across the Nasdaq, Inc. affiliated options markets.⁴ The Exchange notes that it is generally including additional detail in its rules on the existing obligations and process using the same format as Phlx Rule 1081(c). Other than one modification to allow the Exchange to announce in advance a higher percentage of quoting compliance standards as further described below, no changes to the current practice or to the current quoting obligations are being contemplated by this rule change. Accordingly, to the extent there are other differences between the proposed rule text and the current language, the Exchange is in those cases either conforming to Phlx Rule 1081(c) or codifying current practice explicitly within the proposed rule, as further discussed below.

Rule 804(e)

The Exchange first proposes to remove the word “continuous” from the title of Rule 804(e) and retitle the Rule as “Intra-day Quotes.” The Exchange is replacing the word “continuous” with “intra-day” because the Exchange notes that Market Makers quote a percentage of the day and therefore the word “continuous” may not accurately reflect the manner in which Market Makers quote on GEMX. The Exchange also proposes related changes to replace the word “continuous” with “intra-day” within the Rulebook, specifically in

³ See Phlx Rule 1081(c). See also Securities Exchange Act Release No. 83209 (May 10, 2018), 83 FR 22717 (May 16, 2018) (SR–Phlx–2018–22) (order granting approval of proposed rule change to amend Phlx’s quoting requirements, among other changes).

⁴ Nasdaq ISE, LLC (“ISE”) and Nasdaq MRX, LLC will file similar proposals.

Rules 701(c)(3) and (4), and Rule 702(d)(4).⁵

The Exchange also proposes to amend Rule 804(e) by deleting the introductory sentence: “A market maker must enter continuous quotations for the options classes to which it is appointed pursuant to the following.” The Exchange proposes to specifically detail a Market Maker’s quoting obligations in new rule text within paragraph (e) and therefore believes that the deleted language is not necessary given that the following sentences will replace this language, as described below.

The Exchange proposes to add new rule text to Rule 804(e). The first new sentence will provide, similar to Phlx Rule 1081(c): “A market maker must enter bids and offers for the options to which it is appointed, except in an assigned options series listed intra-day⁶ on the Exchange.” The Exchange believes this sentence is clearer than the current Rule 804(e) because it excepts intra-day quotes. The Exchange notes that this is the case today, where a Market Maker is not held to quote an intra-day add of a series because the options series was not available for trading the entire day. The Exchange is adding this exception to the rule text to make clear that Market Makers would not be responsible for quoting an intra-day addition on the day it was added. The Exchange does not count intra-day adds of a series that were not available for the entire day of trading because the Market Maker would not have the opportunity to trade that particular options series for the entire trading day, and therefore could not have anticipated the impact such intra-day adds would have on the calculation of its quoting obligations.

The Exchange also proposes to note within the new rule text the specific quoting obligations for each type of Market Maker by adding: “On a daily basis, a Market Maker must make markets consistent with the applicable quoting requirements specified below.” The Exchange proposes to note within the new rule text the specific quoting

⁵ The Exchange notes that as part of a parallel ISE filing that also proposes to amend the quoting obligations, ISE proposes to replace the word “continuous” with “intra-day” within ISE Rule 1614(b)(10). ISE Chapter 16, including ISE Rule 1614, is incorporated by reference into the Exchange’s Rulebook. As such, the proposed amendment to ISE Rule 1614 will also apply to GEMX Rule 1614. See SR–ISE–2018–90.

⁶ An intra-day listing or add of a series means, for purposes of this Rule 804(e), as an option series that is added manually on the same day the series begins trading. The Exchange notes that an intra-day add of a series would be counted the following trading day (next business day after the intra-day add of a series was listed) when the options series would be available for a full trading day.

¹⁶ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

obligations for each type of Market Maker. The Exchange is also adding rule text to explain the interplay between the quoting obligations for Competitive Market Makers, Primary Market Makers, and Competitive Market Makers that are Preferred Market Makers.⁷ Specifically, the Exchange proposes to add, similar to Phlx Rules:⁸ “A Member will be required to meet each market making obligation separately. A Competitive Market Maker who is also the Primary Market Maker will be held to the Primary Market Maker obligations in the options series in which the Primary Market Maker is assigned and will be held to Competitive Market Maker obligations in all other options series where assigned. A Competitive Market Maker who receives a Preferred Order, as described in Supplementary Material .03 to Rule 713, (“Preferred CMM”) shall be held to the standard of a Preferred CMM in the options series of any assigned options class in which it receives the Preferred Order.” This is the case today, even though the current rule text does not explicitly state that each obligation is separate. As such, the Exchange is proposing to make clear that a member who is a Competitive Market Maker, Primary Market Maker, or Preferred CMM will have quoting obligations which may need to be separately met depending on the role.

Rule 804(e)(1)

To align its rule structure with Phlx Rule 1081(c), the Exchange proposes to relocate the quoting obligations of Competitive Market Makers currently in subparagraph (2) of Rule 804(e) to subparagraph (1), and set forth the rule text currently in subparagraphs (2)(i) and (2)(ii) therein, with a non-substantive modification from the current “intraday” to “intra-day” for consistency throughout the Rule. As such, proposed Rule 804(e)(1) will read: “On any given day, a Competitive Market Maker is not required to enter quotations in the options classes to which it is appointed. A Competitive Market Maker may initiate quoting in options classes to which it is appointed intra-day.”⁹

⁷ Supplementary Material .03 to Rule 713 allows an Electronic Access Member to designate a “Preferred Market Maker” on orders it enters into the System (“Preferred Orders”). A Preferred Market Maker may be the Primary Market Maker appointed to the options class or any Competitive Market Maker appointed to the options class.

⁸ See Phlx Rule 1081(c).

⁹ The quoting obligations of Primary Market Makers currently in subparagraph (1) of Rule 804(e) and Supplementary Material to Rule 804 will be set forth in new subparagraph (2) under the Exchange’s proposal, as further discussed below.

The Exchange also proposes to remove the following sentence in Rule 804(e)(2)(iii): “Whenever a Competitive Market Maker enters a quote in an options class to which it is appointed, it must maintain continuous quotations in that class for 60% of the time the class is open for trading on the Exchange; provided, however, that a Competitive Market Maker shall be required to maintain continuous quotations for 90% of the time the class is open for trading on the Exchange in any options class in which it receives Preferred Orders (see Supplementary Material .03 to Rule 713 regarding Preferred Orders).” The Exchange proposes to replace this language with language in Rule 804(e)(1) that more technically defines a Competitive Market Maker’s quoting obligation.¹⁰ The Exchange proposes the following rule text: “If a Competitive Market Maker initiates quoting in an options class, the Competitive Market Maker, associated with the same Member, is collectively required to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member’s assigned options class is open for trading.” The 60% quoting requirement and the manner in which it is calculated as a percentage of time is not being amended.¹¹ The only change from current practice is to allow the Exchange to announce in advance a higher percentage than the current 60% quoting requirement, which would bring the Exchange’s rule in line with Phlx Rule 1081(c)(ii)(A). The Exchange believes it may be appropriate to apply a higher standard if doing so would be in the interest of a fair and orderly market.¹² Otherwise, the proposed amendments described above are either stylistic in nature or clarifying changes that are intended to more specifically state the current quoting obligations as 60% of the cumulative number of seconds rather than 60% of the time the class is open for trading on the Exchange.¹³ While the current rule more

¹⁰ The proviso setting forth the 90% quoting obligation for Competitive Market Makers with Preferred Orders currently in subparagraph (2)(iii) will be replaced with more detailed language in proposed Rule 804(e)(3), as further described below.

¹¹ As further discussed below, the Exchange will go from minutes to seconds as a way to express how it will calculate this percentage of time. See note 16 below, with accompanying text.

¹² Any such higher percentage would involve appropriate advance announcement, which would then be available on the Exchange’s website.

¹³ Phlx Rule 1081(c)(ii)(A) similarly sets forth the quoting obligations as a percentage of the cumulative number of seconds.

generally indicates that the Exchange currently reviews quoting as a percentage of the time the class is open for trading on the Exchange, the two standards are otherwise equivalent. Furthermore, the Exchange adopted the Market Maker quoting requirements as part of its application to be registered as a national securities exchange under its previous name of Topaz Exchange, LLC.¹⁴ In approving the Market Maker quoting requirements, the Commission noted that the Exchange’s Market Maker requirements were identical to ISE’s rules.¹⁵ ISE in its adopting rule filing for the 60% standard stated that it would “calculate the percentage of time a market maker quotes by dividing the number of minutes a Market Maker quotes in series of an options class (numerator) by the total minutes all series of the options class were open for trading on the Exchange (denominator).”¹⁶ As such, the proposed changes for GEMX will explicitly state the same standard (expressed in seconds) within the rule text itself. Adding “associated with the same Member” conforms to Phlx Rule 1081(c)(ii)(A) and also makes clear that the obligation is at the firm level and that all associated Competitive Market Makers will be counted in arriving at the calculation for quoting obligations.

The Exchange also proposes to add in Rule 804(e)(1): “Notwithstanding the foregoing, a Competitive Market Maker shall not be required to make two-sided markets pursuant to this Rule 804(e)(1) in any Quarterly Options Series, any adjusted option series, and any option series with an expiration of nine months or greater for options on equities and exchange-traded funds (“ETFs”) or with an expiration of twelve months or greater for index options.” These exceptions exist today for GEMX and are being carried over into proposed Rule 804(e)(1) from current Supplementary Material .02 to Rule 804 with some modifications to conform to Phlx Rule 1081(c)(ii)(A). The majority of the changes from the current rule text are stylistic in nature to conform to Phlx’s language and to define ETFs within the rule text itself. The Exchange also proposes to add Quarterly Options Series, which is defined in Rule 100(a)(55), to the list of exceptions to

¹⁴ See Securities Exchange Act Release No. 70050 (July 26, 2013), 78 FR 46622 (August 1, 2013) (File No. 10–209). The Exchange subsequently changed its name to ISE Gemini and then later to Nasdaq GEMX.

¹⁵ *Id.* at 46635.

¹⁶ See Securities Exchange Act Release No. 69175 (March 19, 2013), 78 FR 17988 (March 25, 2013) (SR–ISE–2013–17) (“2013 ISE Proposal”) at 17989. See also SR–ISE–2018–90.

the quoting obligations for Competitive Market Makers. Quarterly Options Series are excluded from a Competitive Market Maker's quoting obligations today, and the Exchange therefore seeks to codify its current practice within the proposed rule text. The Exchange notes that Quarterly Options Series are similarly excluded from the market maker quoting obligations on Phlx.¹⁷

The Exchange also proposes to add to Rule 804(e)(1): "Competitive Market Makers may choose to quote such series in addition to regular series in the options class, but such quotations will not be considered when determining whether a Competitive Market Maker has met the obligation contained in this paragraph (e)(1)." This language is being relocated from current Supplementary Material .02 to Rule 804, with a modification to update the cross-reference.

Further, the definition of adjusted options series currently within Supplementary Material .02 to Rule 804 will be relocated to subparagraph (1)(ii) of Rule 804(e), and will be defined as "Adjusted Options Series" throughout Rule 804(e). The Exchange also proposes to use the defined term "Exchange-Traded Fund Shares," which is defined in Rule 502(h), instead of "exchange-traded fund shares" in the proposed definition of Adjusted Options Series for consistency with the rest of the Exchange's Rulebook.

Finally, the Exchange proposes to relocate current subparagraph (2)(iv) in Rule 804(e) to proposed subparagraph (1)(ii). The Exchange is not proposing any amendments to the rule text itself other than to replace the word "continuous" with "intra-day" for the reasons discussed above.

Rule 804(e)(2)

As noted above, the Exchange proposes to set forth the quoting obligations of Primary Market Makers in Rule 804(e)(2). Currently as set forth in Rule 804(e)(1), Primary Market Makers must enter continuous quotations in all of the series of the options classes to which they are appointed.¹⁸ Pursuant to Supplementary Material .01 to Rule 804, Primary Market Makers are deemed to have provided continuous quotes if they provide two-sided quotes for 90% of the

time that an options class is open for trading on the Exchange. Similar to the quoting obligations for Competitive Market Makers, the Exchange proposes to replace this language with language in Rule 804(e)(2) that more technically defines a Primary Market Maker's quoting obligations. Proposed Rule 804(e)(2) will provide that Primary Market Makers, associated with the same Member, are collectively required to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member's assigned options class is open for trading.¹⁹ Similar to the proposed changes to the 60% quoting requirement for Competitive Market Makers discussed above, the 90% quoting requirement for Primary Market Makers and the manner in which it is calculated as a percentage of time is not being amended. The only change from current practice is to allow the Exchange to announce in advance a higher percentage than the current 90% quoting obligation, which would bring the Exchange's rule in line with Phlx Rule 1081(c)(ii)(B). As discussed above for the Competitive Market Maker quoting obligations, the Exchange believes it may be appropriate to apply a higher standard if doing so would be in the interest of a fair and orderly market.²⁰ Otherwise, the Exchange does not propose to amend the current 90% quoting requirement; rather, the Exchange proposes to more specifically state the current quoting obligations as 90% of the cumulative number of seconds rather than 90% of the time the class is open for trading on the Exchange. While the current rule in Supplementary Material .01 to Rule 804 more generally indicates that the Exchange currently reviews quoting as a percentage of the time the class is open for trading on the Exchange, the two standards are otherwise equivalent.²¹ Accordingly, the proposed changes will explicitly state the same standard (expressed in seconds) within the rule text itself. Adding "associated with the same Member" to the first sentence

¹⁹ Phlx Rule 1081(c)(ii)(B) similarly sets forth the quoting obligations as a percentage of the cumulative number of seconds.

²⁰ See note 12 above.

²¹ See 2013 ISE Proposal, footnote 16 (providing that to calculate whether a Primary Market Maker has maintained quotations for at least 90% of the time, the Exchange will divide the total number of minutes a Primary Market Maker maintained quotations in options series of a class (numerator) by the total minutes all series of the options class were open for trading on the Exchange (denominator)). As discussed above, GEMX's quoting requirements are identical to ISE's requirements.

conforms to Phlx Rule 1081(c)(ii)(B) and also makes clear that the obligation is at the firm level and that all associated Primary Market Makers will be counted in arriving at the calculation for quoting obligations.

The Exchange also proposes to more specifically state within Rule 804(e)(2) that Primary Market Makers shall be required to make two-sided markets pursuant to Rule 804(e)(2) in any Quarterly Options Series, any Adjusted Options Series, and any options series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options. The proposed changes do not amend the current quoting obligations of Primary Market Makers with respect to these options series. As discussed above, Supplementary Material .02 to Rule 804 currently excludes adjusted options series and long-term options series from the quoting obligations of Competitive Market Makers and Preferred CMMs. As noted above, while the current rule in paragraph (e)(1) implicitly provides that these exceptions do not apply to Primary Market Makers and that their quoting obligations include such series, the Exchange proposes to explicitly state that Primary Market Makers are required to make two-sided markets in the specified options series. Furthermore, Primary Market Makers are required to make two-sided markets in Quarterly Options Series today. Accordingly, the Exchange seeks to add Quarterly Options Series to the Rule 804(e)(2) to codify its current practice. The Exchange notes that Phlx Specialists are similarly required to make two-sided markets in Quarterly Options Series.²²

Rule 804(e)(3)

Currently as set forth in Rule 804(e)(2)(iii), a Competitive Market Maker is required to maintain continuous quotations for 90% of the time the class is open for trading on the Exchange in any options class in which it receives the Preferred Order pursuant to Supplementary Material .03 to Rule 713. The Exchange now proposes to replace this language with language that more technically defines the quoting obligations of the Competitive Market Maker that receives the Preferred Order (*i.e.*, Preferred CMM) in new Rule 804(e)(3). The Exchange proposes to add in Rule 804(e)(3) that Preferred CMMs, associated with the same Member, are collectively required to provide two-sided quotations in 90% of the

²² See Phlx Rule 1081(c)(ii)(B).

¹⁷ See Phlx Rule 1081(c)(ii)(A).

¹⁸ This means that the Primary Market Maker quoting requirement includes all series of an appointed options class, including the options series that are currently excluded from the quoting requirements of Competitive Market Makers and Preferred CMMs (*i.e.*, Quarterly Options Series, Adjusted Options Series, and long-term options). As discussed below, the Exchange will explicitly state that a Primary Market Maker's quoting obligations will include these specified options series.

cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member's assigned options class is open for trading. A Member shall be considered preferred in an assigned options class once the Member receives a Preferred Order in any option class in which they are assigned and shall be considered a preferred for that day in all series for that option class in which it received the Preferred Order. Notwithstanding the foregoing, a Preferred CMM shall not be required to make two-sided markets pursuant to Rule 804(e)(3) in any Quarterly Options Series, any Adjusted Options Series, and any options series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options.

The Exchange notes that similar to the proposed language for the Competitive Market Maker and Primary Market Maker quoting obligations discussed above, the only change from current practice is to allow the Exchange to announce in advance a higher percentage than the current 90% quoting obligation, which would bring the Exchange's rule in line with Phlx Rule 1081(c)(ii)(C). As discussed above for the Competitive Market Maker and Primary Market Maker quoting obligations, the Exchange believes it may be appropriate to apply a higher standard if doing so would be in the interest of a fair and orderly market.²³ Otherwise, the 90% quoting requirement for Preferred CMMs and the manner in which it is calculated as a percentage of time is not being amended; rather, the Exchange proposes to more specifically express the current quoting obligations as 90% of the cumulative number of seconds rather than 90% of the time the class is open for trading on the Exchange.²⁴ As noted above for Competitive Market Makers and Primary Market Makers, the two standards are equivalent even though the current rule more generally expresses that the Exchange reviews quoting as a percentage of time. As such, the proposed changes will explicitly state the same standard (expressed in seconds) within the rule text itself.

Adding "associated with the same Member" conforms to Phlx Rule 1081(c)(ii)(C) and also makes clear that the obligation is at the firm level and that all associated Preferred CMMs will

be counted in arriving at the calculation for quoting obligations. Furthermore, the proposed language is being added to clarify when a Preferred CMM is considered to be preferred in an assigned options class, and does not amend the Exchange's current practice. The Exchange, similar to today, will exclude any Quarterly Options Series, any Adjusted Options Series, and any options series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options from the quoting obligations of Preferred CMMs.²⁵ As discussed above, Supplementary Material .02 to Rule 804 currently provides an exception from the quoting obligations in adjusted options series and any long-term options series for Preferred CMMs. As such, proposed Rule 804(e)(3) makes clear that such Members are not required to make two-sided markets in these options series. In addition, Preferred CMMs are not required to make two-sided markets in Quarterly Options Series today. Accordingly, the Exchange seeks to add Quarterly Options Series to the list of exceptions in proposed Rule 804(e)(3) to codify its current practice.²⁶

The Exchange will add in proposed Rule 804(e)(3) similar language for Preferred CMMs as proposed for Competitive Market Makers in Rule 804(e)(1) that Preferred CMMs may choose to quote such series in addition to regular series in the options class, but such quotations will not be considered when determining whether a Preferred CMM has met the obligation contained in this paragraph (e)(3). This language is currently in Supplementary Material .02 to Rule 804, and applies to the quoting obligations for both Competitive Market Makers and Preferred CMMs. Finally, the Exchange proposes to relocate language from Supplementary Material .02 to Rule 804 into new paragraph (e)(3), with some modifications to update a cross-reference and remove redundant language, as follows: "A Preferred CMM may be preferred in such series and receive enhanced allocations pursuant to Nasdaq GEMX Rule 713, Supplementary Material .03, only if it complies with the heightened 90% quoting requirement contained in this paragraph (e)(3)."

Rule 804(e)(4)

The Exchange proposes to add new rule text at Rule 804(e)(4) to provide the method by which the Exchange will calculate the Market Maker quoting obligations contained in proposed subparagraphs (1)–(3) of Rule 804(e). The Exchange proposes to state that the Exchange will (i) take the total number of seconds the Member disseminates quotes in each assigned options series, excluding, for Competitive Market Makers and Preferred CMMs, Quarterly Option Series, any Adjusted Option Series, and any option series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options; and (ii) divide that time by the eligible total number of seconds each assigned option series in the options class is open for trading that day. Similar to Phlx Rule 1081(c)(ii)(D), the Exchange believes that the addition of this language will bring greater transparency to the manner in which the Exchange calculates the quoting obligation. The Exchange is not amending the manner in which the quoting obligation is calculated; rather the Exchange is simply adding to the current rule the exact manner in which the Exchange determines the quoting percentage. The Exchange also proposes to add the following in Rule 804(e)(4): "Quoting is not required in every assigned options series." This sentence is not currently in the rule. The added language is not amending the Exchange's current practice; rather the Exchange is clearly stating that quoting is not required in every assigned options series to make clear the current obligation (*i.e.*, the Market Maker is not required to quote every single assigned options series in order to meet its quoting obligations). Also, the Exchange proposes to state: "Compliance with this requirement is determined by reviewing the aggregate of quoting in assigned options series for the Member." This language is similar to language presently in Supplementary Material .01 to Rule 804²⁷ and clarifies that the quoting obligations apply to all of the Market Maker's assigned options series collectively, which is how the Exchange applies the quoting obligation today. As such, the proposed language simply conforms the text to Phlx Rule 1081(c)(ii)(D).

²⁵ This exception is currently set forth in Supplementary Material .02 to Rule 804.

²⁶ Directed SQTs and Directed RSQTs on Phlx are similarly excluded from making two-sided markets in Quarterly Options Series. See Phlx Rule 1081(c)(ii)(C).

²⁷ The current language provides: "Compliance with this Primary Market Marker quoting requirement and the Competitive Market Maker quoting requirements contained in (e)(2)(iii) above will be applied to all option classes quoted collectively on a daily basis."

²³ See note 12 above.

²⁴ Phlx Rule 1081(c)(ii)(C) similarly sets forth the quoting obligations as a percentage of the cumulative number of seconds.

Rule 804(e)(5)

The Exchange proposes to adopt a new Rule 804(e)(5) to provide that GEMX Regulation may consider exceptions to the above-referenced requirement to quote based on demonstrated legal or regulatory requirements or other mitigating circumstances. This language is similar to language presently in Supplementary Material .01 to Rule 804,²⁸ but specifies that GEMX Regulation (*i.e.*, the Exchange's regulatory department) may consider exceptions to the quoting obligation, which is the case today, and aligns the rule text to Phlx Rule 1081(c)(iii). The Exchange further proposes to add the following rule text to new Rule 804(e)(5): "For purposes of the Exchange's surveillance of Member compliance with this rule, the Exchange will determine compliance on a monthly basis. The Exchange's monthly compliance evaluation of the quoting requirement does not relieve a Member of the obligation to provide two-sided quotes on a daily basis, nor will it prohibit the Exchange from taking disciplinary action against a Member for failing to meet the quoting obligation each trading day." The proposed rule text is similar to language currently in Supplementary Material .01 to Rule 804,²⁹ and is merely rephrased to conform to Phlx Rule 1081(c)(iii). As such, the Exchange is not amending the manner in which the surveillance functions today, and the proposed amendments to Rule 804(e)(5) are not substantive in nature.

Rule 804(e)(6)

The Exchange proposes to adopt a new Rule 804(e)(6) that provides: "If a technical failure or limitation of a System of the Exchange prevents a Member from maintaining, or prevents a market maker from communicating to the Exchange, timely and accurate quotes, the Member shall promptly notify the Exchange and the duration of such failure or limitation shall not be included in any of the calculations under this subparagraph (e) with respect to the affected quotes." This language is

²⁸ The current language provides: "The Exchange may consider other exceptions to this continuous electronic quote obligation based on demonstrated legal or regulatory requirements or other mitigating circumstances."

²⁹ The current language provides: "Overall compliance with market maker quoting obligations will be determined on a monthly basis. However, the ability of the Exchange to determine compliance on a monthly basis does not: (1) relieve market makers from their obligation to meet daily quoting requirements in Rule 804; and (2) prohibit the Exchange from bringing disciplinary action against a market maker for failure to meet its daily quoting requirements set forth in Rule 804."

being relocated from Supplementary Material .01 to Rule 804, and modified to specifically refer to the calculations in proposed subparagraph (e), capitalize "System," which is a defined term, and rephrased to conform to Phlx Rule 1081(c)(iv).

Clean-Up Changes

The Exchange proposes to delete Supplementary Materials .01 and .02 to Rule 804, and all related cross-references throughout the Rulebook. As explained above, this rule text is being relocated within the proposed rule text with some modifications. Finally, the Exchange proposes to update all cross-references to Rule 804(e) in its Rules to reflect the proposed renumbering and expansion of rules described above.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,³⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,³¹ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes that its proposed rule change provides further detail as to the quoting obligations of Market Makers. As discussed above, other than one modification to allow the Exchange to announce in advance a higher percentage of quoting compliance standards, the Exchange is not amending current practice or its current quoting obligations. The Exchange believes that it is consistent with the Act to have the ability to announce a higher percentage in the interest of maintaining a fair and orderly market. As noted above, the Exchange would provide appropriate advance announcement for any such higher percentage, which would then be available on the Exchange's website. Otherwise, the Exchange notes that to the extent that there are rule text changes from the current language, these differences are all to harmonize its rules with Phlx Rule 1081(c) to promote consistency among similar rules of the Exchange and its affiliates, or to codify its current practice within the proposed rule text to bring transparency to the Exchange's rulebook.

Specifically, the Exchange believes that replacing "continuous" with "intra-day" throughout the rulebook is consistent with the Act because it more

accurately reflects the manner in which Market Makers quote on GEMX. Also in the introductory sentence to Rule 804(e), the Exchange is codifying its current practice of excluding intra-day additions of assigned options series from a Market Maker's quoting obligations to make clear that Market Makers would not be responsible for such series on the day it was added. As noted above, for purposes of calculating the quoting obligations, the Exchange counts an intra-day add of a series the following trading day when the options series would be available for a full trading day. The Exchange believes that codifying this current exception within the rule text is consistent with the Act as it will bring transparency to the Exchange's rulebook. The Exchange does not count intra-day adds of options series that were not available for the entire day of trading because the Market Maker would not have the opportunity to trade that particular options series for the entire trading day, and therefore could not have anticipated the impact such intra-day additions would have on the calculation of its quoting obligations. The Exchange also believes that codifying its current practice of excluding Quarterly Options Series from the quoting requirements of Competitive Market Makers and Preferred CMMs will bring clarity to the Exchange's rulebook that quotes in such series will not be considered in determining whether a Competitive Market Maker or Preferred CMM complied with their respective quoting obligations. Similar to the Adjusted Options Series and long-term options series that are currently explicitly listed as exceptions in the rule text, it is the Exchange's understanding that quoting obligations on these often less frequently traded options series impact the risk parameters acceptable to the Market Makers, and therefore the quoting obligation exceptions (including Quarterly Options Series) are to incentivize Market Makers to continue to seek assignments in these options series and thereby promote liquidity in options classes listed on the Exchange to the benefit of investors and the public interest.

The Exchange is also proposing to explicitly state that a member will be required to meet each market making obligation separately in order to make clear that a Competitive Market Maker, Primary Market Maker, or Preferred CMM will have quoting obligations which may need to be met separately, depending on the role. In addition, the Exchange is expressing each of the current quoting obligations as a

³⁰ 15 U.S.C. 78f(b).

³¹ 15 U.S.C. 78f(b)(5).

percentage of the cumulative number of seconds rather than as a percentage of the time the class is open for trading on the Exchange in order to add more transparency as to the standards by which a Market Maker's quoting obligations are measured. In the same vein, the proposed rule text in Rule 804(e)(4) to describe the exact manner in which the Exchange calculates the quoting obligations by specifying the numerator and denominator calculations, as well as clarifying that quoting is not required in every assigned options series, adds transparency to the Exchange's rulebook, and allows members to better monitor whether they are in compliance with their quoting requirements.

Adding "associated with the same Member" throughout the proposed rule text conforms to Phlx Rule 1081(c)(ii) and adds clarity that the quoting obligations are at the firm level, and that all associated Market Makers will be counted in arriving at the applicable calculation for quoting obligations. Specifically stating that Primary Market Makers are required to make two-sided markets in any Quarterly Options Series, any Adjusted Options Series, and any long-term options series codifies what was implicit in the current rule text which required Primary Market Makers to enter continuous quotations in all of the series listed on the Exchange in their assigned options classes, as further described above. Finally, adding that the Member is considered preferenced for that day in all series for that assigned options class in which it received the Preferenced Order is similarly codifying the Exchange's current practice and will bring more transparency to the Rulebook.

Overall, the Exchange believes that its proposal is consistent with the Act because the proposed rule text protects investors and the public interest by providing clear language that will be utilized on all Nasdaq, Inc.-affiliated options markets for easy comparison by common members that are engaged in market making activities on both the Exchange and its affiliates. As discussed above, the proposed changes will restructure GEMX's current rules on Market Maker quoting obligations to conform to rule text used on its affiliate, Phlx. The Exchange further believes that the proposed rule changes would remove impediments to and perfect the mechanism of a free and open market by ensuring that members, regulators and the public can more easily navigate and understand the Exchange's rulebook, thereby avoiding potential confusion.

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 further of the purposes of the Act. The proposal does not impose a burden on competition because the Exchange will continue to uniformly calculate and apply the quoting obligations for all Market Makers. Other than to allow the Exchange to announce in advance a higher percentage of quoting compliance standards, the Exchange's proposal does not modify the current practice or the current quoting obligations on GEMX, as further discussed above.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act³² and subparagraph (f)(6) of Rule 19b-4 thereunder.³³

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

³² 15 U.S.C. 78s(b)(3)(A)(iii).

³³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-GEMX-2018-37 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-GEMX-2018-37. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-GEMX-2018-37 and should be submitted on or before December 11, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁴

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2018-25233 Filed 11-19-18; 8:45 am]

BILLING CODE 8011-01-P

³⁴ 17 CFR 200.30-3(a)(12).

**SECURITIES AND EXCHANGE
COMMISSION****Proposed Collection; Comment
Request***Upon Written Request, Copies Available*

From: Securities and Exchange
Commission, Office of FOIA Services,
100 F Street NE, Washington, DC
20549-2736.

Extension:

Rule 17e-1, SEC File No. 270-224, OMB
Control No. 3235-0217

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) ("Paperwork Reduction Act"), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

Rule 17e-1 (17 CFR 270.17e-1) under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) (the "Investment Company Act") deems a remuneration as "not exceeding the usual and customary broker's commission" for purposes of Section 17(e)(2)(A) of the Investment Company Act (15 U.S.C. 80a-17(e)(2)(A)) if, among other things, a registered investment company's ("fund's") board of directors has adopted procedures reasonably designed to provide that the remuneration to an affiliated broker is reasonable and fair compared to that received by other brokers in connection with comparable transactions involving similar securities being purchased or sold on a securities exchange during a comparable period of time and the board makes and approves such changes as it deems necessary. In addition, each quarter, the board must determine that all transactions effected under the rule during the preceding quarter complied with the established procedures. Rule 17e-1 also requires the fund to (i) maintain permanently a written copy of the procedures adopted by the board for complying with the requirements of the rule; and (ii) maintain for a period of six years, the first two in an easily accessible place, a written record of each transaction subject to the rule, setting forth the amount and source of the commission, fee, or other remuneration received; the identity of the broker; the terms of the transaction; and the materials used to determine that the transactions were effected in compliance with the procedures adopted by the board. The recordkeeping requirements under rule

17e-1 enable the Commission to ensure that affiliated brokers receive compensation that does not exceed the usual and customary broker's commission. Without the recordkeeping requirements, Commission inspectors would have difficulty ascertaining whether funds were complying with rule 17e-1.

Based on an analysis of fund filings, the staff estimates that approximately 266 funds enter into subadvisory agreements each year.¹ Based on discussions with industry representatives, the staff estimates that it will require approximately 3 attorney hours to draft and execute additional clauses in new subadvisory contracts in order for funds and subadvisers to be able to rely on the exemptions in rule 17e-1. Because these additional clauses are identical to the clauses that a fund would need to insert in their subadvisory contracts to rely on rules 12d3-1, 10f-3, and 17a-10, and because we believe that funds that use one such rule generally use all of these rules, we apportion this 3 hour time burden equally to all four rules. Therefore, we estimate that the burden allocated to rule 17e-1 for this contract change would be 0.75 hours.² Assuming that all 266 funds enter into new subadvisory contracts each year make the modification to their contract required by the rule, we estimate that the rule's contract modification requirement will result in 200 burden hours annually.³

Based on an analysis of fund filings, we estimate that approximately 1,609 funds use at least one affiliated broker. Based on staff experience and conversations with fund representatives, the staff estimates approximately 40 percent of transactions (and thus, 40% of funds) that occur under the rule 17e-1 would be exempt from its recordkeeping and review requirements. This would leave approximately 965 funds⁴ still subject to the rule's recordkeeping and review requirements. Based on staff experience and conversations with fund representatives, we estimate that the burden of compliance with rule 17e-1 is

¹ Based on data from Morningstar, as of June 30, 2018, there are 12,393 registered funds (open-end funds, closed-end funds, and exchange-traded funds), 4,594 funds of which have subadvisory relationships (approximately 37%). Based on data from the 2018 ICI Factbook, 720 new funds were established in 2017 (705 open-end funds and exchange-traded funds + 15 closed-end funds (from the ICI Research Perspective, April 2018)). 720 new funds × 37% = 266 funds.

² 3 hours ÷ 4 rules = 0.75 hours.

³ This estimate is based on the following calculation: 0.75 hours × 266 funds = 200 burden hours.

⁴ 1,609 funds × 0.6 = 965 funds.

approximately 50 hours per fund per year. This time is spent, for example, reviewing the applicable transactions and maintaining records. Accordingly, we calculate the total estimated annual internal burden of complying with the review and recordkeeping requirements of rule 17e-1 to be approximately 48,250 hours⁵ and the total annual burden of the rule's paperwork requirements is 48,450 hours.⁶

Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. The collection of information under rule 17e-1 is mandatory. The information provided under rule 17e-1 will not be kept confidential. 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.

Written 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 will have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, C/O Candace Kenner, 100 F Street NE, Washington, DC 20549; or send an email to: PRA_Mailbox@sec.gov.

Dated: November 14, 2018.

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2018-25216 Filed 11-19-18; 8:45 am]

BILLING CODE 8011-01-P

⁵ 965 funds × 50 hours per fund = 48,250 hours.

⁶ 200 hours + 48,250 hours = 48,450 hours.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84590; File No. SR–BX–2018–055]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Long-Term Options Contracts

November 14, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on November 7, 2018, Nasdaq BX, Inc. (“BX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Chapter IV, Securities Traded on BX Options, Section 8, Long-Term Options Contracts.

The text of the proposed rule change is available on the Exchange’s website at <http://nasdaqbx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its rules at Chapter IV, Securities Traded on BX Options, Section 8, Long-Term

Options Contracts, in order (i) to clarify the number of long-term option contract (“LEAPS”) expiration months that may be listed on the Exchange on underlying securities under the current rule, and (ii) to expand the number of LEAPS expiration months that may be listed in options on the SPDR® S&P 500® exchange-traded fund (the “SPY ETF”) in particular.

Clarification of the Number of Permitted Expiration Months

Pursuant to current Chapter IV, Section 8, the Exchange may list LEAPS that expire from twelve (12) to thirty-nine (39) months from the time they are listed. The rule provides that there may be up to six (6) additional expiration months. Because the rule does not specify which expiration months the six months are in addition to, and thus is ambiguous, the Exchange proposes to delete the word “additional.” As amended, the rule would clearly and simply provide that the Exchange may list six expiration months having from twelve up to thirty-nine months from the time they are listed until expiration. This aspect of the proposed rule change is based upon Nasdaq PHLX, LLC (“Phlx”) Rule 1012, Series of Options Open for Trading, subsection (a)(i)(D).³

Additional Expiration Months in SPY ETF LEAPS

The Exchange proposes to further amend Chapter IV, Section 8, to permit up to ten LEAPS expiration months for options on the SPY ETF in response to customer demand.⁴ The proposal will add liquidity to the SPY ETF options market by allowing market participants to hedge risks relating to SPY ETF option positions over a longer time period with a known and limited cost. This aspect of the proposed rule change is also based upon Phlx Rule 1012, Series of Options Open for Trading, subsection (a)(i)(D), as recently amended.⁵

The SPY ETF options market today is characterized by its tremendous daily and annual liquidity. As a consequence the Exchange believes that the listing of additional SPY ETF LEAPS expiration months would be well received by investors. This proposal to expand the number of permitted SPY ETF LEAPS

expiration months would not apply to LEAPS on any other security.⁶

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁸ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. First, as noted above, the proposal protects investors and the public interest by clarifying ambiguous rule language associated with permitted listings of long term options. Second, the proposal would permit the Exchange to offer market participants additional LEAPS on SPY ETF options for their investment and risk management purposes. This aspect of the proposal is intended simply to provide additional trading opportunities which have been requested by customers, thereby facilitating transactions in options and contributing to the protection of investors and the maintenance of fair and orderly markets. The proposed rule change responds to the continuing needs of market participants, particularly portfolio managers and other institutional customers, by providing protection from long-term market moves and by offering an alternative to hedging portfolios with futures positions or off-exchange customized derivative instruments. The Exchange believes that the addition today of four additional expiration months for SPY ETF LEAPS does not represent a proliferation of expiration months, but is instead a very modest expansion of LEAPS in response to stated customer demand. Significantly, the proposal would feature new LEAPS expiration months in only a single class of options that are very liquid and heavily traded, as discussed above. Additionally, the Exchange notes by way of precedent that ten expiration months are already permitted for stock index LEAPS. Further, the Exchange has the necessary systems capacity to support the new SPY ETF LEAPS expiration months.

³ See Securities Exchange Act Release No. 80769 (May 25, 2017), 82 FR 25472 (June 1, 2017) (SR–Phlx–2017–41).

⁴ Chapter XIV, Index Rules, Section 11, Terms of Index Options Contracts, subsection (b)(1)(i) currently permits the Exchange to list up to ten (10) expiration months in long term index options.

⁵ See Securities Exchange Act Release No. 84449 (October 18, 2018), 83 FR 53699 (October 24, 2018) (SR–Phlx–2018–64).

⁶ Historically, SPY ETF is the largest and most actively traded ETF in the United States as measured by its assets under management and the value of shares traded.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. On the contrary, the Exchange believes that the proposed amendment will benefit investors, market participants, and the marketplace in general by eliminating ambiguity in the current rules regarding the number of permitted expiration months in LEAPS generally. Additionally, the proposal merely provides investors additional investment and risk management opportunities by providing flexibility to the Exchange to list additional LEAPS expiration series, expanding the number of SPY ETF LEAPS offered on the Exchange from six expiration months to ten expiration months.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰

A proposed rule change filed under Rule 19b-4(f)(6)¹¹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹² 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 on November 16, 2018, to coincide with the

effective date of Phlx's proposed rule change on which the proposal is partially based.¹³ The Exchange's proposal would clarify ambiguous rule text and would conform the Exchange's rules relating to permitted number of SPY ETF LEAPS expirations to those of Phlx. 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 proposal operative on November 16, 2018.¹⁴

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-BX-2018-055 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-BX-2018-055. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

¹³ See *supra* note 5.

¹⁴ 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).

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-BX-2018-055 and should be submitted on or before December 11, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2018-25246 Filed 11-19-18; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84582; File No. SR-MRX-2018-34]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Market Maker Quoting Obligations

November 14, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 7, 2018, Nasdaq MRX, LLC ("MRX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4. 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.

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 240.19b-4(f)(6)(iii).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules related to Market Maker (*i.e.*, Primary Market Maker and Competitive Market Maker) quoting obligations.

The text of the proposed rule change is available on the Exchange's website at <http://nasdaqmrxcchwallstreet.com/>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Rule 804(e) to provide greater detail regarding the quoting obligations of Market Makers and the manner in which they are calculated, and to restructure the current rules to conform to rule text used on its affiliated options market, Nasdaq Phlx ("Phlx").³ The Exchange seeks to make conforming changes to Rule 804(e) to promote structural consistency of the Exchange's rules with those of its affiliated options markets, and to allow its members to quickly compare quoting obligations across the Nasdaq, Inc. affiliated options markets.⁴ The Exchange notes that it is generally including additional detail in its rules on the existing obligations and process using the same format as Phlx Rule 1081(c). Other than one modification to allow the Exchange to announce in advance a higher percentage of quoting compliance standards as further described below, no changes to the

current practice or to the current quoting obligations are being contemplated by this rule change. Accordingly, to the extent there are other differences between the proposed rule text and the current language, the Exchange is in those cases either conforming to Phlx Rule 1081(c) or codifying current practice explicitly within the proposed rule, as further discussed below.

Rule 804(e)

The Exchange first proposes to remove the word "continuous" from the title of Rule 804(e) and retitle the Rule as "Intra-day Quotes." The Exchange is replacing the word "continuous" with "intra-day" because the Exchange notes that Market Makers quote a percentage of the day and therefore the word "continuous" may not accurately reflect the manner in which Market Makers quote on MRX. The Exchange also proposes related changes to replace the word "continuous" with "intra-day" within the Rulebook, specifically in Rules 701(c)(3) and (4), and Rule 702(d)(4).⁵

The Exchange also proposes to amend Rule 804(e) by deleting the introductory sentence: "A market maker must enter continuous quotations for the options classes to which it is appointed pursuant to the following." The Exchange proposes to specifically detail a Market Maker's quoting obligations in new rule text within paragraph (e) and therefore believes that the deleted language is not necessary given that the following sentences will replace this language, as described below.

The Exchange proposes to add new rule text to Rule 804(e). The first new sentence will provide, similar to Phlx Rule 1081(c): "A market maker must enter bids and offers for the options to which it is appointed, except in an assigned options series listed intra-day⁶ on the Exchange." The Exchange believes this sentence is clearer than the current Rule 804(e) because it excepts intra-day quotes. The Exchange notes that this is the case today, where a

⁵ The Exchange notes that as part of a parallel ISE filing that also proposes to amend the quoting obligations, ISE proposes to replace the word "continuous" with "intra-day" within ISE Rule 1614(b)(10). ISE Chapter 16, including ISE Rule 1614, is incorporated by reference into the Exchange's Rulebook. As such, the proposed amendment to ISE Rule 1614 will also apply to MRX Rule 1614. See SR-ISE-2018-90.

⁶ An intra-day listing or add of a series means, for purposes of this Rule 804(e), as an option series that is added manually on the same day the series begins trading. The Exchange notes that an intra-day add of a series would be counted the following trading day (next business day after the intra-day add of a series was listed) when the options series would be available for a full trading day.

Market Maker is not held to quote an intra-day add of a series because the options series was not available for trading the entire day. The Exchange is adding this exception to the rule text to make clear that Market Makers would not be responsible for quoting an intra-day addition on the day it was added. The Exchange does not count intra-day adds of a series that were not available for the entire day of trading because the Market Maker would not have the opportunity to trade that particular options series for the entire trading day, and therefore could not have anticipated the impact such intra-day adds would have on the calculation of its quoting obligations.

The Exchange also proposes to note within the new rule text the specific quoting obligations for each type of Market Maker by adding: "On a daily basis, a Market Maker must make markets consistent with the applicable quoting requirements specified below." The Exchange proposes to note within the new rule text the specific quoting obligations for each type of Market Maker. The Exchange is also adding rule text to explain the interplay between the quoting obligations for Competitive Market Makers, Primary Market Makers, and Competitive Market Makers that are Preferred Market Makers.⁷ Specifically, the Exchange proposes to add, similar to Phlx Rules:⁸ "A Member will be required to meet each market making obligation separately. A Competitive Market Maker who is also the Primary Market Maker will be held to the Primary Market Maker obligations in the options series in which the Primary Market Maker is assigned and will be held to Competitive Market Maker obligations in all other options series where assigned. A Competitive Market Maker who receives a Preferred Order, as described in Supplementary Material .03 to Rule 713, ("Preferred CMM") shall be held to the standard of a Preferred CMM in the options series of any assigned options class in which it receives the Preferred Order." This is the case today, even though the current rule text does not explicitly state that each obligation is separate. As such, the Exchange is proposing to make clear that a member who is a Competitive Market Maker, Primary Market Maker, or Preferred CMM will have quoting

⁷ Supplementary Material .03 to Rule 713 allows an Electronic Access Member to designate a "Preferred Market Maker" on orders it enters into the System ("Preferred Orders"). A Preferred Market Maker may be the Primary Market Maker appointed to the options class or any Competitive Market Maker appointed to the options class.

⁸ See Phlx Rule 1081(c).

³ See Phlx Rule 1081(c). See also Securities Exchange Act Release No. 83209 (May 10, 2018), 83 FR 22717 (May 16, 2018) (SR-Phlx-2018-22) (order granting approval of proposed rule change to amend Phlx's quoting requirements, among other changes).

⁴ Nasdaq ISE, LLC ("ISE") and Nasdaq GEMX, LLC will file similar proposals.

obligations which may need to be separately met depending on the role.

Rule 804(e)(1)

To align its rule structure with Phlx Rule 1081(c), the Exchange proposes to relocate the quoting obligations of Competitive Market Makers currently in subparagraph (2) of Rule 804(e) to subparagraph (1), and set forth the rule text currently in subparagraphs (2)(i) and (2)(ii) therein, with a non-substantive modification from the current “intraday” to “intra-day” for consistency throughout the Rule. As such, proposed Rule 804(e)(1) will read: “On any given day, a Competitive Market Maker is not required to enter quotations in the options classes to which it is appointed. A Competitive Market Maker may initiate quoting in options classes to which it is appointed intra-day.”⁹

The Exchange also proposes to remove the following sentence in Rule 804(e)(2)(iii): “Whenever a Competitive Market Maker enters a quote in an options class to which it is appointed, it must maintain continuous quotations in that class for 60% of the time the class is open for trading on the Exchange; provided, however, that a Competitive Market Maker shall be required to maintain continuous quotations for 90% of the time the class is open for trading on the Exchange in any options class in which it receives Preferred Orders (see Supplementary Material .03 to Rule 713 regarding Preferred Orders).” The Exchange proposes to replace this language with language in Rule 804(e)(1) that more technically defines a Competitive Market Maker’s quoting obligation.¹⁰ The Exchange proposes the following rule text: “If a Competitive Market Maker initiates quoting in an options class, the Competitive Market Maker, associated with the same Member, is collectively required to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member’s assigned options class is open for trading.” The 60% quoting requirement and the manner in which it is calculated as a percentage of time is

not being amended.¹¹ The only change from current practice is to allow the Exchange to announce in advance a higher percentage than the current 60% quoting requirement, which would bring the Exchange’s rule in line with Phlx Rule 1081(c)(ii)(A). The Exchange believes it may be appropriate to apply a higher standard if doing so would be in the interest of a fair and orderly market.¹² Otherwise, the proposed amendments described above are either stylistic in nature or clarifying changes that are intended to more specifically state the current quoting obligations as 60% of the cumulative number of seconds rather than 60% of the time the class is open for trading on the Exchange.¹³ While the current rule more generally indicates that the Exchange currently reviews quoting as a percentage of the time the class is open for trading on the Exchange, the two standards are otherwise equivalent. Furthermore, the Exchange adopted the Market Maker quoting requirements as part of its application to be registered as a national securities exchange under its previous name of ISE Mercury, LLC.¹⁴ In approving the Market Maker quoting requirements, the Commission noted that the Exchange’s Market Maker requirements were identical to ISE’s rules.¹⁵ ISE in its adopting rule filing for the 60% standard stated that it would “calculate the percentage of time a market maker quotes by dividing the number of minutes a Market Maker quotes in series of an options class (numerator) by the total minutes all series of the options class were open for trading on the Exchange (denominator).”¹⁶ As such, the proposed changes for MRX will explicitly state the same standard (expressed in seconds) within the rule text itself. Adding “associated with the same Member” conforms to Phlx Rule 1081(c)(ii)(A) and also makes clear that the obligation is at the firm level and that all associated Competitive Market

Makers will be counted in arriving at the calculation for quoting obligations.

The Exchange also proposes to add in Rule 804(e)(1): “Notwithstanding the foregoing, a Competitive Market Maker shall not be required to make two-sided markets pursuant to this Rule 804(e)(1) in any Quarterly Options Series, any adjusted option series, and any option series with an expiration of nine months or greater for options on equities and exchange-traded funds (“ETFs”) or with an expiration of twelve months or greater for index options.” These exceptions exist today for MRX and are being carried over into proposed Rule 804(e)(1) from current Supplementary Material .02 to Rule 804 with some modifications to conform to Phlx Rule 1081(c)(ii)(A). The majority of the changes from the current rule text are stylistic in nature to conform to Phlx’s language and to define ETFs within the rule text itself. The Exchange also proposes to add Quarterly Options Series, which is defined in Rule 100(a)(55), to the list of exceptions to the quoting obligations for Competitive Market Makers. Quarterly Options Series are excluded from a Competitive Market Maker’s quoting obligations today, and the Exchange therefore seeks to codify its current practice within the proposed rule text. The Exchange notes that Quarterly Options Series are similarly excluded from the market maker quoting obligations on Phlx.¹⁷

The Exchange also proposes to add to Rule 804(e)(1): “Competitive Market Makers may choose to quote such series in addition to regular series in the options class, but such quotations will not be considered when determining whether a Competitive Market Maker has met the obligation contained in this paragraph (e)(1).” This language is being relocated from current Supplementary Material .02 to Rule 804, with a modification to update the cross-reference.

Further, the definition of adjusted options series currently within Supplementary Material .02 to Rule 804 will be relocated to subparagraph (1)(ii) of Rule 804(e), and will be defined as “Adjusted Options Series” throughout Rule 804(e). The Exchange also proposes to use the defined term “Exchange-Traded Fund Shares,” which is defined in Rule 502(h), instead of “exchange-traded fund shares” in the proposed definition of Adjusted Options Series for consistency with the rest of the Exchange’s Rulebook.

Finally, the Exchange proposes to relocate current subparagraph (2)(iv) in Rule 804(e) to proposed subparagraph

⁹ The quoting obligations of Primary Market Makers currently in subparagraph (1) of Rule 804(e) and Supplementary Material to Rule 804 will be set forth in new subparagraph (2) under the Exchange’s proposal, as further discussed below.

¹⁰ The proviso setting forth the 90% quoting obligation for Competitive Market Makers with Preferred Orders currently in subparagraph (2)(iii) will be replaced with more detailed language in proposed Rule 804(e)(3), as further described below.

¹¹ As further discussed below, the Exchange will go from minutes to seconds as a way to express how it will calculate this percentage of time. See note 16 below, with accompanying text.

¹² Any such higher percentage would involve appropriate advance announcement, which would then be available on the Exchange’s website.

¹³ Phlx Rule 1081(c)(ii)(A) similarly sets forth the quoting obligations as a percentage of the cumulative number of seconds.

¹⁴ See Securities Exchange Act Release No. 76998 (January 29, 2016), 81 FR 6066 (February 4, 2016) (File No. 10–221). The Exchange subsequently changed its name to Nasdaq MRX.

¹⁵ *Id.* at 6078.

¹⁶ See Securities Exchange Act Release No. 69175 (March 19, 2013), 78 FR 17988 (March 25, 2013) (SR–ISE–2013–17) (“2013 ISE Proposal”) at 17989. See also SR–ISE–2018–90.

¹⁷ See Phlx Rule 1081(c)(ii)(A).

(1)(ii). The Exchange is not proposing any amendments to the rule text itself other than to replace the word “continuous” with “intra-day” for the reasons discussed above.

Rule 804(e)(2)

As noted above, the Exchange proposes to set forth the quoting obligations of Primary Market Makers in Rule 804(e)(2). Currently as set forth in Rule 804(e)(1), Primary Market Makers must enter continuous quotations in all of the series of the options classes to which they are appointed.¹⁸ Pursuant to Supplementary Material .01 to Rule 804, Primary Market Makers are deemed to have provided continuous quotes if they provide two-sided quotes for 90% of the time that an options class is open for trading on the Exchange. Similar to the quoting obligations for Competitive Market Makers, the Exchange proposes to replace this language with language in Rule 804(e)(2) that more technically defines a Primary Market Maker’s quoting obligations. Proposed Rule 804(e)(2) will provide that Primary Market Makers, associated with the same Member, are collectively required to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member’s assigned options class is open for trading.¹⁹ Similar to the proposed changes to the 60% quoting requirement for Competitive Market Makers discussed above, the 90% quoting requirement for Primary Market Makers and the manner in which it is calculated as a percentage of time is not being amended. The only change from current practice is to allow the Exchange to announce in advance a higher percentage than the current 90% quoting obligation, which would bring the Exchange’s rule in line with Phlx Rule 1081(c)(ii)(B). As discussed above for the Competitive Market Maker quoting obligations, the Exchange believes it may be appropriate to apply a higher standard if doing so would be in the interest of a fair and orderly market.²⁰ Otherwise, the Exchange does not propose to amend the current 90%

quoting requirement; rather, the Exchange proposes to more specifically state the current quoting obligations as 90% of the cumulative number of seconds rather than 90% of the time the class is open for trading on the Exchange. While the current rule in Supplementary Material .01 to Rule 804 more generally indicates that the Exchange currently reviews quoting as a percentage of the time the class is open for trading on the Exchange, the two standards are otherwise equivalent.²¹ Accordingly, the proposed changes will explicitly state the same standard (expressed in seconds) within the rule text itself. Adding “associated with the same Member” to the first sentence conforms to Phlx Rule 1081(c)(ii)(B) and also makes clear that the obligation is at the firm level and that all associated Primary Market Makers will be counted in arriving at the calculation for quoting obligations.

The Exchange also proposes to more specifically state within Rule 804(e)(2) that Primary Market Makers shall be required to make two-sided markets pursuant to Rule 804(e)(2) in any Quarterly Options Series, any Adjusted Options Series, and any options series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options. The proposed changes do not amend the current quoting obligations of Primary Market Makers with respect to these options series. As discussed above, Supplementary Material .02 to Rule 804 currently excludes adjusted options series and long-term options series from the quoting obligations of Competitive Market Makers and Preferred CMMs. As noted above, while the current rule in paragraph (e)(1) implicitly provides that these exceptions do not apply to Primary Market Makers and that their quoting obligations include such series, the Exchange proposes to explicitly state that Primary Market Makers are required to make two-sided markets in the specified options series. Furthermore, Primary Market Makers are required to make two-sided markets in Quarterly Options Series today. Accordingly, the Exchange seeks to add Quarterly Options Series to the Rule 804(e)(2) to codify its current practice.

²¹ See 2013 ISE Proposal, footnote 16 (providing that to calculate whether a Primary Market Maker has maintained quotations for at least 90% of the time, the Exchange will divide the total number of minutes a Primary Market Maker maintained quotations in options series of a class (numerator) by the total minutes all series of the options class were open for trading on the Exchange (denominator)). As discussed above, MRX’s quoting requirements are identical to ISE’s requirements.

The Exchange notes that Phlx Specialists are similarly required to make two-sided markets in Quarterly Options Series.²²

Rule 804(e)(3)

Currently as set forth in Rule 804(e)(2)(iii), a Competitive Market Maker is required to maintain continuous quotations for 90% of the time the class is open for trading on the Exchange in any options class in which it receives the Preferred Order pursuant to Supplementary Material .03 to Rule 713. The Exchange now proposes to replace this language with language that more technically defines the quoting obligations of the Competitive Market Maker that receives the Preferred Order (*i.e.*, Preferred CMM) in new Rule 804(e)(3). The Exchange proposes to add in Rule 804(e)(3) that Preferred CMMs, associated with the same Member, are collectively required to provide two-sided quotations in 90% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance, for which that Member’s assigned options class is open for trading. A Member shall be considered preferred in an assigned options class once the Member receives a Preferred Order in any option class in which they are assigned and shall be considered a preferred for that day in all series for that option class in which it received the Preferred Order. Notwithstanding the foregoing, a Preferred CMM shall not be required to make two-sided markets pursuant to Rule 804(e)(3) in any Quarterly Options Series, any Adjusted Options Series, and any options series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options.

The Exchange notes that similar to the proposed language for the Competitive Market Maker and Primary Market Maker quoting obligations discussed above, the only change from current practice is to allow the Exchange to announce in advance a higher percentage than the current 90% quoting obligation, which would bring the Exchange’s rule in line with Phlx Rule 1081(c)(ii)(C). As discussed above for the Competitive Market Maker and Primary Market Maker quoting obligations, the Exchange believes it may be appropriate to apply a higher standard if doing so would be in the interest of a fair and orderly market.²³ Otherwise, the 90% quoting

¹⁸ This means that the Primary Market Maker quoting requirement includes all series of an appointed options class, including the options series that are currently excluded from the quoting requirements of Competitive Market Makers and Preferred CMMs (*i.e.*, Quarterly Options Series, Adjusted Options Series, and long-term options). As discussed below, the Exchange will explicitly state that a Primary Market Maker’s quoting obligations will include these specified options series.

¹⁹ Phlx Rule 1081(c)(ii)(B) similarly sets forth the quoting obligations as a percentage of the cumulative number of seconds.

²⁰ See note 12 above.

²² See Phlx Rule 1081(c)(ii)(B).

²³ See note 12 above.

requirement for Preferred CMMs and the manner in which it is calculated as a percentage of time is not being amended; rather, the Exchange proposes to more specifically express the current quoting obligations as 90% of the cumulative number of seconds rather than 90% of the time the class is open for trading on the Exchange.²⁴ As noted above for Competitive Market Makers and Primary Market Makers, the two standards are equivalent even though the current rule more generally expresses that the Exchange reviews quoting as a percentage of time. As such, the proposed changes will explicitly state the same standard (expressed in seconds) within the rule text itself.

Adding “associated with the same Member” conforms to Phlx Rule 1081(c)(ii)(C) and also makes clear that the obligation is at the firm level and that all associated Preferred CMMs will be counted in arriving at the calculation for quoting obligations. Furthermore, the proposed language is being added to clarify when a Preferred CMM is considered to be preferenced in an assigned options class, and does not amend the Exchange’s current practice. The Exchange, similar to today, will exclude any Quarterly Options Series, any Adjusted Options Series, and any options series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options from the quoting obligations of Preferred CMMs.²⁵ As discussed above, Supplementary Material .02 to Rule 804 currently provides an exception from the quoting obligations in adjusted options series and any long-term options series for Preferred CMMs. As such, proposed Rule 804(e)(3) makes clear that such Members are not required to make two-sided markets in these options series. In addition, Preferred CMMs are not required to make two-sided markets in Quarterly Options Series today.

Accordingly, the Exchange seeks to add Quarterly Options Series to the list of exceptions in proposed Rule 804(e)(3) to codify its current practice.²⁶

The Exchange will add in proposed Rule 804(e)(3) similar language for Preferred CMMs as proposed for Competitive Market Makers in Rule

804(e)(1) that Preferred CMMs may choose to quote such series in addition to regular series in the options class, but such quotations will not be considered when determining whether a Preferred CMM has met the obligation contained in this paragraph (e)(3). This language is currently in Supplementary Material .02 to Rule 804, and applies to the quoting obligations for both Competitive Market Makers and Preferred CMMs. Finally, the Exchange proposes to relocate language from Supplementary Material .02 to Rule 804 into new paragraph (e)(3), with some modifications to update a cross-reference and remove redundant language, as follows: “A Preferred CMM may be preferenced in such series and receive enhanced allocations pursuant to Nasdaq MRX Rule 713, Supplementary Material .03, only if it complies with the heightened 90% quoting requirement contained in this paragraph (e)(3).”

Rule 804(e)(4)

The Exchange proposes to add new rule text at Rule 804(e)(4) to provide the method by which the Exchange will calculate the Market Maker quoting obligations contained in proposed subparagraphs (1)–(3) of Rule 804(e). The Exchange proposes to state that the Exchange will (i) take the total number of seconds the Member disseminates quotes in each assigned options series, excluding, for Competitive Market Makers and Preferred CMMs, Quarterly Option Series, any Adjusted Option Series, and any option series with an expiration of nine months or greater for options on equities and ETFs or with an expiration of twelve months or greater for index options; and (ii) divide that time by the eligible total number of seconds each assigned option series in the options class is open for trading that day. Similar to Phlx Rule 1081(c)(ii)(D), the Exchange believes that the addition of this language will bring greater transparency to the manner in which the Exchange calculates the quoting obligation. The Exchange is not amending the manner in which the quoting obligation is calculated; rather the Exchange is simply adding to the current rule the exact manner in which the Exchange determines the quoting percentage. The Exchange also proposes to add the following in Rule 804(e)(4): “Quoting is not required in every assigned options series.” This sentence is not currently in the rule. The added language is not amending the Exchange’s current practice; rather the Exchange is clearly stating that quoting is not required in every assigned options series to make clear the current obligation (*i.e.*, the Market Maker is not

required to quote every single assigned options series in order to meet its quoting obligations). Also, the Exchange proposes to state: “Compliance with this requirement is determined by reviewing the aggregate of quoting in assigned options series for the Member.” This language is similar to language presently in Supplementary Material .01 to Rule 804²⁷ and clarifies that the quoting obligations apply to all of the Market Maker’s assigned options series collectively, which is how the Exchange applies the quoting obligation today. As such, the proposed language simply conforms the text to Phlx Rule 1081(c)(ii)(D).

Rule 804(e)(5)

The Exchange proposes to adopt a new Rule 804(e)(5) to provide that MRX Regulation may consider exceptions to the above-referenced requirement to quote based on demonstrated legal or regulatory requirements or other mitigating circumstances. This language is similar to language presently in Supplementary Material .01 to Rule 804,²⁸ but specifies that MRX Regulation (*i.e.*, the Exchange’s regulatory department) may consider exceptions to the quoting obligation, which is the case today, and aligns the rule text to Phlx Rule 1081(c)(iii). The Exchange further proposes to add the following rule text to new Rule 804(e)(5): “For purposes of the Exchange’s surveillance of Member compliance with this rule, the Exchange will determine compliance on a monthly basis. The Exchange’s monthly compliance evaluation of the quoting requirement does not relieve a Member of the obligation to provide two-sided quotes on a daily basis, nor will it prohibit the Exchange from taking disciplinary action against a Member for failing to meet the quoting obligation each trading day.” The proposed rule text is similar to language currently in Supplementary Material .01 to Rule 804,²⁹ and is merely rephrased to

²⁷ The current language provides: “Compliance with this Primary Market Marker quoting requirement and the Competitive Market Maker quoting requirements contained in (e)(2)(iii) above will be applied to all option classes quoted collectively on a daily basis.”

²⁸ The current language provides: “The Exchange may consider other exceptions to this continuous electronic quote obligation based on demonstrated legal or regulatory requirements or other mitigating circumstances.”

²⁹ The current language provides: “Overall compliance with market maker quoting obligations will be determined on a monthly basis. However, the ability of the Exchange to determine compliance on a monthly basis does not: (1) relieve market makers from their obligation to meet daily quoting requirements in Rule 804; and (2) prohibit the

²⁴ Phlx Rule 1081(c)(ii)(C) similarly sets forth the quoting obligations as a percentage of the cumulative number of seconds.

²⁵ This exception is currently set forth in Supplementary Material .02 to Rule 804.

²⁶ Directed SQTs and Directed RSQTs on Phlx are similarly excluded from making two-sided markets in Quarterly Options Series. See Phlx Rule 1081(c)(ii)(C).

conform to Phlx Rule 1081(c)(iii). As such, the Exchange is not amending the manner in which the surveillance functions today, and the proposed amendments to Rule 804(e)(5) are not substantive in nature.

Rule 804(e)(6)

The Exchange proposes to adopt a new Rule 804(e)(6) that provides: "If a technical failure or limitation of a System of the Exchange prevents a Member from maintaining, or prevents a market maker from communicating to the Exchange, timely and accurate quotes, the Member shall promptly notify the Exchange and the duration of such failure or limitation shall not be included in any of the calculations under this subparagraph (e) with respect to the affected quotes." This language is being relocated from Supplementary Material .01 to Rule 804, and modified to specifically refer to the calculations in proposed subparagraph (e), capitalize "System," which is a defined term, and rephrased to conform to Phlx Rule 1081(c)(iv).

Clean-Up Changes

The Exchange proposes to delete Supplementary Materials .01 and .02 to Rule 804, and all related cross-references throughout the Rulebook. As explained above, this rule text is being relocated within the proposed rule text with some modifications. Finally, the Exchange proposes to update all cross-references to Rule 804(e) in its Rules to reflect the proposed renumbering and expansion of rules described above.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,³⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,³¹ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes that its proposed rule change provides further detail as to the quoting obligations of Market Makers. As discussed above, other than one modification to allow the Exchange to announce in advance a higher percentage of quoting compliance standards, the Exchange is not amending current practice or its current quoting obligations. The Exchange

believes that it is consistent with the Act to have the ability to announce a higher percentage in the interest of maintaining a fair and orderly market. As noted above, the Exchange would provide appropriate advance announcement for any such higher percentage, which would then be available on the Exchange's website. Otherwise, the Exchange notes that to the extent that there are rule text changes from the current language, these differences are all to harmonize its rules with Phlx Rule 1081(c) to promote consistency among similar rules of the Exchange and its affiliates, or to codify its current practice within the proposed rule text to bring transparency to the Exchange's rulebook.

Specifically, the Exchange believes that replacing "continuous" with "intra-day" throughout the rulebook is consistent with the Act because it more accurately reflects the manner in which Market Makers quote on MRX. Also in the introductory sentence to Rule 804(e), the Exchange is codifying its current practice of excluding intra-day additions of assigned options series from a Market Maker's quoting obligations to make clear that Market Makers would not be responsible for such series on the day it was added. As noted above, for purposes of calculating the quoting obligations, the Exchange counts an intra-day add of a series the following trading day when the options series would be available for a full trading day. The Exchange believes that codifying this current exception within the rule text is consistent with the Act as it will bring transparency to the Exchange's rulebook. The Exchange does not count intra-day adds of options series that were not available for the entire day of trading because the Market Maker would not have the opportunity to trade that particular options series for the entire trading day, and therefore could not have anticipated the impact such intra-day additions would have on the calculation of its quoting obligations. The Exchange also believes that codifying its current practice of excluding Quarterly Options Series from the quoting requirements of Competitive Market Makers and Preferred CMMs will bring clarity to the Exchange's rulebook that quotes in such series will not be considered in determining whether a Competitive Market Maker or Preferred CMM complied with their respective quoting obligations. Similar to the Adjusted Options Series and long-term options series that are currently explicitly listed as exceptions in the rule text, it is the Exchange's understanding that quoting obligations

on these often less frequently traded options series impact the risk parameters acceptable to the Market Makers, and therefore the quoting obligation exceptions (including Quarterly Options Series) are to incentivize Market Makers to continue to seek assignments in these options series and thereby promote liquidity in options classes listed on the Exchange to the benefit of investors and the public interest.

The Exchange is also proposing to explicitly state that a member will be required to meet each market making obligation separately in order to make clear that a Competitive Market Maker, Primary Market Maker, or Preferred CMM will have quoting obligations which may need to be met separately, depending on the role. In addition, the Exchange is expressing each of the current quoting obligations as a percentage of the cumulative number of seconds rather than as a percentage of the time the class is open for trading on the Exchange in order to add more transparency as to the standards by which a Market Maker's quoting obligations are measured. In the same vein, the proposed rule text in Rule 804(e)(4) to describe the exact manner in which the Exchange calculates the quoting obligations by specifying the numerator and denominator calculations, as well as clarifying that quoting is not required in every assigned options series, adds transparency to the Exchange's rulebook, and allows members to better monitor whether they are in compliance with their quoting requirements.

Adding "associated with the same Member" throughout the proposed rule text conforms to Phlx Rule 1081(c)(ii) and adds clarity that the quoting obligations are at the firm level, and that all associated Market Makers will be counted in arriving at the applicable calculation for quoting obligations. Specifically stating that Primary Market Makers are required to make two-sided markets in any Quarterly Options Series, any Adjusted Options Series, and any long-term options series codifies what was implicit in the current rule text which required Primary Market Makers to enter continuous quotations in all of the series listed on the Exchange in their assigned options classes, as further described above. Finally, adding that the Member is considered preferenced for that day in all series for that assigned options class in which it received the Preferenced Order is similarly codifying the Exchange's current practice and will bring more transparency to the Rulebook.

Exchange from bringing disciplinary action against a market maker for failure to meet its daily quoting requirements set forth in Rule 804."

³⁰ 15 U.S.C. 78f(b).

³¹ 15 U.S.C. 78f(b)(5).

Overall, the Exchange believes that its proposal is consistent with the Act because the proposed rule text protects investors and the public interest by providing clear language that will be utilized on all Nasdaq, Inc.-affiliated options markets for easy comparison by common members that are engaged in market making activities on both the Exchange and its affiliates. As discussed above, the proposed changes will restructure MRX's current rules on Market Maker quoting obligations to conform to rule text used on its affiliate, Phlx. The Exchange further believes that the proposed rule changes would remove impediments to and perfect the mechanism of a free and open market by ensuring that members, regulators and the public can more easily navigate and understand the Exchange's rulebook, thereby avoiding potential confusion.

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 further of the purposes of the Act. The proposal does not impose a burden on competition because the Exchange will continue to uniformly calculate and apply the quoting obligations for all Market Makers. Other than to allow the Exchange to announce in advance a higher percentage of quoting compliance standards, the Exchange's proposal does not modify the current practice or the current quoting obligations on MRX, as further discussed above.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act³² and subparagraph (f)(6) of Rule 19b-4 thereunder.³³

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-MRX-2018-34 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-MRX-2018-34. 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

the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MRX-2018-34 and should be submitted on or before December 11, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁴

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018-25234 Filed 11-19-18; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84585; File No. SR-PEARL-2018-24]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 406, Long-Term Option Contracts

November 14, 2018.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 8, 2018, MIAX PEARL, LLC ("MIAX PEARL" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend MIAX PEARL Rule 406, Long-Term Option Contracts.

The text of the proposed rule change is available on the Exchange's website at <http://www.miaxoptions.com/rule-filings/pearl> at MIAX PEARL's principal office, and at the Commission's Public Reference Room.

³⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³² 15 U.S.C. 78s(b)(3)(A)(iii).

³³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend MIAx PEARL Rule 406, Long-Term Option Contracts, to permit the listing and trading of up to ten (10) long-term expiration months for long term options on the SPDR® S&P 500® exchange-traded fund ("SPY") in response to customer demand.³ Rule 406(a) currently provides that the Exchange may list long-term option contracts that expire from twelve (12) to thirty-nine (39) months from the time they are listed ("long-term expiration months") until expiration. There may be up to six (6) long-term expiration months per option class.⁴ The proposal will add liquidity to the SPY options market by allowing market participants to hedge risks relating to SPY positions over a longer period with a known and limited cost.

The SPY options market today is characterized by its tremendous daily and annual liquidity. As a consequence the Exchange believes that the listing of additional SPY long-term expiration months would be well received by investors. This proposal to expand the number of permitted SPY long-term expiration months would not apply to

³ In contrast to Rule 406(a), MIAx Options Rule 1809(b), which is incorporated by reference into MIAx PEARL, and which applies to index options, permits the Exchange to list long-term index options series based on either the full or reduced value of the underlying index, adding up to ten (10) expiration months. The Exchange seeks to list ten (10) long-term expiration months on SPY, just as it now may list ten (10) expiration months on long-term index options series, in order to provide investors with a wider choice of investments.

⁴ Strike price interval (Rule 404) and continuous quoting (Rule 605(d)) Rules shall not apply to such options series until the time to expiration is less than nine (9) months.

long-term expiration months on any other class of options.⁵

The Exchange proposes to implement the proposed rule change on November 16, 2018.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act⁷ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms 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)⁸ 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 offers market participants additional long-term expiration months on SPY options for their investment and risk management purposes. The proposal is intended simply to provide additional trading opportunities which have been requested by customers, thereby facilitating transactions in options and contributing to the protection of investors and the maintenance of fair and orderly markets. The proposed rule change responds to the continuing needs of market participants, particularly portfolio managers and other institutional customers, by providing protection from long-term market moves and by offering an alternative to hedging portfolios with future positions or off-exchange customized derivative instruments.

Rule 406 has permitted up to six (6) long-term expiration months in option classes since the launch of the Exchange, in 2017. Other exchanges, such as Nasdaq PHLX LLC ("Phlx"), have permitted up to six "LEAPS" since 1991, when it increased the number of permissible expiration months from four to six. As noted by Phlx (in its recent proposal to permit up to ten LEAPS expiration months for options on SPY), when the Commission approved the

⁵ Historically, SPY is the largest and most actively traded ETF in the United States as measured by its assets under management and the value of shares traded.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ *Id.*

increase to six expiration months, the Commission stated that it did not believe that increasing the number of expiration months to six would cause, by itself, a proliferation of expiration months. The Commission also required that Phlx monitor the volume of additional options series listed as a result of the rule change, and the effect on Phlx's system capacity and quotation dissemination displays.⁹ MIAx PEARL believes that the addition today of four (4) additional long-term expiration months on SPY options likewise does not represent a proliferation of expiration months, but is instead a very modest expansion of long-term options in response to stated customer demand. Significantly, the proposal would feature new long-term expiration months in only a single class of options that are very liquid and heavily traded, as discussed above. Additionally, the Exchange notes by way of precedent, that ten (10) expiration months are already permitted for long-term index options series. Further, the Exchange has the necessary systems capacity to support the new SPY long-term expiration months.

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 proposal merely provides investors additional investment and risk management opportunities by providing flexibility to the Exchange to list additional long-term options expiration series, expanding the number of SPY long-term expiration months offered on the Exchange from six (6) long-term expiration months to ten (10) long-term expiration months.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become

⁹ See Securities Exchange Act Release No. 84449 (October 18, 2018), 83 FR 53699 (October 24, 2018) (SR-Phlx-2018-64). See also Securities Exchange Act Release No. 29103 (April 18, 1991), 56 FR 19132 (April 25, 1991) (approving SR-Phlx-91-18).

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 Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹

A proposed rule change filed under Rule 19b-4(f)(6)¹² normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),¹³ 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 on November 16, 2018, to coincide with the effective date of Phlx's proposed rule change on which the proposal is based.¹⁴ The Exchange's proposal would conform the Exchange's rules relating to permitted number of long-term expiration months on SPY options to those of Phlx. 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 proposal operative on November 16, 2018.¹⁵

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-PEARL-2018-24 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-PEARL-2018-24. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-PEARL-2018-24 and should be submitted on or before December 11, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2018-25237 Filed 11-19-18; 8:45 am]

BILLING CODE 8011-01-P

¹⁶ 17 CFR 200.30-3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 15796 and # 15797; Virginia Disaster Number VA-00077]

Administrative Declaration of a Disaster for the Commonwealth of Virginia

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of Virginia dated 11/13/2018.

Incident: Tropical Storm Michael.
Incident Period: 10/10/2018 through 10/15/2018.

DATES: Issued on 11/13/2018. Physical Loan Application Deadline Date: 01/14/2019. Economic Injury (EIDL) Loan Application Deadline Date: 08/13/2019.

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 Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Areas/Cities: Independent Cities of Danville, Salem.

Contiguous Counties: Virginia—Pittsylvania, Roanoke, Roanoke City.

North Carolina—Caswell.

The Interest Rates are:

| | Percent |
|---|---------|
| <i>For Physical Damage:</i> | |
| Homeowners with Credit Available Elsewhere | 4.000 |
| Homeowners without Credit Available Elsewhere | 2.000 |
| Businesses with Credit Available Elsewhere | 7.350 |
| Businesses without Credit Available Elsewhere | 3.675 |
| Non-Profit Organizations with Credit Available Elsewhere | 2.500 |
| Non-Profit Organizations without Credit Available Elsewhere | 2.500 |
| <i>For Economic Injury:</i> | |
| Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere | 3.675 |

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4. 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.

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii).

¹⁴ See Securities Exchange Act Release No. 84449 (October 18, 2018), 83 FR 53699 (October 24, 2018) (SR-Phlx-2018-64).

¹⁵ 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).

| | Percent |
|---|---------|
| Non-Profit Organizations without Credit Available Elsewhere | 2.500 |

The number assigned to this disaster for physical damage is 15796 8 and for economic injury is 15797 0.

The States which received an EIDL Declaration # are Virginia, North Carolina.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: November 13, 2018.

Linda E. McMahon,
Administrator.

[FR Doc. 2018-25219 Filed 11-19-18; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF STATE

[Public Notice: 10612]

U.S. Department of State Cuba Internet Task Force; Notice of Open Meeting

The U.S. Department of State will conduct a public meeting of the Cuba Internet Task Force, Thursday, December 6, 2018, from 3:30 p.m. until 5:00 p.m. at the Harry S. Truman Building, 2201 C Street NW, Room 1107.

In accordance with the National Security Presidential Memorandum of June 16, 2017, on Strengthening the Policy of the United States Toward Cuba (NSPM-5), the Department of State created the Cuba internet Task Force and hosted its first public meeting on February 7, 2018. During the February meeting, the Task Force decided to create two subcommittees that would explore and develop recommendations on (1) the role of the media and the free, unregulated flow of information through independent media in Cuba, and (2) expanding internet access in Cuba. This meeting will be an opportunity to discuss the subcommittees' findings. The Cuba internet Task Force is composed of U.S. government and non-government representatives and its purpose is to examine technological challenges and opportunities for expanding internet access in Cuba.

As space is limited for this meeting, seats will be allocated on a first-come, first-served basis. Those wishing to attend must RSVP by emailing CubaITF@state.gov with your name, organization, and contact information no later than November 30, 2018. Requests for reasonable accommodation

should be made prior to November 30, 2018.

Dale B. Eppler,
Acting Deputy Assistant Secretary,
Department of State.

[FR Doc. 2018-25272 Filed 11-19-18; 8:45 am]

BILLING CODE 4710-29-P

DEPARTMENT OF STATE

[Public Notice 10613]

Call for Expert Reviewers To Contribute to the U.S. Government Review of the Second and Third Special Reports To Be Undertaken by the Intergovernmental Panel on Climate Change (IPCC) During the Sixth Assessment Report (AR6) Cycle

The Department of State in cooperation with the United States Global Change Research Program (USGCRP), requests expert review of the second-order drafts of the IPCC Special Report on land and the IPCC Special Report on oceans, including the first draft of each report's Summary for Policymakers (SPM).

The United Nations Environment Programme (UNEP) and the World Meteorological Organization (WMO) established the IPCC in 1988. As reflected in its governing documents (the IPCC's "principles and procedures"), the role of the IPCC is to assess on a comprehensive, objective, open, and transparent basis the scientific, technical, and socio-economic information relevant to understanding the scientific basis of risk of human-induced climate change, its potential impacts, and options for adaptation and mitigation. IPCC reports should be neutral with respect to policy, although they may need to deal objectively with scientific, technical, and socio-economic factors relevant to the application of particular policies. The principles and procedures for the IPCC and its preparation of reports can be found at: <https://www.ipcc.ch/pdf/ipcc-principles/ipcc-principles.pdf> and <http://ipcc.ch/pdf/ipcc-principles/ipcc-principles-appendix-a-final.pdf>.

At the 45th Session of the Panel (Guadalajara, Mexico, March 28-31, 2017), the IPCC approved the outlines for the Special Report on climate change, desertification, land degradation, sustainable land management, food security, and greenhouse gas fluxes in terrestrial ecosystems ("Land Special Report") and the Special Report on the ocean and cryosphere in a changing climate ("Oceans Special Report"). The Tables

of Contents for the Special Reports can be viewed here:

http://www.ipcc.ch/meetings/session45/Decision_Outline_SR_Oceans.pdf
http://www.ipcc.ch/meetings/session45/Decision_Outline_SR_LandUse.pdf

Review of IPCC documents involves both peer review by experts and review by governments. All IPCC reports go through two broad reviews: A "first-order draft" reviewed by experts and a "second-order draft" reviewed by both experts and governments. The purpose of these reviews is to ensure the reports present a comprehensive, objective, and balanced view of the areas they cover.

The IPCC Secretariat has informed the U.S. Department of State that the second-order drafts of the Special Reports are available for Expert and Government Review.

As part of the U.S. Government Review—starting on November 16, 2018 for the Oceans Special Report and November 19, 2018 for the Land Special Report—experts wishing to contribute to the U.S. Government review are encouraged to register via the USGCRP Review and Comment System (<https://review.globalchange.gov/>). Instructions and the second-order drafts of the Special Reports will be available for download via the system. In accordance with IPCC policy, drafts of the reports are provided for review purposes only and are not to be cited or distributed. The USGCRP coordination office will compile U.S. expert comments and submit them to the IPCC, on behalf of the Department of State, by the prescribed deadline. U.S. experts have the opportunity to submit comments via the USGCRP Review and Comment System (<https://review.globalchange.gov/>) from November 16 to December 19, 2018, for the Oceans Special Report and from November 19 to December 19, 2018, for the Land Special Report. To be considered for inclusion in the U.S. Government submission, comments on either of the two Special Reports must be received by December 19, 2018, in the proper format. All technical comments received that are relevant to the text under review will be forwarded to the IPCC authors for their consideration.

Experts may choose to provide comments directly through the IPCC's Expert Review process, which occurs in parallel with the U.S. Government Review:

<https://www.ipcc.ch/apps/comments/srocc/sod/register.php>
<https://www.ipcc.ch/apps/comments/srccl/sod/register.php>

This notice will be published in the **Federal Register**.

Farhan H. Akhtar,

Foreign Affairs Officer, Office of Global Change, Department of State.

[FR Doc. 2018–25330 Filed 11–19–18; 8:45 am]

BILLING CODE 4710–09–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36182]

North Central Mississippi Regional Railroad Authority—Acquisition and Operation Exemption—Mississippi Department of Transportation

North Central Mississippi Regional Railroad Authority (NCMRRRA), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate a 21.70-mile rail line owned by the Mississippi Department of Transportation (MSDOT) that extends from milepost H–0.20 (at Aberdeen Junction) to milepost H–21.90 (at Kosciusko), in Holmes and Attala Counties, Miss. (Kosciusko Line).¹

NCMRRRA states that it will become a rail carrier through this acquisition. The transaction is related to a petition for exemption in *North Central Mississippi Regional Railroad Authority & Grenada Railway—Continuance in Control Exemption*, Docket No. FD 36234, in which NCMRRRA seeks to continue in control of Grenada Railway, LLC (GRYR), a Class III carrier owned and controlled by NCMRRRA, once NCMRRRA becomes a rail carrier.²

NCMRRRA states that it has reached an agreement with MSDOT for NCMRRRA to

¹ NCMRRRA states that MSDOT purchased the rail line previously owned by Illinois Central Railroad Company (IC), by filing an offer of financial assistance after IC filed for authority to abandon the rail line. See *Ill. Cent. R.R.—Aban.—Between Aberdeen Junction & Kosciusko, in Holmes & Attala Cts., Miss.*, AB 43 (Sub-No. 163) (STB served Apr. 17, 1997).

² NCMRRRA and GRYR initially sought authorization for NCMRRRA to continue in control of both rail carriers pursuant to a verified notice of exemption under 49 CFR 1180.2(d)(3) for a transaction within a corporate family. See *N. Cent. Miss. Reg'l R.R. Auth.—Acquis. & Operation Exemption—Miss. Dep't of Transp. (October 12 Decision)*, FD 36182 et al. (STB served Oct. 12, 2018). In the *October 12 Decision*, the Board rejected the corporate family exemption as an inappropriate mechanism for obtaining the requisite continuance in control authority and directed NCMRRRA to file a petition for exemption if it wished to do so. The notice of exemption in this proceeding was held in abeyance and its effective date postponed until further Board order.

NCMRRRA filed a petition for a continuance in control exemption on October 19, 2018. The Board is serving a decision today granting that petition. See *N. Cent. Miss. Reg'l R.R. Auth.—Continuance in Control Exemption*, FD 36234 (STB served Nov. 20, 2018). That decision also takes this proceeding out of abeyance. *Id.*

acquire and operate the Kosciusko Line upon the effective date established by the Board. NCMRRRA states that the transaction does not include any interchange commitments that prohibit NCMRRRA from interchanging traffic with a third party or limit NCMRRRA's ability to interchange with a third party.

NCMRRRA certifies that its projected annual revenues will not exceed those that would qualify it as a Class III carrier and that the projected annual revenues of NCMRRRA will not exceed \$5 million as a result of this transaction. The transaction may be consummated on or after December 4, 2018, the effective date of the exemption, consistent with the timetable specified in 49 CFR 1150.32(b).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than November 27, 2018. An original and 10 copies of all pleadings, referring to Docket No. FD 36182, must be filed with the Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Avenue NW, Suite 300, Washington, DC 20037.

According to NCMRRRA, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b)(1).

Board decisions and notices are available on our website at www.stb.gov.

Decided: November 15, 2018.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Jeffrey Herzig,
Clearance Clerk.

[FR Doc. 2018–25317 Filed 11–19–18; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36234]

North Central Mississippi Regional Railroad Authority—Continuance in Control Exemption

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: The Board is granting an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49

U.S.C. 11323–25 for North Central Mississippi Regional Railroad Authority (NCMRRRA), a noncarrier, to continue in control of Grenada Railway, LLC (GRYR), a Class III carrier owned and controlled by NCMRRRA, when NCMRRRA becomes a Class III rail carrier in a related transaction involving its acquisition of a 21.7-mile rail line in Holmes and Attala Counties, Miss., currently owned by the Mississippi Department of Transportation.¹ After the consummation of the acquisition transaction, NCMRRRA and GRYR will exist as separately managed and maintained entities within the same corporate family, and will connect at or near Aberdeen Junction, Miss. Because all of the carriers involved are Class III carriers, the continuance-in-control exemption is not subject to labor protective conditions.

DATES: This exemption will be effective on December 4, 2018. Petitions to stay must be filed by November 27, 2018. Petitions to reopen must be filed by December 10, 2018.

ADDRESSES: Send an original and 10 copies of all pleadings, referring to Docket No. FD 36234, to: Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Avenue NW, Suite 300, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Sarah Fancher, (202) 245–0355. Federal Information Relay Service (FIRS) for the hearing impaired: (800) 877–8339.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision served on November 20, 2018, which is available on our website, www.stb.gov.

Decided: November 15, 2018.

By the Board, Board Members Begeman and Miller.

Brendetta Jones,
Clearance Clerk.

[FR Doc. 2018–25318 Filed 11–19–18; 8:45 am]

BILLING CODE 4915–01–P

¹ See *N. Cent. Miss. Reg'l R.R. Auth.—Acquis. & Operation Exemption—Miss. Dep't of Transp.*, FD 36182 (STB served Nov. 20, 2018).

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Flight and Duty Limitations and Rest Requirements—Flightcrew Members**

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 July 31, 2018. The collection involves reporting exceeded flight duty periods and flight times, including scheduled maximum and actual flight duty periods and flight times, basic flight information (e.g., city pairs, departure times, flight number), and reason for exceedance. Reporting and recordkeeping are required any time a certificated air carrier has exceeded a maximum daily flight time limit or a maximum daily Flight Duty Period (FDP) limit. It is also required for the voluntary development of a Fatigue Risk Management System (FRMS), and for fatigue training. The information is necessary to monitor trends in exceedance and possible underlying systemic causes requiring operator action, and to determine whether operator is scheduling realistically.

DATES: Written comments should be submitted by December 20, 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 oir_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.

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.

FOR FURTHER INFORMATION CONTACT: Barbara Hall at (940) 594-5913, or by email at: Barbara.L.Hall@faa.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120-0751.

Title: Flight and Duty Limitations and Rest Requirements—Flightcrew Members.

Form Numbers: There are no forms associated with this collection.

Type of Review: This is a 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 July 31, 2018 (83 FR 37041). The FAA collects reports from air carriers conducting passenger operations certificated under 14 CFR part 121 as prescribed in 14 CFR part 117 Flightcrew Member Duty and Rest Requirements, §§ 117.11 and 117.19. Air carriers are required to submit a report of exceeded flight duty periods and flight times, including scheduled maximum and actual flight duty periods and flight times, basic flight information (e.g., city pairs, departure times, flight number), and reason for exceedance. The purpose for the reports is to notify the FAA that the certificate holder has extended a flight time and/or FDP limitation. This information enables FAA to monitor trends in exceedance and possible underlying systemic causes requiring operator action as well as determine whether operators are scheduling realistically. Additionally, if air carriers choose to develop a Fatigue Risk Management System (FRMS) they are required to collect data specific to the need of the operation for which they will seek an FRMS authorization. It results in an annual recordkeeping and reporting burden when carriers adopt the system because they need to report the related activities to the FAA. Each air carrier is also required to develop specific elements and incorporate these elements into their training program. Once the elements have been incorporated, the air carrier must submit the revised training program for approval.

Respondents: 67 Certificated Air Carriers.

Frequency: On Occasion.

Estimated Average Burden per Response: 20 Hours.

Estimated Total Annual Burden: 3,178 Hours.

Issued in Washington, DC, on November 14, 2018.

Barbara Hall,

FAA Information Collection Clearance Officer, Performance, Policy, and Records Management Branch, ASP-110.

[FR Doc. 2018-25305 Filed 11-19-18; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Motor Carrier Safety Administration**

[Docket Nos. FMCSA-2011-0389; FMCSA-2012-0294; FMCSA-2013-0109; FMCSA-2013-0442; FMCSA-2014-0380; FMCSA 2015-0321]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for 20 individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have “no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.” The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates stated in the discussions below.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366-4001, fmcsamedical@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to <http://www.regulations.gov>. Insert the docket numbers, FMCSA–2011–0389; FMCSA–2012–0294; FMCSA–2013–0109; FMCSA–2013–0442; FMCSA–2014–0380; FMCSA 2015–0321, in the keyword box, and click “Search.” Next, click the “Open Docket Folder” button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at www.dot.gov/privacy.

II. Background

On August 15, 2018, FMCSA published a notice announcing its decision to renew exemptions for 20 individuals from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8) to operate a CMV in interstate commerce and requested comments from the public (83 FR 40625). The public comment period ended on September 14, 2018, and no comments were received.

As stated in the previous notice, FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(8).

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria to assist Medical Examiners in determining

whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce (49 CFR part 391, APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. Epilepsy: § 391.41(b)(8), paragraphs 3, 4, and 5).

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Conclusion

Based on its evaluation of the 20 renewal exemption applications, FMCSA announces its decision to exempt the following drivers from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8). In accordance with 49 U.S.C. 31136(e) and 31315, the following groups of drivers received renewed exemptions in the month of April and are discussed below:

As of April 8, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following four individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers (83 FR 40625):

Jeffrey F. Ballweg (WI)
Harold J. Durkee (WI)
Michael C. Ranalli (PA)
Lonnie M. Rieker (IL)

The drivers were included in docket number FMCSA–2011–0389; FMCSA–2012–0294; FMCSA–2013–0109; FMCSA–2014–0380. Their exemptions are applicable as of April 8, 2018, and will expire on April 8, 2020.

As of April 11, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 12 individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers (83 FR 40625):

Robert P. Brackett (ME)
Kelly L. Frederick (LA)
Scott W. Gessner (PA)
Jerry L. Henderson (IN)
Preston R. Kanagy (TN)
Scott A. Lowe (MA)
Steven D. Shirley (UT)
Matthew J. Staley (CO)
Mohammad S. Warrad (IA)
Richard J. Wenner (MN)
John C. Wolfe (PA)
Dennis R. Zayic (MN)

The drivers were included in docket number FMCSA–2015–0321. Their exemptions are applicable as of April 11, 2018, and will expire on April 11, 2020.

As of April 23, 2018, and in accordance with 49 U.S.C. 31136(e) and

31315, the following four individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers (83 FR 40625):

Raymond Lobo (NJ)
Randy L. Pinto (PA)
James M. Spece (PA)
Joseph A. Thomas (MD)

The drivers were included in docket number FMCSA–2013–0442. Their exemptions are applicable as of April 23, 2018, and will expire on April 23, 2020.

In accordance with 49 U.S.C. 31315, each exemption will be valid for two years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: November 9, 2018.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2018–25280 Filed 11–19–18; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket Nos. FMCSA–2013–0109; FMCSA–2013–0444; FMCSA–2015–0322]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for 16 individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have “no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.” The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

DATES: Each group of renewed exemptions were applicable on the

dates stated in the discussions below and will expire on the dates stated in the discussions below.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366-4001, fmcsamedical@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to <http://www.regulations.gov>. Insert the docket numbers, FMCSA-2013-0109; FMCSA-2013-0444; FMCSA-2015-0322, in the keyword box, and click "Search." Next, click the "Open Docket Folder" button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

II. Background

On September 10, 2018, FMCSA published a notice announcing its decision to renew exemptions for 16 individuals from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8) to operate a CMV in interstate commerce and requested comments from the public (83 FR 45734). The public comment period ended on October 10, 2018, and no comments were received.

As stated in the previous notice, FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would achieve a level of safety equivalent to,

or greater than, the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(8).

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria to assist Medical Examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce (49 CFR part 391, APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. Epilepsy: § 391.41(b)(8), paragraphs 3, 4, and 5).

III. Discussion of Comments

FMCSA received no comments in this preceding.

IV. Conclusion

Based on its evaluation of the 16 renewal exemption applications, FMCSA announces its decision to exempt the following drivers from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8).

In accordance with 49 U.S.C. 31136(e) and 31315, the following groups of drivers received renewed exemptions in the month of June and are discussed below.

As of June 9, 2018 and in accordance with 49 U.S.C. 31136(e) and 31315, the following ten individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers (83 FR 45734):

Henry Counts, Jr. (MD)
David P. Crowe (VA)
Michael D. Davis (ME)
Dennis R. Gilles (IN)
Larry G. Hediger (IL)
Eric J. McVetty (NH)
Donald J. Richmond (SC)
Kevin L. Sprinkle (NC)
Patrick J. Trimbo (MN)
Alan K. Washabaugh (PA)

These drivers were included in docket numbers FMCSA-2013-0109 and FMCSA-2015-0322. Their exemptions are applicable as of June 9, 2018, and will expire on June 9, 2020.

As of June 24, 2018 and in accordance with 49 U.S.C. 31136(e) and 31315, the following six individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and

seizure disorders prohibition in the FMCSRs for interstate CMV drivers (83 FR 45734):

Heath A. Crowe (LA)
Peter Della-Rocco, Jr. (PA)
Domenick R. Panfile (NJ)
Milton N. Tatham (NV)
Thomas H. Tincher (NC)
Duane A. Troff (MN)

These drivers were included in docket number FMCSA-2013-0444. Their exemptions are applicable as of June 24, 2018, and will expire on June 24, 2020.

In accordance with 49 U.S.C. 31315, each exemption will be valid for two years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: November 9, 2018.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2018-25279 Filed 11-19-18; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-1999-6156; FMCSA-1999-6480; FMCSA-2002-11714; FMCSA-2005-23099; FMCSA-2006-24015; FMCSA-2006-24783; FMCSA-2007-27515; FMCSA-2008-0021; FMCSA-2008-0106; FMCSA-2008-0174; FMCSA-2009-0206; FMCSA-2009-0291; FMCSA-2009-0303; FMCSA-2009-0321; FMCSA-2010-0050; FMCSA-2010-0082; FMCSA-2010-0114; FMCSA-2011-0299; FMCSA-2011-0324; FMCSA-2011-0379; FMCSA-2012-0039; FMCSA-2012-0104; FMCSA-2012-0106; FMCSA-2012-0159; FMCSA-2012-0160; FMCSA-2012-0161; FMCSA-2013-0174; FMCSA-2014-0002; FMCSA-2014-0003; FMCSA-2014-0005; FMCSA-2014-0006; FMCSA-2014-0007; FMCSA-2014-0008; FMCSA-2016-0024; FMCSA-2016-0027; FMCSA-2016-0028; FMCSA-2016-0030]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for 100 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate

commercial motor vehicle (CMV) drivers. The exemptions enable these individuals to continue to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates stated in the discussions below.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, 202-366-4001, fmcsamedical@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to <http://www.regulations.gov>. Insert the docket number, FMCSA-1999-6156; FMCSA-1999-6480; FMCSA-2002-11714; FMCSA-2005-23099; FMCSA-2006-24015; FMCSA-2006-24783; FMCSA-2007-27515; FMCSA-2008-0021; FMCSA-2008-0106; FMCSA-2008-0174; FMCSA-2009-0206; FMCSA-2009-0291; FMCSA-2009-0303; FMCSA-2009-0321; FMCSA-2010-0050; FMCSA-2010-0082; FMCSA-2010-0114; FMCSA-2011-0299; FMCSA-2011-0324; FMCSA-2011-0379; FMCSA-2012-0039; FMCSA-2012-0104; FMCSA-2012-0106; FMCSA-2012-0159; FMCSA-2012-0160; FMCSA-2012-0161; FMCSA-2013-0174; FMCSA-2014-0002; FMCSA-2014-0003; FMCSA-2014-0005; FMCSA-2014-0006; FMCSA-2014-0007; FMCSA-2014-0008; FMCSA-2016-0024; FMCSA-2016-0027; FMCSA-2016-0028; FMCSA-2016-0030, in the keyword box, and click "Search." Next, click the "Open Docket Folder" button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

II. Background

On July 20, 2018, FMCSA published a notice announcing its decision to renew exemptions for 100 individuals from the vision requirement in 49 CFR 391.41(b)(10) to operate a CMV in interstate commerce and requested comments from the public (83 FR 34661). The public comment period ended on August 20, 2018, and no comments were received.

As stated in the previous notice, FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(10).

The physical qualification standard for drivers regarding vision found in 49 CFR 391.41(b)(10) states that a person is physically qualified to driver a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

III. Discussion of Comments

FMCSA received no comments in this preceding.

IV. Conclusion

Based on its evaluation of the 100 renewal exemption applications and comments received, FMCSA confirms its' decision to exempt the following drivers from the vision requirement in 49 CFR 391.41(b)(10):

In accordance with 49 U.S.C. 31136(e) and 31315, the following groups of drivers received renewed exemptions in the month of August and are discussed below.

As of August 1, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 39 individuals have satisfied the renewal conditions for obtaining an exemption from the vision

requirement in the FMCSRs for interstate CMV drivers (64 FR 54948; 64 FR 68195; 65 FR 159; 65 FR 20251; 67 FR 10475; 67 FR 15662; 67 FR 17102; 67 FR 37907; 69 FR 8260; 69 FR 17267; 69 FR 26206; 71 FR 4194; 71 FR 6824; 71 FR 13450; 71 FR 16410; 71 FR 26601; 71 FR 26602; 71 FR 32183; 71 FR 41310; 72 FR 21313; 72 FR 32703; 73 FR 15255; 73 FR 15567; 73 FR 27015; 73 FR 27017; 73 FR 28186; 73 FR 36955; 74 FR 26464; 74 FR 43217; 74 FR 57551; 74 FR 60022; 74 FR 65842; 75 FR 1835; 75 FR 4623; 75 FR 9478; 75 FR 9482; 75 FR 14656; 75 FR 19674; 75 FR 20882; 75 FR 25917; 75 FR 27621; 75 FR 27622; 75 FR 27623; 75 FR 28682; 75 FR 36778; 75 FR 36779; 75 FR 39727; 76 FR 37173; 76 FR 75942; 77 FR 7657; 77 FR 10606; 77 FR 13689; 77 FR 15184; 77 FR 20879; 77 FR 22059; 77 FR 23797; 77 FR 26816; 77 FR 27847; 77 FR 27849; 77 FR 27850; 77 FR 29447; 77 FR 31427; 77 FR 33017; 77 FR 36338; 77 FR 38384; 77 FR 38386; 77 FR 44708; 78 FR 57679; 78 FR 67452; 78 FR 67460; 78 FR 78477; 79 FR 1908; 79 FR 10606; 79 FR 10608; 79 FR 14328; 79 FR 14333; 79 FR 14571; 79 FR 17641; 79 FR 18390; 79 FR 21996; 79 FR 22003; 79 FR 23797; 79 FR 27043; 79 FR 27681; 79 FR 28588; 79 FR 29495; 79 FR 35212; 79 FR 35218; 79 FR 35220; 79 FR 38649; 79 FR 38661; 79 FR 47175; 80 FR 49302; 80 FR 63869; 80 FR 80443; 81 FR 20433; 81 FR 20435; 81 FR 21655; 81 FR 26305; 81 FR 28138; 81 FR 39320; 81 FR 66718; 81 FR 66720; 81 FR 66724; 81 FR 77173; 81 FR 90050; 81 FR 91239; 81 FR 96196):

Julian Aguirre (TX)
Daniel A. Bahm (FL)
Kenneth J. Bernard (LA)
Brad T. Braegger (UT)
Walter M. Brown (SC)
Daniel M. Cannon (OR)
Cary Carn (NJ)
Ryan E. Cox (WI)
William C. Dempsey, Jr. (MA)
Richard W. Ellis (IA)
Ronald D. Flanery (KY)
Nicholas C. Georgen (IA)
Luis Gomez-Banda (NV)
Gary A. Goostree (OH)
Joshua V. Harrison (NJ)
Wesley V. Holland (NC)
Timothy B. Hummel (KY)
Walter J. Jurczak (NJ)
Charles J. Kennedy (OH)
Randall L. Mathis (AL)
Brian D. McClanahan (IL)
Lawrence C. Moody (NJ)
Norman V. Myers (WA)
Earl R. Neugerbauer (CO)
Hassan Ourahou (KY)
Joe Ramirez (CA)
Tommy L. Ray, Jr. (AL)
Justin T. Richman (IN)
Kevin L. Routin (KY)
Scott J. Schlenker (WA)

Andrew W. Schollett (CO)
 Michael D. Singleton (IN)
 John C. Smith (IL)
 Temesgn H. Teklezig (WA)
 George W. Thomas (SC)
 Gary R. Thomas (OH)
 Leslie D. Wallace (MO)
 Wade W. Ward (WY)
 John T. White, Jr. (NC)

The drivers were included in docket numbers FMCSA-1999-6156; FCMSA-1999-6480; FCMSA-2002-11714; FCMSA-2005-23099; FCMSA-2006-24783; FCMSA-2007-27515; FCMSA-2008-0021; FCMSA-2009-0206; FCMSA-2009-0291; FCMSA-2009-0303; FCMSA-2009-0321; FCMSA-2010-0050; FCMSA-2010-0082; FCMSA-2011-0299; FCMSA-2011-0324; FCMSA-2011-0379; FCMSA-2012-0039; FCMSA-2012-0104; FCMSA-2012-0106; FCMSA-2013-0174; FCMSA-2014-0002; FCMSA-2014-0003; FCMSA-2014-0005; FCMSA-2014-0006; FCMSA-2016-0024; FCMSA-2016-0027; FCMSA-2016-0028. Their exemptions are applicable as of August 1, 2018, and will expire on August 1, 2020.

As of August 6, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following five individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (75 FR 25918; 75 FR 39729; 77 FR 15184; 77 FR 27850; 77 FR 36336; 77 FR 36338; 77 FR 46795; 79 FR 38661; 81 FR 90050):

William L. Martin (OR)
 Richard L. Miller (IN)
 Lance C. Phares (NY)
 Richard D. Tucker II (NC)
 Jay Turner (OH)

The drivers were included in docket numbers FMCSA-2010-0082; FMCSA-2011-0379; FMCSA-2012-0159. Their exemptions are applicable as of August 6, 2018, and will expire on August 6, 2020.

As of August 8, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 16 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (79 FR 38659; 79 FR 53514; 81 FR 90050):

Jimmy A. Baker (TX)
 Antonio A. Calixto (MN)
 James W. Carter, Jr. (KS)
 Larry G. Davis (TN)
 Michael C. Doheny (CT)
 George P. Ford (NC)
 Ronnie L. Henry (KS)
 Johnny L. Irving (MS)
 Kevin L. Jones (SC)
 Keith A. Kelley (ME)

David L. Miller (OH)
 David Perkins (NY)
 Randall H. Tempel (MT)
 Cory J. Tivnan (WA)
 Ricky W. Witt (IA)
 John D. Woods (MI)

The drivers were included in docket number FMCSA-2014-0007. Their exemptions are applicable as of August 8, 2018, and will expire on August 8, 2020.

As of August 9, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following four individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (75 FR 34210; 75 FR 34211; 75 FR 34212; 75 FR 27888; 77 FR 40945; 79 FR 40945; 81 FR 90050):

Mark S. Berkheimer (PA)
 Michael A. Jabro (MI)
 Buddy W. Myrick (TX)
 Charles L. Rill, Sr. (MD)

The drivers were included in docket number FMCSA-2010-0114. Their exemptions are applicable as of August 9, 2018, and will expire on August 9, 2020.

As of August 12, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following ten individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (81 FR 45214; 81 FR 66726):

David E. Campbell (NY)
 James G. Cothren (GA)
 Nenad Harnos (NJ)
 Matthew D. Hormann (MN)
 James W. Jones (AL)
 Duane R. Martin (PA)
 Roger S. Orr (IA)
 Richard D. Shryock (MO)
 Steven D. Soddors (OH)
 Keith R. Tyler (NC)

The drivers were included in docket number FMCSA-2016-0014. Their exemptions are applicable as of August 12, 2018, and will expire on August 12, 2020.

As of August 18, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 22 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (71 FR 14567; 71 FR 30228; 73 FR 28187; 73 FR 35195; 73 FR 35196; 73 FR 35197; 73 FR 35198; 73 FR 35199; 73 FR 35200; 73 FR 35201; 73 FR 38498; 73 FR 38499; 73 FR 48273; 73 FR 48275; 75 FR 25919; 75 FR 39729; 75 FR 44051; 77 FR 46153; 79 FR 46153; 81 FR 90050):

Donald L. Carman (OH)

Christopher R. Cone (GA)
 Walter O. Connelly (WA)
 Roger D. Elders (MI)
 Lucious J. Erwin (TX)
 Riche Ford (CO)
 Kevin K. Friedel (NY)
 Steven G. Harter (OR)
 Andrew C. Kelly (WV)
 Jason W. King (MT)
 Billy J. Lewis (LA)
 Robert W. McMillian (MA)
 Richard A. Peterson (OR)
 Carroll G. Quisenberry (KY)
 Ryan J. Reimann (WI)
 Brandon J. See (IA)
 Ricky L. Shepler (PA)
 John L. Stone (PA)
 Nils S. Thornberg (OR)
 Daniel W. Toppings (WV)
 Christopher R. Whitson (NC)
 Aaron E. Wright (MI)

The drivers were included in docket numbers FMCSA-2006-24015; FMCSA-2008-0106; FMCSA-2008-0174; FMCSA-2010-0082. Their exemptions are applicable as of August 18, 2018, and will expire on August 18, 2020.

As of August 19, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following two individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (79 FR 41737; 79 FR 56102; 81 FR 90050): Leamon V. Manchester (LA); Leverne F. Schulte, Jr. (OH)

The drivers were included in docket number FMCSA-2014-0008. Their exemptions are applicable as of August 19, 2018, and will expire on August 19, 2020.

As of August 27, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, Gregory S. Smith (AR) has satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (77 FR 38381; 77 FR 51846; 79 FR 41740; 81 FR 90050).

The driver was included in docket number FMCSA-2012-0160. The exemption is applicable as of August 27, 2018, and will expire on August 27, 2020.

As of August 29, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, Rickey W. Goins (TN) has satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (77 FR 41879; 77 FR 52391; 79 FR 41735; 81 FR 90050).

The driver was included in docket number FMCSA-2012-0161. The exemption is applicable as of August 29, 2018, and will expire on August 29, 2020.

In accordance with 49 U.S.C. 31315, each exemption will be valid for two years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: November 9, 2018.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2018-25282 Filed 11-19-18; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA-2018-0204]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 38 individuals from the prohibition in the Federal Motor Carrier Safety Regulations (FMCSRs) against persons with insulin-treated diabetes mellitus (ITDM) from operating a commercial motor vehicle (CMV) in interstate commerce. The exemptions enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on October 11, 2018. The exemptions expire on October 11, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366-4001, fmcsamedical@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to

<http://www.regulations.gov>. Insert the docket number, FMCSA-2018-0204, in the keyword box, and click "Search." Next, click the "Open Docket Folder" button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

II. Background

On September 10, 2018, FMCSA published a notice announcing receipt of applications from 38 individuals requesting an exemption from diabetes requirement in 49 CFR 391.41(b)(3) and requested comments from the public (83 FR 45728). The public comment period ended on October 10, 2018, and one comment was received.

FMCSA has evaluated the eligibility of these applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

The physical qualification standard for drivers regarding diabetes found in 49 CFR 391.41(b)(3) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control.

III. Discussion of Comments

FMCSA received one comment in this proceeding. Vicky Johnson submitted a comment regarding Jerome E. Haskin and Clarence S. Waldner indicating that the Minnesota Department of Public Safety (MN DPS) has no objections to these drivers being granted a Federal diabetes exemption.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for up to five years from the diabetes standard in 49 CFR 391.41(b)(3) if the exemption

is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce. FMCSA grants exemptions from the FMCSRs for a two-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on the program eligibility criteria and an individualized assessment of information submitted by each applicant. The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the September 10, 2018, **Federal Register** notice (83 FR 45728) and will not be repeated in this notice.

These 38 applicants have had ITDM over a range of 1 to 49 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (two or more) severe hypoglycemic episodes in the past five years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) Each driver must submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) each driver must report within two business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) each driver must

provide a copy of the ophthalmologist's or optometrist's report to the Medical Examiner at the time of the annual medical examination; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keeping a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 38 exemption applications, FMCSA exempts the following drivers from the diabetes requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above:

Marc A. Angle (MI)
David J. Archie (MS)
Kevin C. Atkins (TN)
Paul R. Bales (MO)
Francis M. Bautista, Jr. (NM)
Leonard M. Block (MI)
Christian A. Bowles (OH)
Lee R. Bryant (KS)
Michael A. Cameron (SD)
Wisner Charles (FL)
James C. Cherry, Jr. (PA)
Kevin M. Crow (WV)
Cynthia L. Dixon-Pyke (WI)
James E. Dodge, Jr. (PA)
Richard T. Ewell (IL)
F.D. N. Garbo, Sr. (MD)
Vincent P. Gaudino (PA)
Jerome E. Haskin (MN)
Thomas P. Kelly, Jr. (NY)
Jerrold P. Kerber (AZ)
Aaron D. Lee (TN)
Ryan T. Lindner (CA)
Keith A. MacAdams (MA)
Jeremy R. Main (KS)
Robert D. Manley (IN)
Daniel P. McCartney (IL)
Rose M. McKay (NY)
Keith C. Newburn (OR)
Colby A. Nutter (VA)
Donald S. Pederson (MT)
David Perez (ND)
Timothy C. Perry (KY)
Scott K. Powell (IL)
Layne C. Sanderson (ID)
Emily M. Thibodeau (MA)
Federico F. Vigil (TX)
Clarence S. Waldner (MN)
Logan T. Wiersema (VA)

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid

for two years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Issued on: November 9, 2018.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2018-25283 Filed 11-19-18; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2018-0242]

Qualification of Drivers; Exemption Applications; Implantable Cardioverter Defibrillator (ICD)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of denials.

SUMMARY: FMCSA announces its decision to deny applications from four individuals treated with Implantable Cardioverter Defibrillators (ICDs) who requested an exemption from the Federal Motor Carrier Safety Regulations (FMCSRs) prohibiting operation of a commercial motor vehicle (CMV) in interstate commerce by persons with a current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive heart failure.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366-4001, fmcsamedical@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as

being available in the docket, go to <http://www.regulations.gov>. Insert the docket number, FMCSA-2018-0242, in the keyword box, and click "Search." Next, click the "Open Docket Folder" button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

II. Background

On August 15, 2018, FMCSA published a **Federal Register** notice (83 FR 40649) announcing receipt of applications from four individuals treated with ICDs and requested comments from the public. These four individuals requested an exemption from 49 CFR 391.41(b)(4) which prohibits operation of a CMV in interstate commerce by persons with a current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive heart failure. The public comment period closed on September 14, 2018, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and concluded that granting these exemptions would not provide a level of safety that would be equivalent to or greater than, the level of safety that would be obtained by complying with the regulation 49 CFR 391.41(b)(4). A summary of each applicant's medical history related to their ICD exemption request was discussed in the August 15, 2018, **Federal Register** notice and will not be repeated in this notice.

In reaching the decision to deny these exemption requests, the Agency considered information from the Cardiovascular Medical Advisory Criteria, the April 2007 Evidence Report "Cardiovascular Disease and Commercial Motor Vehicle Driver Safety, a December 2014 focused

research report “Implantable Cardioverter Defibrillators and the Impact of a Shock in a Patient When Deployed.” Copies of the reports are included in the docket.

FMCSA has published advisory criteria to assist medical examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce. [Appendix A to Part 391—Medical Advisory Criteria, section D, paragraph 4]. The advisory criteria for 49 CFR 391.41(b)(4) indicates that coronary artery bypass surgery and pacemaker implantation are remedial procedures and thus, not medically disqualifying. Implantable cardioverter defibrillators are disqualifying due to risk of syncope.

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption if it finds such an exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such an exemption.

The Agency’s decision regarding these exemption applications is based on an individualized assessment of each applicant’s medical information provided by the applicant, available medical and scientific data concerning ICD’s, and public comments received.

In the case of persons with ICDs, the underlying condition for which the ICD was implanted places the individual at high risk for syncope (a transient loss of consciousness) or other unpredictable events known to result in gradual or sudden incapacitation. ICDs may discharge, which could result in loss of ability to safely control a CMV. See the April 2007 Evidence Report on Cardiovascular Disease and Commercial Motor Vehicle Driver Safety, April 2007.¹ A focused research report on Implantable Cardioverter Defibrillators and the Impact of a Shock on a Patient When Deployed completed for the FMCSA December 2014 indicates that the available scientific data on persons with ICDs and CMV driving does not support that persons with ICDs who operate CMVs are able to meet an equal or greater level of safety and upholds the findings of the April 2007 report.

¹ Now available at http://ntl.bts.gov/lib/30000/30100/30123/Final_CVD_Evidence_Report_v2.pdf.

V. Conclusion

The Agency has determined that the available medical and scientific literature and research provides insufficient data to enable the Agency to conclude that granting these exemptions would achieve a level of safety equivalent to, or greater than, the level of safety maintained without the exemption. Therefore, the following four applicants have been denied exemptions from the physical qualification standards in 49 CFR 391.41(b)(4):

David Christiansen (IL)
Christopher G. Harville (SC)
Terry W. Meredith (TN)
Grady C. Stone (GA)

Each applicant has, prior to this notice, received a letter of final disposition regarding his/her exemption request. Those decision letters fully outlined the basis for the denial and constitutes final action by the Agency. The list published today summarizes the Agency’s recent denials as required under 49 U.S.C. 31315(b)(4).

Issued on: November 9, 2018.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2018–25281 Filed 11–19–18; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0213; FMCSA–2015–0323]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for 12 individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have “no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.” The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

DATES: Each group of renewed exemptions were applicable on the

dates stated in the discussions below and will expire on the dates stated in the discussions below. Comments must be received on or before December 20, 2018.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2014–0213; FMCSA–2015–0323 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.

- *Fax:* 1–202–493–2251.

To avoid duplication, please use only one of these four methods. See the “Public Participation” portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, fmcamedical@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket Nos. FMCSA–2015–0323; FMCSA–2014–0213), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, put the

docket numbers, FMCSA–2014–0213; FMCSA–2015–0323, in the keyword box, and click “Search.” When the new screen appears, click on the “Comment Now!” button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to <http://www.regulations.gov>. Insert the docket numbers, FMCSA–2014–0213; FMCSA–2015–0323, in the keyword box, and click “Search.” Next, click the “Open Docket Folder” button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at www.dot.gov/privacy.

II. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for up to five years if it finds “such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.” The statute also allows the Agency to renew exemptions at the end of the five-year period. FMCSA grants exemptions from the FMCSRs for a two-year period to align with the maximum duration of a driver’s medical certification.

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria to assist Medical Examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce (49 CFR part 391, APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. Epilepsy: § 391.41(b)(8), paragraphs 3, 4, and 5).

The 12 individuals listed in this notice have requested renewal of their exemptions from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable two-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315, each of the 12 applicants has satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition. The 12 drivers in this notice remain in good standing with the Agency, have maintained their medical monitoring and have not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous two-year exemption period. In addition, for Commercial Driver’s License (CDL) holders, the Commercial Driver’s License Information System (CDLIS) and the Motor Carrier Management Information System (MCMIS) are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver’s

Licensing Agency (SDLA). These factors provide an adequate basis for predicting each driver’s ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

In accordance with 49 U.S.C. 31136(e) and 31315, the following groups of drivers received renewed exemptions in the month of September and are discussed below:

As of September 9, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following eight individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers:

Mark D. Anderson (NC)
Jeremy N. Bradford (AL)
Jeffrey B. Green (CA)
Stephen M. Harmon (WV)
Donald A. Horst (MD)
Kyle P. Loney (WA)
Leigh P. Mallory (VT)
Raymond H. VanDeMark (NJ)

The drivers were included in docket number FMCSA–2015–0323. Their exemptions are applicable as of September 9, 2018, and will expire on September 9, 2020.

As of September 16, 2018, and in accordance with 49 U.S.C. 31136(e) and 31315, the following four individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers:

Lee H. Anderson (MA)
Gary A. Combs, Jr. (KY)
Roland K. Mezger (PA)
Robert Thomas, Jr. (NC)

The drivers were included in docket number FMCSA–2014–0213. Their exemptions are applicable as of September 16, 2018, and will expire on September 16, 2020.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must remain seizure-free and maintain a stable treatment during the two-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified Medical Examiner, as defined by 49 CFR 390.5; and (4) each driver must provide a copy

of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based on its evaluation of the 12 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the epilepsy and seizure disorders prohibition in 49 CFR 391.41 (b)(8). In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for two years unless revoked earlier by FMCSA.

Issued on: November 9, 2018.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2018-25278 Filed 11-19-18; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA-2018-0037; Notice No. 2; Safety Advisory 2018-02]

Safety Advisory Related to Temporary Signal Suspensions

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Safety Advisory.

SUMMARY: FRA is issuing this Safety Advisory addressing railroad operations under temporary signal suspensions. This Safety Advisory recommends the use of industry best practices when planning and implementing temporary signal suspensions, including when conducting rail operations under temporary signal suspensions. This Safety Advisory also recommends that railroads develop and implement procedures and practices consistent

with the identified best practices and that railroads take certain other actions to ensure the safety of railroad operations during temporary signal suspensions. FRA believes that actions consistent with this Safety Advisory will reduce the risk of serious injury or death both to railroad employees and members of the public.

FOR FURTHER INFORMATION CONTACT: Douglas Taylor, Staff Director, Operating Practices, Office of Railroad Safety, FRA, 1200 New Jersey Avenue SE, Washington, DC 20590, telephone (202) 493-6255; or Carolyn Hayward-Williams, Staff Director, Positive Train Control/Signal & Train Control Division, Office of Railroad Safety, FRA, 1200 New Jersey Avenue SE, Washington, DC 20590, telephone (202) 493-6399.

SUPPLEMENTARY INFORMATION:

Background

On April 23, 2018, FRA published a notice of a draft Safety Advisory in the **Federal Register** addressing railroad operations during temporary signal suspensions. 83 FR 17701. As stated in the draft Safety Advisory, a review of FRA's accident/incident data shows that overall, rail transportation, both passenger and freight, is safe. However, recent rail accidents occurring in areas where a railroad has temporarily suspended the signal system, typically for purposes of maintenance, repair, or installation of additional components for a new or existing system, demonstrate that rail operations during signal suspensions present increased safety risks. In the draft Safety Advisory, FRA specifically noted the February 4, 2018 accident in Cayce, South Carolina, in which the engineer and conductor of National Railroad Passenger Corporation (Amtrak) Train P09103 were killed and 115 passengers injured,¹ when their train collided head-on with a CSX Transportation, Inc. freight train (Train F77703). As noted in the draft Safety Advisory, while the cause of this accident has not yet been determined, FRA's preliminary investigation indicates that despite the CSX train crew reporting to the train dispatcher that the switch was lined correctly, the crew did not restore the main track switch to its normal position as required by Federal regulation (Title 49 Code of Federal Regulations (CFR) 218.105) and CSX's own operating rules. The misaligned switch diverted the next train to traverse the location (the Amtrak train) into the siding and into

the standing CSX train parked on the siding.

In the draft Safety Advisory, FRA also noted the March 14, 2016 accident near Granger, Wyoming, which occurred when a Union Pacific Railroad (UP) freight train traveled from the main track through a misaligned switch into a controlled siding and collided head-on with another UP freight train standing on the siding.

Notably, both the Cayce and Granger accidents occurred while the operating railroads were installing and testing positive train control (PTC) technology and while the railroads had temporarily suspended the signals in the accident areas to perform installation and testing activities. In the Granger accident, while the signals were suspended, UP established absolute blocks intended to provide for the safe movement of trains through the area without signals. In the Cayce accident, the Amtrak train was operating on a track warrant and at the time of the accident, signal personnel had stopped working for the day, yet the temporary signal suspension remained in place.

As explained in the draft Safety Advisory, the National Transportation Safety Board (NTSB) determined that the probable cause of the Granger accident was the employee-in-charge incorrectly using information from a conversation with the train dispatcher as authorization to send a train into the area where the signal system suspension was in effect. The NTSB also found that a contributing factor was the conductor pilot's failure to check the switch position before authorizing the train to enter the area. Both FRA and the NTSB's investigations into the Cayce accident are ongoing and while neither agency has yet issued any formal findings, on February 13, 2018, the NTSB issued a Safety Recommendation Report² to FRA regarding train operations during signal suspensions. In its report, the NTSB recommended that FRA issue an emergency order directing railroads to require train crews to approach switches at restricted speed when signal suspensions are in effect and a switch has been reported relined for a main track (NTSB Safety Recommendation R-18-005). The NTSB further recommended that after the switch position is verified, train crews should be required to report to the dispatcher that the switch is correctly lined for the main track before

¹ Including 92 individuals who were transported to medical facilities for treatment and 23 people who received first aid at a triage area established near the accident site.

² NTSB, Safety Recommendation Report: Train Operation During Signal Suspension, Report No. RSR-18/01, Recommendation No. R-18-005 (Feb. 13, 2018), <https://www.ntsb.gov/investigations/AccidentReports/Reports/RSR1801.pdf>.

subsequent trains are permitted to operate at maximum-authorized speed.

FRA issued the draft Safety Advisory consistent with the purpose of the NTSB's recommendation and to ensure all railroads were made aware of both the safety concerns identified and information and practices available to specifically address the issues raised. Moreover, FRA intended the draft Safety Advisory to provide railroads the flexibility to review and revise their existing operating rules and practices as necessary to ensure the safety of their operations, without imposing rigid and inherently limited, new requirements on the industry. FRA intended the draft Safety Advisory to provide an opportunity for interested parties and industry experts to provide input on potential ways to prevent future accidents such as those that occurred in Granger and Cayce by sharing known industry best practices and seeking input on the same.

In the draft Safety Advisory, FRA noted the following best practices that some railroads were already implementing:

- Taking all practical measures to ensure sufficient personnel are present to continue signal work until the system is restored to proper operation. If sufficient personnel are not present, the signal suspension is terminated until such time as sufficient personnel are on hand.
- If a railroad elects to allow train traffic through signal suspension limits:
 - Establishing the smallest limits possible for the signal suspension (if possible, no more than three (3) control points or use phased limits to allow restoration of the signal system as work is completed);
 - Minimizing the duration of the signal suspension to the shortest time period possible (if possible, no more than twelve (12) hours); and
 - Taking all practical measures to ensure only through traffic is allowed to operate within the limits (avoiding any train meets or any movements requiring the manipulation of switches within the suspension limits).
- If any switches within the suspension limits are manipulated, consistent with 49 CFR 218.105, establishing an effective means of verifying that all switches have been returned to the proper position prior to any train traffic operating through the limits. (For example, require spiking or clamping of switches followed by locking for through movement after use; utilize a signal employee to tend the switch and to establish agreement between assigned crew members and the switch tender that the switch is

properly lined; and/or require the first train through the limits after the manipulation of any switch to operate at restricted speed).

Among other recommendations, in the draft Safety Advisory, FRA recommended that railroads develop and implement procedures and practices consistent with these industry best practices for operations conducted under temporary signal suspensions. FRA also recommended that railroads increase supervisory operational oversight and conduct operational testing on the applicable operating rules pertaining to the operation of hand-operated main track switches and that this increased oversight should include face-to-face initial job briefings with all train and engine crews that will operate in any area where the signal system will be temporarily suspended.

Discussion of Comments Received in Response To Draft Safety Advisory

In response to the draft Safety Advisory, FRA received comments from the NTSB, the Association of American Railroads and the American Short Line and Regional Railroad Association (AAR/ASLRRRA), Amtrak, the Brotherhood of Locomotive Engineers and Trainmen (BLET), the Transportation Division of the International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART) and individuals involved in railroad transportation. Some commenters, including the NTSB, BLET, and SMART expressed the view that FRA's issuance of a Safety Advisory did not go far enough to address the safety issues associated with signal suspensions. These commenters expressed the view that FRA should mandate solutions through the regulatory process.³ FRA respectfully disagrees with these commenters. FRA believes that when properly implemented and complied with, FRA's existing regulations (*e.g.*, 49 CFR part 218, subpart F) and the railroads' related operating rules effectively address the safety issues involved. Moreover, given the variety of circumstances under which railroads may need to temporarily suspend signal systems, FRA does not believe mandating a "one size fits all" solution is practical or in the interest of railroad safety.

The NTSB further commented that the draft Safety Advisory offered

"contradictory statements" in noting that the Advisory provided railroads the "flexibility to review and revise their existing operating rules and practices as necessary to ensure the safety of their rail operations, without imposing rigid, and inherently limited, new requirements on the industry" and at the same time stating that temporary signal suspensions "are necessarily common occurrences" and that "rail operations under signal suspensions should be rare and appropriately limited." These statements are not contradictory. FRA recognizes that signal suspensions are necessary to maintain and upgrade signal systems. In recent years railroads have improved upon installation and testing processes to minimize the extent and duration of signal suspensions. Furthermore, some railroads have sought to limit or prohibit operations through signal suspensions, and FRA agrees that in some circumstances, limiting or prohibiting operations through signal suspensions may be appropriate. Accordingly, in this Safety Advisory, FRA is recommending that before initiating a planned temporary signal system suspension, a railroad conduct a risk assessment to, among other things, evaluate whether rail operations through and/or within the suspension limits should continue during the suspension.

The NTSB further recommended that FRA require railroads, when operating trains during signal suspensions, to establish "an effective means for verifying that all switches have been returned to the proper position prior to any train traffic operating through" the suspension limits. The NTSB agreed with FRA's statement in the draft Safety Advisory that spiking or clamping switches, followed by locking the switches for through movement after use is one way to effectively verify switch position. In its comments, the NTSB also reiterated its Safety Recommendation R-18-005 recommending that FRA require train crews to approach switches at restricted speed when signal suspensions are in effect and a switch has been reported relined for a main track. The NTSB also recommended FRA convert the draft Safety Advisory into a regulation. As noted previously, FRA does not agree with this recommendation. FRA does, however, agree with the NTSB, and other commenters' recommendation that restricted speed may be an effective mitigation measure, and in this Safety Advisory FRA is specifically reiterating that as a potential best practice to be employed as appropriate.

³ On June 11, 2018, recognizing FRA's publication of the draft Safety Advisory, the NTSB classified FRA's response to Safety Recommendation R-18-005 as "Open—Unacceptable Response." In its letter to FRA, the NTSB noted that it did not agree with FRA that "an advisory goes far enough to ensure safety."

BLET echoed the NTSB's restricted speed recommendation and expressed the view that it is irrelevant that both the Granger and Cayce accidents occurred while signal suspensions were in effect. Instead, from an operational standpoint, BLET asserted that the issue needing to be addressed is misaligned switches in non-signaled territory. As such, BLET expressed the view that FRA should not only implement NTSB Safety Recommendation R-18-005 as a regulation, but FRA should also implement the NTSB's Safety Recommendation R-12-29. NTSB Safety Recommendation R-12-29 recommended that until appropriate switch position warning technology is installed on main track switches, the first train through any dark territory after a main track switch had been reported relined for the main track must approach the switch location at restricted speed until the train crew reported to the dispatcher that the switch is correctly lined for the main track.⁴

SMART urged FRA to establish "uniform safety procedures" noting that many SMART members operate trains over more than one railroad. In addition, SMART suggested FRA issue an emergency order requiring railroads to adopt the best practice of spiking and locking main track switches when trains operate over a section of track where a signal system is suspended or "turned off and abandoned."

In their comments, AAR/ASLRRA expressed agreement with the draft Safety Advisory's recommendation that railroads develop and implement procedures and practices for operations under temporary signal suspensions consistent with industry best practices. In their comments, however, AAR/ASLRRA suggested that certain aspects of the best practices FRA identified in the draft Safety Advisory should be modified. Specifically, AAR/ASLRRA suggested that FRA's recommended best practices should not limit signal suspensions to three control points and 12 hours in duration. Instead, noting the often complex nature of signal work, AAR/ASLRRA suggested that best practices should simply be for railroads to limit the number of control points involved in signal suspensions and the duration of the signal suspensions to the extent practicable. AAR/ASLRRA also expressed agreement with FRA's recommendation for increased supervisory operational oversight of the

application of operating rules regarding the operation of hand-operated switches, but suggested that face-to-face initial job briefings with train and engine crews operating in signal suspension areas are "not always feasible" or the most effective solution. Thus, AAR/ASLRRA suggested that FRA revise its recommendation to allow for job briefings regarding temporary signal suspensions through bulletin or notice from the dispatcher, as opposed to a face-to-face job briefing. Given the variety of reasons a railroad may choose or need to suspend its signal system and the variety of circumstances under which such suspensions are conducted, FRA generally agrees with AAR/ASLRRA's comments that no geographic limit or time duration should be specified as a matter of industry-wide best practice. Accordingly, FRA believes railroads should limit the geographic scope and time duration of signal suspensions to the extent possible given the particular circumstances, but agrees that no hard limit on the number of control points, specific ways of limiting the geographic scope (such as using phased limits), or duration of signal suspensions should be specified. FRA also generally agrees that face-to-face job briefings may not always be practical if a signal suspension results from an unplanned event, such as a storm as referenced in AAR/ASLRRA's comments. This Safety Advisory, however, is specifically directed to the best practices for carrying out planned signal suspensions and thus, AAR/ASLRRA's comment on job briefings is outside the scope of this Advisory.

Amtrak generally expressed support for the recommendations in the draft Safety Advisory and additionally shared its experience in developing and implementing a Safety Management System (SMS) to enhance communication of safety concerns and issues. Amtrak also referenced its February 2018 initiation of the development of a formal risk assessment methodology to identify, analyze, assess, and mitigate risks due to human error associated with operating passenger service through territories in which the normal signal systems have been temporarily suspended. Amtrak explained that upon notification of a signal system suspension from a host railroad, using a collaborative process with departments across the railroad (including Operating Practices, System Safety, and local Train and Engine staff), Amtrak performs a risk assessment to identify appropriate operational mitigations including, but not limited to, speed restrictions, alternate routing,

or service suspensions. Amtrak explained that each risk assessment and the mitigations prescribed are reviewed and approved by Amtrak senior leadership and the results of that assessment and approved operational mitigations are communicated to affected employees and shared with Amtrak's host railroad. Amtrak indicates in its comments that it has performed over thirty risk assessments and is committed to continuously improving the assessment process. FRA believes Amtrak's comments have merit and in this Safety Advisory is revising its recommendations to railroads to include a risk assessment component.

Safety Advisory 2018-02⁵

Railroads suspend signal systems for a variety of reasons, including for maintenance or repair purposes, to install a new system, or to add additional components to an existing system. As exemplified by the accidents described above, rail operations under the temporary loss of protections provided by an existing signal system have the potential to introduce new safety risks and amplify existing safety risks because railroad employees accustomed to the safety an existing signal system provides must operate in an environment they may not encounter on a regular basis. A temporary signal suspension requires operating employees to immediately apply operating rules and practices different from those to which they are accustomed. Because a person's routine may include learned habits that are difficult to set aside when a temporary condition is imposed, operating employees may also need specialized instruction on the applicable rules and practices. Such risks must be addressed to provide for the safety of train operations during the loss of protection afforded by the signal system.

As discussed in detail in the draft Safety Advisory, Federal regulations require railroads to apply for FRA approval for certain discontinuances and modifications of signal systems, but Federal regulations do not prohibit railroads from temporarily suspending existing signal systems for purposes of performing maintenance, upgrades, repairs, or implementing PTC technology. See 49 CFR 235.7. FRA does

⁵ The draft Safety Advisory published on April 23, 2018, was captioned "Draft Safety Advisory 2018-01." Subsequent to publication of the draft Safety Advisory, however, on July 27, 2018, FRA published a separate Safety Advisory addressing electrode-induced rail pitting from pressure electric welding. That Safety Advisory was numbered 2018-01. Accordingly, FRA has revised the number assigned to this Safety Advisory to 2018-02.

⁴ NTSB previously closed R-12-29 after reconsideration of the recommendation noting that 49 CFR part 218, subpart F addresses the intent of the recommendation in an alternative manner.

not believe that Federal regulations should include such a prohibition. FRA's regulations already require individual railroads to adopt and comply with operating rules addressing the operation of hand-operated main track switches. *See* 49 CFR 218.105.

In addition to the regulatory requirements, virtually all railroads have adopted additional operational protections to ensure the safety of rail operations when an existing signal system is temporarily suspended. FRA believes certain operational safeguards that railroads already undertake constitute the best practices within the industry when temporarily suspending a signal system. These best practices include:

- Take all practical measures to ensure sufficient personnel are present to continue signal work until the system is restored to proper operation. If sufficient personnel are not present, terminate the signal suspension until sufficient personnel are on hand.

- If a railroad elects to allow train traffic through signal suspension limits:
 - Establish the smallest limits possible for the signal suspension;
 - Minimize the duration of the signal suspension to the shortest time period possible;

- Take all practical measures to ensure only through traffic is allowed to operate within the limits (avoiding any train meets or any movements requiring the manipulation of switches within the suspension limits).

- If any switches within the signal suspension limits are manipulated, consistent with 49 CFR 218.105, establish an effective means of verifying that all switches have been returned to the proper position prior to any train traffic operating through the limits (for example, require spiking or clamping of switches followed by locking for through movement after use; utilize a signal employee to tend the switch and to establish agreement between assigned crew members and the switch tender that the switch is properly lined; and/or require the first train through the limits after the manipulation of any switch to operate at restricted speed).

Recommendations: After careful consideration of the comments received in response to the draft Safety Advisory, and to ensure the safety of the Nation's railroads, their employees, and the public, FRA recommends that railroads take immediate actions consistent with the following:

1. Before initiating a planned temporary suspension of a signal system, perform a risk assessment to determine the most effective and safest way to implement the suspension. The

risk assessment should include consideration of the need to minimize the geographic scope and duration of the suspension and evaluate whether rail operations through and/or within the suspension limits should continue during the suspension. If a railroad concludes operations through or within the suspension limits may continue, the risk assessment should identify appropriate operational mitigations including, but not limited to, speed restrictions or alternate routing. The risk assessment should be performed with the input of all affected railroad departments (*e.g.*, Operating, Signal and Train Control, System Safety, and involved Train and Engine Staff), and any approved operational mitigations should be clearly communicated to all affected employees in advance of initiating the suspension or allowing the employees to operate through or within the suspension limits.

2. Develop and implement procedures and practices consistent with the industry best practices discussed above for rail operations conducted under temporary signal suspensions.

3. Inform employees of the circumstances surrounding the February 4, 2018, accident in Cayce, South Carolina, and the March 14, 2016, accident near Granger, Wyoming, discussed above, emphasizing the potential consequences of misaligned switches and the relevant Federal regulations and railroad operating rules intended to prevent such accidents.

4. Review, and as appropriate, revise all operating rules related to operating hand-operated main track switches (including operating rules required by 49 CFR 218.105), to enhance them to ensure (a) train crews and others restore switches to their normal position after use, and (b) the position of switches are clearly communicated to train control employees and/or dispatcher(s) responsible for the movement of trains through the area where the signal system is temporarily suspended. In doing so, railroads should pay particular attention to those main track switches where employees report clear of the main track to the train dispatcher.

5. Increase supervisory operational oversight and conduct operational testing on the applicable operating rules pertaining to the operation of hand-operated main track switches. This should include face-to-face initial job briefings with all train and engine (T&E) crews that will operate in any area where the signal system will be temporarily suspended.

6. Enhance instruction on the relevant operating rules concerning the operation of hand-operated main track switches in

non-signaled territory, including the operating rules required by 49 CFR 218.105(d) during both initial and periodic instruction required by 49 CFR 217.11. In doing so, railroads should emphasize the applicability of the rules to any area(s) where the signal system is temporarily suspended and the need to ensure and verify that all hand-operated main track switches manipulated within any suspension limits have been returned to the proper position prior to operating any trains through the limits.

7. Stress to T&E employees the importance of thorough and accurate job briefings when operating hand-operated main track switches, particularly in areas where the signal system is temporarily suspended, and specifically when releasing main track authority. Ensure adequate processes and procedures are in place enabling clear and timely communication of switch positions between and among all dispatching, T&E, and train control employees responsible for operating, performing work, or authorizing trains to operate through areas where the signal system is temporarily suspended. These processes and procedures should include processes and procedures for communicating switch position information during shift handovers. Encourage employees, in case of any doubt or uncertainty regarding the position of hand-operated switches, to immediately contact the train dispatcher or take other appropriate action to confirm the position of the switch prior to authorizing a train to operate through the limits of the area.

FRA encourages railroads to take immediate action consistent with the recommendations of this Safety Advisory and to take any other actions appropriate to help ensure the safety of the Nation's railroads. FRA may modify this Safety Advisory or take other appropriate actions necessary to ensure the highest level of safety on the Nation's railroads.

Issued in Washington, DC.

Ronald L. Batory,
Administrator.

[FR Doc. 2018-25311 Filed 11-19-18; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Senior Executive Service; Combined Performance Review Board (PRB)

AGENCY: Financial Crimes Enforcement Network ("FinCEN"), Treasury.

ACTION: Notice of Members of Combined Performance Review Board (PRB).

SUMMARY: This notice announces the appointment of the members of the Combined Performance Review Board (PRB) for the Bureau of the Fiscal Service (BFS), the Bureau of Engraving and Printing (BEP), the United States Mint, the Alcohol and Tobacco Tax and Trade Bureau (TTB), and the Financial Crimes Enforcement Network (FinCEN). The Combined PRB reviews the performance appraisals of career senior executives who are below the level of bureau head and principal deputy in the bureaus, except for executives below the Assistant Commissioner/Executive Director level in the Bureau of Fiscal Service. The Combined PRB makes recommendations regarding proposed performance appraisals, ratings, bonuses, pay adjustments, and other appropriate personnel actions.

DATES: The membership of the Combined PRB as described in the Notice was confirmed on October 29, 2018.

FOR FURTHER INFORMATION CONTACT: Nicole Hall, Human Resources Specialist, Financial Crimes Enforcement Network, (703) 905-3557.

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 4314(c)(4), this Notice announces the appointment of the following primary and alternate members to the Combined PRB:

PRIMARY MEMBERS: Stephen L. Manning, Deputy Commissioner, Finance and Administration, Bureau of the Fiscal Service; David Croft, Associate Director of Manufacturing, United States Mint; Peter Bergstrom, Associate Director, Management Services, Financial Crimes Enforcement Network; Marty Greiner, Deputy Director, Chief Administrative Officer, Bureau of Engraving and Printing; Daniel T. Riordan, Acting Assistant Administrator, HQ Operations, Alcohol and Tobacco Tax and Trade Bureau.

ALTERNATE MEMBERS: Theresa J. Kohler, Assistant Commissioner/CFO, Bureau of the Fiscal Service; Randall Johnson, Denver Plan Superintendent, United States Mint; Amy Taylor, Associate Director, Technology Division, Financial Crimes Enforcement Network; Harry Singh, Associate Director, Chief Information Officer, Bureau of Engraving and Printing; Mary G. Ryan, Deputy Administrator, Headquarter

Operations, Alcohol and Tobacco Tax and Trade Bureau.

Kenneth A. Blanco,

Director, Financial Crimes Enforcement Network.

[FR Doc. 2018-25303 Filed 11-19-18; 8:45 am]

BILLING CODE 4810-02-P

DEPARTMENT OF THE TREASURY

Fiscal Service

Senior Executive Service; Fiscal Service Performance Review Board

AGENCY: Bureau of the Fiscal Service, Treasury.

ACTION: Notice of appointments to the Fiscal Service Performance Review Board.

SUMMARY: This notice announces the appointment of the members of the Fiscal Service Performance Review Board (PRB) for the Bureau of the Fiscal Service (Fiscal Service). The PRB reviews the performance appraisals of career senior executives who are below the level of Assistant Commissioner/Executive Director and who are not assigned to the Office of the Commissioner in the Fiscal Service. The PRB makes recommendations regarding proposed performance appraisals, ratings, bonuses, pay adjustments, and other appropriate personnel actions.

DATES: Applicable on November 20, 2018.

FOR FURTHER INFORMATION CONTACT: Angela L. Jones, Human Capital Officer, Bureau of the Fiscal Service, (304) 480-8299.

SUPPLEMENTARY INFORMATION: This Notice announces the appointment of the following primary and alternate members to the Fiscal Service PRB:

Primary Members

Stephen L. Manning, Deputy Commissioner, Finance & Administration, Fiscal Service
Theresa J. Kohler, Assistant Commissioner, Management, Fiscal Service
Ronda L. Kent, Assistant Commissioner, Payment Management, Fiscal Service

Alternate Member

Marisa F. Schmader, Deputy Assistant Commissioner, Fiscal Accounting, Fiscal Service

Authority: 5 U.S.C. Section 4314(c)(4).

Stephen L. Manning,

Deputy Commissioner, Finance and Administration, Bureau of the Fiscal Service.

[FR Doc. 2018-25225 Filed 11-19-18; 8:45 am]

BILLING CODE 4810-AS-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning notice of expatriation and waiver of treaty benefits.

DATES: Written comments should be received on or before January 22, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis, at (202) 317-5751 or Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at Kerry.Dennis@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Notice of Expatriation and Waiver of Treaty Benefits.

OMB Number: 1545-2138.

Form Number: Form W-8CE.

Abstract: Information used by taxpayers to notify payer of expatriation so that proper tax treatments is applied by payer. The taxpayer is required to file this form to obtain any benefit accorded by the status.

Current Actions: There are no changes being made to the burden associated with the collection tool at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 500.

Estimated Time per Respondent: 5 hours, 41 minutes.

Estimated Total Annual Burden Hours: 2,840.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information

displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 14, 2018.

Laurie Brimmer,
Senior Tax Analyst.

[FR Doc. 2018-25230 Filed 11-19-18; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8621-A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Return by a Shareholder Making Certain Late Elections To End Treatment as a Passive Foreign Investment Company.

DATES: Written comments should be received on or before January 22, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue

Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, at (202) 317-5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at Martha.R.Brinson@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Return by a Shareholder Making Certain Late Elections To End Treatment as a Passive Foreign Investment Company.

OMB Number: 1545-1950.

Form Number: 8621-A.

Abstract: Form 8621-A is necessary for certain taxpayers/shareholders who are investors in passive foreign investment companies (PFIC's) to request late deemed sale or late deemed dividend elections (late purging elections) under Reg. 1.1298-3(e). The form provides a taxpayer/shareholder the opportunity to fulfill the requirements of the regulation in making the election by asserting the following: (i) The election is being made before an IRS agent has raised on audit the PFIC status of the foreign corporation for any taxable year of the taxpayer/shareholder; (ii) the taxpayer/shareholder is agreeing by submitting Form 8621-A to eliminate any prejudice to the interests of the U.S. government on account of the taxpayer/shareholder's inability to make timely purging elections; and (iii) the taxpayer/shareholder shows as a balance due on Form 8621-A an amount reflecting tax plus interest as determined under Reg. 1.1298(e)(3).

Current Actions: There are no changes being made to the format this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and Households, Businesses and other for-profit organizations.

Estimated Number of Respondents: 12.

Estimated Time per Respondent: 65 hours, 24 minutes.

Estimated Total Annual Burden Hours: 785.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material

in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments will be of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 25, 2018.

Laurie Brimmer,
Senior Tax Analyst.

[FR Doc. 2018-25271 Filed 11-19-18; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0747]

Agency Information Collection Activity: Application for Disability Compensation and Related Compensation Benefits

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 22, 2019.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System

(FDMS) at www.Regulations.gov or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to nancy.kessinger@va.gov. Please refer to "OMB Control No. 2900-0747" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT:

Danny Green at (202) 421-1354.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the

information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104-13; 44 U.S.C. 3501-3521.

Title: Application for Disability Compensation and Related Compensation Benefits (VA Form 21-526EZ).

OMB Control Number: 2900-0747.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 21-526EZ is used to collect the information needed to process a fully developed claim for disability compensation and/or related compensation benefits. Though the law requires the claimant submit a

certification in writing that states no additional information or evidence is available or needs to be submitted in order for the claim to be adjudicated via the fully developed claim program, it has further evolved into a standard claim form to be used for any benefit associated with disability compensation; to include new or initial claims, reopened claims, and claims for increase.

Affected Public: Individuals and households.

Estimated Annual Burden: 498,667 hours.

Estimated Average Burden per Respondent: 22 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,360,000.

By direction of the Secretary.

Cynthia D. Harvey-Pryor,

*Government Information Specialist,
Department of Veterans Affairs.*

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49 CFR Part 192

Pipeline Safety: Plastic Pipe Rule; Final Rule

DEPARTMENT OF TRANSPORTATION**Pipeline and Hazardous Materials
Safety Administration****49 CFR Part 192****[Docket No. PHMSA–2014–0098: Amdt. No.
192–124]****RIN 2137–AE93****Pipeline Safety: Plastic Pipe Rule****AGENCY:** Pipeline and Hazardous
Materials Safety Administration
(PHMSA), Department of Transportation
(DOT).**ACTION:** Final rule.

SUMMARY: PHMSA is amending the Federal Pipeline Safety Regulations that govern the use of plastic piping systems in the transportation of natural and other gas. These amendments are necessary to enhance pipeline safety, adopt innovative technologies and best practices, and respond to petitions from stakeholders. The changes include increasing the design factor of polyethylene pipe; increasing the maximum pressure and diameter for Polyamide-11 pipe and components; allowing the use of Polyamide-12 pipe and components; new standards for risers, more stringent standards for plastic fittings and joints; stronger mechanical fitting requirements; the incorporation by reference of certain new or updated consensus standards for pipe, fittings, and other components; the qualification of procedures and personnel for joining plastic pipe; the installation of plastic pipe; and a number of general provisions.

DATES: The effective date of these amendments is January 22, 2019. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of January 22, 2019.

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SUPPLEMENTARY INFORMATION:

- I. Executive Summary
 - A. Purpose of Regulatory Action
 - B. Summary of Regulatory Provisions
 - C. Costs and Benefits
- II. Background
 - A. Notice of Proposed Rulemaking
 - B. Gas Pipeline Advisory Committee
- III. Analysis of Comments and Proposed PHMSA Response

- IV. Standards Incorporated by Reference
- V. Regulatory Analysis and Notices
- VI. Section-By-Section Analysis
List of Subjects and Amendments to Part 192

I. Executive Summary*A. Purpose of Regulatory Action*

PHMSA is amending the Federal Pipeline Safety Regulations that govern the use of plastic piping systems in the transportation of natural and other gas. This final rule is comprised of amendments that will improve safety, allow for expanded use of plastic pipe products, and allow or require the use of certain materials and practices. The use and availability of plastic pipe have changed over the years with technological innovations in the products and best practices used in plastic pipe installations. Progress in the design and manufacture of plastic pipe and components has resulted in materials with higher strength characteristics. Manufacturers are instituting new practices related to traceability, and operators are incorporating these practices. Together, these measures have the potential to improve pipeline safety and integrity. The pipeline safety regulations have not stayed current with some of these developments. Many of PHMSA's stakeholders have petitioned PHMSA to codify measures from the progress the industry has made; these petitions are detailed below. This final rule amends the Federal Pipeline Safety Regulations (PSR) to incorporate these changes to enhance pipeline safety, respond to petitions for rulemaking, and accommodate innovations in plastic pipe materials and designs.

PHMSA received several petitions for rulemaking under 49 CFR 190.331 regarding plastic pipe. Copies of these petitions are available in the docket for this rulemaking (PHMSA–2014–0098) in addition to the dockets initially established for the petitions. The amendments in this rulemaking will address the following petitions:

- American Gas Association (AGA)—(Docket No. PHMSA 2010–0011)—Petition to increase design factor of PE pipe 0.32 to 0.4 and incorporate updated ASTM International (ASTM) D2513 (standard for polyethylene (PE) pipe and fittings).
- Evonik Industries (Evonik) and UBE Industries (UBE)—(Docket No. PHMSA 2010–0009)—Petition to allow use of Polyamide-12 (PA–12) pipe.
- Arkema—(Docket No. PHMSA 2013–0227)—Petition to allow use of Polyamide-11 (PA–11) pipe at higher pressures.
- Gas Piping Technology Committee (GPTC)—Petition to allow above-

ground, encased plastic pipe for regulator and metering stations.

Federal and State inspectors have noticed issues related to plastic pipe installation that should be addressed in the pipeline safety regulations. For example, the National Association of Pipeline Safety Representatives (NAPSR), an association of State pipeline safety regulators, petitioned PHMSA to establish permanency requirements for pipe markings in Resolution SR 2–01. Approved on September 27, 2001, Resolution SR2–01 encouraged PHMSA OPS to amend 49 CFR 192.63 “to require marking of all pipe, fittings, and components in such a manner that the markings last for a period of 50 years or the life of the pipe, fittings, and components.”

B. Summary of Regulatory Provisions

To address these issues and petitions, PHMSA is amending the PSR in 49 CFR part 192 to update the plastic pipe regulations. This rulemaking limits these changes to new, repaired, and replaced pipelines. The changes include increasing the design factor of PE pipe; increasing the maximum pressure and diameter for PA–11 pipe and components; allowing the use of PA–12 pipe and components; new standards for risers; more stringent standards for plastic fittings and joints; stronger mechanical fitting requirements; new and expanded standards for the installation of plastic pipe; the incorporation by reference of certain the qualification of procedures and personnel for joining plastic pipe; the installation of plastic pipe; new or updated consensus standards for pipe, fittings, and other components; the qualification of procedures and personnel for joining plastic pipe; the installation of plastic pipe; and a number of general provisions. These amendments are described in Part III of this document and in further detail in the Notice of Proposed Rulemaking (NPRM) published May 21, 2015. *See* 80 FR 29263.

C. Costs and Benefits

In accordance with 49 U.S.C. 60102, Executive Orders 12866 and 13563, and U.S. DOT policy, PHMSA has prepared an assessment of the benefits and costs of the rule as well as reasonable alternatives. PHMSA released the initial Regulatory Impact Analysis (RIA) concurrent with the NPRM for public review and comment. PHMSA developed the final RIA by incorporating further internal review and input from public comments. PHMSA has published the final RIA concurrent with this final rule, and it is

available in the docket. PHMSA quantified positive net benefits of \$32.7 million, mostly from cost savings due to the change in the PE design factor. Other changes enhance pipeline safety, expand flexibility in pipe material choice, and incorporate more modern technical consensus standards.

PHMSA quantified approximately \$391,000 in annualized safety benefits from the revisions to plastic pipe installation requirements. This estimate is based on the historical frequency and consequences of incidents on plastic pipe systems that could have been prevented by the changes in the final rule. PHMSA also determined unquantified safety benefits from enhanced standards for fittings and risers, prohibiting the permanent use of temporary leak repair clamps, and other general provisions. PHMSA estimated that the revised design factor for PE, relaxed restrictions on PA-11, incorporation of PA-12, and updated standards for all three materials would have negligible impacts on pipeline safety. Overall, the rule improves the safety of plastic pipe systems.

On the cost side, PHMSA quantified \$32 million in cost savings for the revision to the design factor of PE pipe from 0.32 to 0.40. The change in design factor leads to pipe material cost savings as it permits pipe to operate at higher pressures for a given pipe size and wall thickness. PHMSA also determined that the provisions for expanded use of PA-11 and incorporation of PA-12 materials would lead to unquantified cost savings to operators from greater flexibility in pipeline material choice. The other provisions have unquantified costs, however PHMSA expects these to be minimal as they generally incorporate existing industry best practices by incorporating by reference technical consensus standards.

II. Background

A. Notice of Proposed Rulemaking

On May 21, 2015, PHMSA published the Plastic Pipe NPRM and requested feedback and public comments on the proposed changes to the natural gas pipeline safety regulations in accordance with the Administrative Procedure Act, 5 U.S.C. 551 *et seq.* The comment period closed on July 31, 2015. These comments and all other related rulemaking materials are available in the electronic docket via www.regulations.gov under Docket ID PHMSA-2014-0098. In section III of this document, PHMSA has summarized the regulatory changes proposed in the NPRM and the public's comments regarding those changes. PHMSA has

included a detailed response to the public's feedback and comments.

B. Gas Pipeline Advisory Committee

Under 49 U.S.C. 60115, the Gas Pipeline Advisory Committee (GPAC) is a statutorily mandated advisory committee that advises PHMSA on proposed safety standards, risk assessments, and safety policies for natural gas pipelines. The Pipeline Advisory Committees were established under the Federal Advisory Committee Act, Public Law 92-463, 5 U.S.C. App. 1-16, and the Federal Pipeline Safety Statutes, 49 U.S.C. ch. 601. The GPAC consists of 15 members, with membership equally divided among Federal and State agencies, the regulated industry, and the public. The GPAC advises PHMSA on the technical feasibility, practicability, and cost-effectiveness of each proposed pipeline safety regulation.

On June 1-3, 2016, the GPAC met in Arlington County, VA. Seven members of the GPAC were in attendance: One representing government, three representing the public, and five representing industry. One member representing the public, one representing industry, and one representing government were absent; additionally, there were 3 vacancies for government representatives and one vacancy for a public representative. During the meeting, the GPAC considered the regulatory proposals of the NPRM, discussed the comments on the NPRM from the public and the pipeline industry, and recommended changes to the NPRM. The record of this meeting, including full transcripts, is filed under Docket Number PHMSA-2016-0032, available at both regulations.gov and on the PHMSA meeting page at <https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=113>.

The GPAC, in a unanimous vote, found the NPRM, as published in the **Federal Register**, and the Draft Regulatory Evaluation technically feasible, reasonable, cost-effective, and practicable provided PHMSA incorporated recommended amendments agreed upon by the committee. PHMSA staff has reviewed and incorporated the GPAC's recommendations into this final rule to the extent practicable. Part III of this document summarizes these discussions and recommendations in greater detail under the respective individual topics.

III. Analysis of Comments and PHMSA Response

In the NPRM published on May 21, 2015, PHMSA solicited public comment

on whether the potential amendments put forward in the NPRM would enhance the safety of plastic pipe in gas transmission, distribution, and gathering systems, and on the costs and benefits associated with these proposals. PHMSA received comments on the NPRM from 39 entities, including:

- Fifteen pipeline operators;
- Eight pipeline or manufacturer trade associations;
- Six manufacturers;
- Five private citizens;
- Three consultants;
- Two government entities, including an association of State pipeline regulators;
- One citizen group; and
- One pipeline services company.

The following subsections summarize PHMSA's proposals, each of the relevant issues raised by commenters concerning those proposals, and PHMSA's response to those comments. Comments and corresponding rulemaking materials received may be viewed at www.regulations.gov under docket ID PHMSA-2014-0098.

A. Tracking and Traceability

(1) PHMSA's Proposal

In the NPRM, PHMSA proposed to amend § 192.3 to define "traceability information" and "tracking information" and to amend §§ 192.321 and 192.375 to establish standards requiring operators to properly and consistently track and trace pipe and components within their system. The proposed tracking information included the location of each section of pipe, the individual who joined the pipe, and components within the pipeline. The proposed traceability information included the location of pipe and components; manufacturer; production; lot information; size; material; pressure rating; temperature rating; and as appropriate, other information such as type, grade, and model. PHMSA proposed to amend § 192.63 to require operators to adopt the tracking and traceability requirements in ASTM F2897-11a, "Standard Specification for Tracking and Traceability Encoding System of Natural Gas Distribution Components (Pipe, Tubing, Fittings, Valves, and Appurtenances)," issued in November 2011, (ASTM F2897-11a), and proposed that operators must record the tracking and traceability data and retain it for the life of the pipe.

(2) Comment Summary

PHMSA received comments supporting the proposed revisions from NAPS and Dr. Gene Palermo of Palermo Plastics Pipe (P3) Consulting

(Palermo). Palermo praised the tracking and traceability standards in ASTM F2897–11a and noted that it would bring American operators more in line with International Standards Organization (ISO) tracking and traceability standards. Though the American Public Gas Association (APGA) had specific concerns about technology and costs, it described the collection of tracking and traceability information as “a laudable goal” and further noted that “operators no doubt wish this capability existed when PHMSA issued advisory bulletins about brittle-like cracking problems with Century Pipe, DuPont Adyl A piping manufactured before 1973 and polyethylene gas pipe designated PE 3306.”

AGA, APGA, the Texas Pipeline Association (TPA), the Northeast Gas Association, National Grid, AGL Resources, Atmos Energy Corporation, CPs Energy, Questar Gas Company, National Fuel Gas Distribution Corporation, SoCal Gas and San Diego Gas and Electric (SDG&E), NiSource Incorporated, and Norton McMurray Manufacturing Company (NORMAC) submitted comments suggesting that the plastic pipe tracking and traceability provisions should be dropped entirely from the rulemaking. Many operators echoed AGAs concern that a tracking and traceability program would be economically significant, and that full consideration of the costs, benefits, and alternatives that program would slow the adoption and implementation of other portions of the rule.

Additionally, those commenters maintained that tracking and traceability requirements should be considered in a separate rulemaking for all material and system types, rather than piecemeal and only for plastic pipe in this rulemaking. The commenters suggested that consistent regulation of all system types would avoid regulatory uncertainty. AGA, APGA, National Fuel, NiSource, SoCal Gas and SDG&E, and Southwest Gas (SW Gas) all proposed convening a working group to discuss options for moving forward with a separate, comprehensive tracking and traceability rule. National Grid estimated a compliance cost of \$8.1 million a year for 14,968 plastic pipe miles, and SW Gas estimated \$10 million to \$20 million in startup costs and \$1 million to \$2 million in annual costs. APGA, the Plastics Pipe Institute (PPI), NORMAC, R.W. Lyall and Company (Lyall), Thomas M. Lael, National Fuel Gas, City Utilities, and TPA submitted comments, indicating that markings should only have to be permanent up to the time of installation.

Commenters argued that truly “permanent” markings are not currently technically feasible, stating that the information is only needed at the time of installation; after the information has been recorded into a recordkeeping system, the physical markings are no longer necessary. PPI notes that with current technology and practice, markings are designed to last only three years in an underground environment.

APGA commented that the proposal would be significantly burdensome to small public operators and that it would be reasonable to expect markings to remain intact 20 years after the pipe was made. Lyall requested clarification about what was expected by the term “permanent markings” and whether an operator’s records were sufficient to meet those requirements.

APGA suggested that if PHMSA did move forward with a tracking and traceability program, it should only collect the data required by the six fields prescribed under ASTM F2897–11a: Component manufacturer, manufacturer’s lot code, production date, material, type and size. Both Lyall and Continental Industries concurred. PPI noted that deviating from ASTM F2897–11a would require manufacturers to revamp their marking systems away from the standard and would potentially require new barcoding systems. SW Gas suggested that a tracking and traceability working group could potentially revise ASTM F2897 to incorporate any additionally-needed data fields in the future.

AGA, Northeast Gas Association (NGA), National Fuel Gas Distribution Corporation (NFGDC), PPI, Lyall, and City Utilities recommended that, regardless of the specific tracking and traceability provision in the final rule, PHMSA should use a “phased-in” approach for implementation. City Utilities commented that it was not opposed to the recordkeeping of material data but requested an extended timeframe to create an implementation plan that considered budget costs. Commenters suggested three to five-year phase-in periods for tracking and traceability recordkeeping requirements.

The GPAC discussed this topic at length and ultimately recommended that PHMSA phase-in the tracking and traceability provisions by establishing a compliance deadline of one year for ASTM F2897–11a-compliant markings and a deadline of five years for recordkeeping requirements. The GPAC further recommended that PHMSA limit the marking and traceability requirements to the categories in ASTM F2897–11a and revise the permanent marking standard to a requirement that

markings on plastic pipe and components be legible at the time of installation.

(3) PHMSA Response

In response to comments on the tracking and traceability recordkeeping requirements proposed for §§ 192.63, 192.321(j) and 192.375(c), PHMSA is delaying final action on these proposals until a later date. PHMSA expects to consider all the comments and the recommendations of the GPAC related to tracking and traceability recordkeeping after further evaluation of the costs and benefits of this issue. These issues may be revisited in either a subsequent final action or a new rulemaking project.

Plastic pipe must still be marked with the 16-character ASTM F2897–11a markings, which are included in the 2012 editions of the material standards for PE and PA–12 pipe. Incorporating the 2012 editions of the material standards help narrow the gap between the regulations and the latest consensus standards, and adopting the 16-character ASTM F2897–11a markings within those materials standards will help to phase in standardization to how component attributes are marked and eventually captured in asset management systems. The final rule does not include most of the additional marking performance regulations previously proposed in § 192.63(e), such as permanence requirements and instead defers to the language in the material standards. PHMSA notes that some of the standards incorporated by reference in this final rule contain their own durability requirements which also vary on whether the marking is on pipe, fitting or another component. For example, section 7 for respective material specific standards (*i.e.* ASTM D2513–12ae1 for PE, ASTM F2785–12 for PA–12 and ASTM F2945–12a for PA–11) states that for pipe all required markings shall be legible, visible, and permanent. The standards go on to say to ensure permanence, markings shall be applied so it can only be removed by physically removing part of the pipe wall, shall not reduce the wall thickness to less than the minimum value of the pipe, not have any effect on the long-term strength of the pipe, and not provide leakage channels when elastomeric gasket compression fittings are used to make joints. The marking section for fittings on the other hand does not have such explicit requirements on durability or mention permanence. The standard for plastic valves, ASME B16.40–2008, states that only certain markings on valves must be

permanently affixed, while others can be made by any means.

PHMSA is including language in § 192.63(e) that markings must be legible until time of installation based on public comments and GPAC recommendations. The language is intended to provide clarity given the confusion with how the marking portions of the material specific standards (such as ASTM D2513–12ae1 for PE, ASTM F2785–12 for PA–12 and ASTM F2945–12a for PA–11) are written and what the ultimate requirements are. For example, it is not entirely clear in section 7.1 of ASTM D2513–12ae1, “Standard Specification for Polyethylene (PE) Gas Pressure Pipe, Tubing, and Fittings,” issued on April 1, 2012, (ASTM D2513–12ae1), whether all required markings (including the 16-character ASTM F2897–11a markings in section 7.6) be “legible, visible, and permanent” per the standards or if the permanence requirements only apply to the more conventional print line information in place prior to the 2012 version and the 16-character marking is an additional requirement with different durability requirements. While manufacturers also commented that it was not feasible to make ASTM D2897 markings permanent and readable for several years after installation without additional costs, it is certainly feasible to print markings legible until the time of installation. This new regulatory language addresses issues raised in public comments and by the GPAC concerning confirming the durability of markings, and help ease any potential regulatory burdens as a result of confusion with permanency and durability requirements. Furthermore, PHMSA is still including a one-year implementation period based on public comments and GPAC recommendations to allow manufacturers additional time to incorporate the new requirements, particularly for the 16-character marking. PHMSA understands many manufacturers are already implementing the 16-character marking but some have not yet, with many manufacturers on both sides waiting to get clarity of expectations on durability.

In the interim, PHMSA expects all distribution operators to already be collecting some form of tracking and traceability information, since the Distribution Integrity Management Program (DIMP) regulations in § 192.1007(a)(5) require that operators capture and retain data on the location where new pipeline is installed and the material of which it is constructed.

B. Design Factor for PE

(1) PHMSA’s Proposal

PHMSA proposed to amend the design pressure equation in § 192.121 to increase the design factor (DF) for PE pipe from 0.32 to 0.40.

The design pressure for PE pipe and other thermoplastics are based first on a Hydrostatic Design Basis (HDB) rating, which refers to the categorized long term hydrostatic strength for a given material. The HDB value is sometimes also considered a measure of the ultimate long term strength of the material. Industries then apply an additional design factor multiplier to the HDB rating to account for potential long term effects based on engineering considerations of how the HDB of the material was derived in conjunction with the behavioral properties of the material, and the specific product they are transporting. The allowable design pressure for plastic in § 192.121 is based on a number of factors, including the HDB rating, wall thickness and diameter or standard dimension ratio (SDR), and design factor. An increase in design factor allows for the use of slightly thinner wall to achieve the same design pressure.

To illustrate how the design factor affects the design of plastic pipe, examples using the design pressure calculation are shown below. The design pressure formula in § 192.121 is expressed in one of two ways:

$$P = 2 \times S \times (t/(D - t)) \times DF$$

or

$$P = 2 \times (S/(SDR - 1)) \times DF$$

Where S = the HDB rating; t = specified minimum wall thickness; D = specified outside diameter; DF is the design factor; and SDR the standard dimension ratio (ratio of average specified outside diameter to minimum specified wall thickness.)

A common pipe material is PE4710 which has an HDB rating of 1600 at 73 °F. A common pipe size is 4-inch PE SDR 11 which has an average specified outside diameter of 4.5 inches and specified minimum wall thickness of 0.409 inches. If these values are applied to the first equation above, the design pressure would be:

$$P = 2 \times 1600 \times (0.409/(4.5 - 0.409)) \times 0.32 = 102.4$$

Applying them to the second equation above, design pressure would be:

$$P = 2 \times (1600/(11 - 1)) \times 0.32 = 102.4 \text{ psi}$$

If the design factor is changed from 0.32 to 0.40, it also changes the result of the calculation in the design pressure formula. If an operator wants to maintain an operating pressure of

around 102.4 psi with the new design factor, they could do so using a slightly thinner wall pipe of SDR 13.5, or minimum specific wall of 0.333 inches. The formulas below illustrate how the new design factor allows an operator to use the same design pressure with thinner wall pipe.

$$P = 2 \times 1600 \times (0.333/(4.5 - 0.333)) \times 0.4 = 102.3 \text{ psi}$$

or

$$P = 2 \times (1600/(13.5 - 1)) \times 0.4 = 102.4 \text{ psi}$$

Alternatively, an increase of design factor with use of slightly thinner wall pipe allows an operator to increase throughput and design pressure if all other variables remain the same, as long as the design pressure doesn’t exceed the limitations called out in the regulations (such as 125 psi and minimum wall thickness.)

The current design factors for thermoplastic pipe were established decades ago based on general experience with materials at the time and attempts at standardization. As an example, water used a 0.5 design factor for decades. For gas pipe, additional safety factors (sometimes also called strength reduction or derating factors) were applied to the water DF: an additional 0.8 multiplier covers long term effects from constituents in fuel gas, and another 0.8 multiplier compensates for use at increased temperatures above 73 °F. If those two multipliers are applied on top of 0.5 DF for water (or $0.5 \times 0.8 \times 0.8$) the resulting DF is 0.32 for gas.

On August 14, 2009, PHMSA received a petition from AGA to allow for a 0.40 design factor for PE pipe based on research and technical justifications performed by the Gas Technology Institute (GTI; July 16, 2007) and to include certain limitations by type of material and wall thickness.¹ A primary justification for considering raising the design factor is consideration of newer, better performing materials of today and changes in other industries like water, but still applying the same safety factors in place for gas. The water industry has changed their safety factor from 0.5 to 0.63 in standards such as ANSI/AWWA C901–08, Polyethylene (PE) Pressure Pipe and Tubing, ½ in. (13 mm) through 3 in. (76mm), for Water Service (October 1, 2008.) The 2017 edition of PPI TR–4 allows a design factor of 0.63 for plastic water pipe made of certain PE 4710 materials. Applying the same two derating factor multipliers for gas to the newer DF for water (or $0.63 \times 0.8 \times 0.8$) results in a DF of 0.4 for gas. There are

¹ Docket No. PHMSA–2011–0011, August 14, 2009.

additional safety measures applied if operators want to use the 0.4 DF, including the use of newer materials in place today, the application of a minimum wall thicknesses by pipe size, and a maximum pressure of 125psi.

Since design pressure for plastic pipe is based on a number of variables, including design factor and wall thickness, an increase in design factor would allow for the use of PE pipe with thinner pipe walls manufactured in accordance with ASTM D2513–12ae1 as long as it doesn't go below the minimum wall thickness for a specific pipe size.

(2) Summary of Comments

The majority of commenters, including AGA, APGA, PPI, NGA, NAPSR, NFGDC, TPA, Palermo, and SW Gas, supported this proposal, with several suggesting that a higher design factor would incentivize the use of plastic pipe and provide safety and economic benefits due to its low cost and resistance to traditional corrosion risks. Palermo supported the design factor increase to 0.40 and noted the safe operating history of PE pipe operated to that specification in Canada. Palermo further noted that increasing the design factor would make the material more attractive for operators which it claims would have positive impacts on pipeline safety, stating that going to a 0.4 design factor encourages distribution operators to "extend the use of plastic pipe systems and displace the lower safety related performance of metal pipe with the higher safety related performance of plastic piping system." Palermo noted specifically that plastic pipe systems do not face corrosion risks like metallic pipe systems do.

AGA, PPI, NGA, Evonik Industries, and the MidAmerican Energy Company (MidAmerican) supported the proposal in general but were opposed to restricting the diameter of PE pipe beyond the limitations in ASTM D2513–14e1. The commenters suggested permitting pipe up to 24 inches as provided in the standard. Evonik Industries, a plastic pipe manufacturer and one of the original petitioners, also requested that PHMSA expand the PE, PA–11 and PA–12 minimum wall thickness tables in § 192.121 to include pipe sizes less-than-or-equal-to one-inch Iron Pipe Size (IPS).² MidAmerican further requested the inclusion of one-inch Copper Tubing Size (CTS) (another size standard) as a pipe size.

AGA and TPA requested that the proposal for an increased design factor

for PE pipe should be applied retroactively to existing pipe made of PE2708 and PE4710. ASTM introduced those compounds in 2008 in ASTM D2513–08b "Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing, and Fittings."

The Iowa Utilities Board (IAUB) stated that the wall-thickness tables in the rule should use Standard Dimension Ratio (SDR) rather than Dimension Ratio (DR) in the column heading to be consistent with the design formula for plastic pipe in § 192.121. Additionally, for ease of use, IAUB recommended including a header on the PE and PA tables in § 192.121 indicating to what materials they apply.

DTE Energy (DTE) opposed the proposed 0.090-inch minimum wall thickness for plastic pipe and suggested that PHMSA should retain the current 0.062-inch minimum for PE pipe that they have used in Michigan since 1967. DTE further commented that operators should be allowed to apply the design formula in § 192.121(a), based on the intended use and operating pressure of the pipe, to dictate the minimum required wall thickness.

The PVC Pipe Association, a trade group representing PVC pipe manufacturers, submitted comments broadly opposing PHMSA's proposal to modify the allowed design factor of PE Pipe. The Association opposed the less-conservative design factor of 0.40 until operators could gain more field experience with PE pipe operating at the higher factor. In supporting documentation, the PVC Pipe Association hypothesizes that certain high-density polyethylene (HDPE) pipe grade compounds can be susceptible to microscopic crack propagation in high-pressure water service, though it acknowledged that newer compounds may be more crack-resistant.

The GPAC recommended minor changes to the minimum wall thickness tables to add additional items, and that PHMSA research the procedural possibility of incorporating the more recent ASTM D2513–14e1, which allows PE pipe with a larger maximum diameter. The Committee further requested that PHMSA research the possibility of applying the new design factor retroactively to existing pipe with the same material characteristics specified in the rule. Members of the Committee and representatives of PPI and AGA commented that, except for the diameters allowed currently, ASTM D2513–12ae1 is not significantly different from either the editions issued before or after it. Therefore, allowing previously installed pipe to operate at the increased design factor or allowing

the higher diameters permitted in the 2014 standard should be acceptable.

(3) PHMSA Response

In consideration of the comments, PHMSA is revising the final rule to include pipe sizes smaller than one-inch IPS and certain one-inch CTS pipe sizes on the tables for each of the materials modified in the final rule. Specifically, in this final rule, PHMSA has revised the proposed PE wall thickness and the SDR table in § 192.121(c)(iv) for clarity and to include 1/2' and 3/4' IPS and CTS sizes. The omission of these smaller-diameter specifications was an oversight; PHMSA did not intend to restrict the use of small-diameter plastic pipe. PHMSA will also revise the PE, PA–11, and PA–12 tables per the recommendations of the IUB for consistency and ease of use.

In response to comments from DTE, PHMSA notes that the 0.090-inch minimum wall thickness applies to pipes operating at the new 0.40 design factor. At 0.32, operators may still use the design formula in § 192.121 in accordance with the applicable standard. PHMSA is not lowering the minimum wall thickness for 0.40 design factor pipe, as the more conservative wall thickness is necessary to mitigate sidewall fusion and tapping risks, among others, that exist at the higher design factor.

PHMSA notes that while AGA and TPA are correct in their assessment that the design requirements for PE2708 and PE4710 pipe under ASTM D2513–08b are the same as the newly incorporated ASTM D2513–12ae1 edition, this subpart is non-retroactive, therefore, the previous maximum design factor would still apply to existing pipelines.

PHMSA disagrees with comments from the PVC Pipe Association; the supporting data provided in the AGA petition provides proper safety justification for the revised maximum design factor. As described further in the petition, a battery of tests was performed on pipe to evaluate the combined influence of increased internal pressures and other add-on stresses including effects of squeeze-off, rock impingement, surface scratches, earth loading, and bending stresses on the pipe wall. Various types of joints (butt heat fusion, saddle fusion, electrofusion and mechanical joining) were also subjected to long term sustained pressure testing at elevated temperatures. No failures were observed. Both the petition and the final rule do provide minimum wall thickness requirements for an added safety measure. The Vinyl Institute's comments studying the history of legacy

² Iron pipe size (IPS) is a pipe size standard still used for polymer pipe.

plastic pipe materials in high-pressure water service is not directly applicable to evaluating the operation of modern PE compounds in gas service.

PHMSA has considered, as requested by the GPAC, the possibility of incorporating a more recent edition of ASTM D2513 and permitting retroactive applicability of the 0.40 design factor. PHMSA is not in the position to adopt the more recent ASTM D2513-14e1, which includes the increased maximum diameter, since this is beyond the scope of the NPRM and PHMSA has not solicited comment on such a proposal. PHMSA will evaluate the new standard and diameter revision for inclusion in future rulemakings.

C. Expanded use of PA-11 Pipe

(1) PHMSA's Proposal

In the NPRM, PHMSA proposed to amend part 192 to allow pipelines made of certain modern PA-11 compounds to operate at pressures up to 250 pounds per square inch gauge (psig) and permit installation of PA-11 pipe with a diameter up to six inches. This would expand the allowable uses of PA-11 from the current regulations which restrict the use of PA-11 pipe to pressures up to 200 psig and nominal pipe sizes of 4 inches or less.

Arkema, the plastics manufacturer that petitioned for this change, cited the growing history of safe operation of PA-11 pipe since 1999 either under special permit or the current restrictions. PHMSA is also permitting arithmetic interpolation of the allowable pressure equation for PA-11. This would allow consistency with how hydrostatic design basis (HDB)³ is already determined for other thermoplastic pipe materials in § 192.121.

Finally, PHMSA proposed incorporating two PA-11 specific standards by reference. Currently, plastic pipe and fittings made of PA-11 must be manufactured in accordance with the much older editions of ASTM D2513 (1987 and 1999) that are referenced for thermoplastic materials other than PE. Adopting ASTM F2945-12a incorporates over a decade of PA-11 material and design advancements. The standard includes requirements for material composition, design, manufacturing tolerances, strength, crack resistance, and quality control for PA-11 pipe and fittings.

The final rule also incorporates ASTM F2600-09 as a listed specification for electrofusion fittings on PA-11 pipe. An electrofusion fitting is one with a built-in electric heating element. Passing a

current through the fitting bonds the pipe. With new material specific standards being added for PA-11 and other standards being added for components in this rule, there is a need to add F2600-09 for Electrofusion PA-11 fittings, similar to how ASTM F1055 is currently referenced for PE Electrofusion Fittings. Like the PE standard, ASTM F2600-09 sets material and performance requirements for PA-11 electrofusion fittings. In order to meet this standard, a manufacturer must demonstrate test a specimen for minimum hydraulic burst pressure, sustained pressure, tensile strength, impact resistance, and joint integrity.

(2) Summary of Comments

Nearly all commenters supported this proposal, including AGA, APGA, PPI, NGA, TPA, TPA, NAPS, Palermo, and Arkema. Arkema highlighted the operating history of PA-11 pipe in offshore oil and gas use and in gas systems in Australia.

A number of commenters requested additional entries on the minimum wall thickness table for PA-11. AGA, NGA, and Arkema proposed including 3/4-inch pipe, and MidAmerican requested the inclusion of one-inch CTS sized pipe in the PE, PA-11, and PA-12 tables. IAUB noted that the rule references CTS pipe, but it is not present on the table.

The Board further stated that CTS values should be included in the minimum wall-thickness table; if not, then references to CTS should be removed from the final rule. The GPAC voted unanimously for these additions to be added to the minimum wall-thickness table.

Palermo and Volgstadt and Associates recommended allowing the use of PA32312 at higher pressures in addition to PA32316 under PA-11. Volgstadt and Associates further noted that since the HDB of PA-11 is 180 °F in PPI TR4, § 192.121 should be revised to allow the installation of pipe using the higher temperature rating. Volgstadt noted that PA32312 could then be safely used in lower-pressure applications where temperatures higher than 140 °F are expected.

(3) PHMSA Response

As noted in the previous discussion on the new design factor for PE Pipe, PHMSA agrees with commenters to revise the tables to include additional sizes, including IPS smaller than one-inch diameter and one-inch CTS. Specifically, PHMSA amended the table in the proposed § 192.121 (d)(2)(iv) to add 1/2' and 3/4' IPS and CTS sizes, which match those in the standard and those listed for PE pipe. PHMSA is not

including an HDB rating at 180 °F, as not all compounds are rated at that temperature, and inclusion could wrongly imply that operators are permitted to operate any plastic pipe at that temperature. Operators may still interpolate the design formula down from 180 °F. PHMSA is not allowing the use of PA32312 at the higher pressures permitted for PA32316. As explained in the NPRM, PHMSA found it appropriate that operators use PA32316 for such higher-pressure applications due to material characteristics, more specifically, an HDB rating of 3150 psi at 73 °F that can result in a design pressure of 250 psi using SDR 11 and 0.4 DF. The PA32312 material HDB rating of 2500 psi would correlate to a design pressure of 200 psi using the same SDR and DF. Operators may install and use PA32312, but not at the higher pressures permitted for PA32316.

D. Incorporation of PA-12

(1) PHMSA's Proposal

In the NPRM, PHMSA proposed to amend § 192.121 to allow the use of PA-12 pipe in response to a petition for rulemaking from Evonik and UBE (Docket No. PHMSA-2010-0009) at pressures up to 250 psig and for pipe sizes up to 6 inches in diameter, subject to wall thickness limitations described in the petition. These restrictions are consistent with the proposed requirements for PA-11, another polyamide material. The petitioners stated that material testing and experience in pipeline service under special permit have "amply validated" the strength and durability of PA-12 against known threats and failure mechanisms.

PHMSA also proposed to incorporate by reference a number of standards applicable to PA-12 pipe. PA-12 pipe and fittings used under part 192 must be manufactured in accordance with ASTM F2785-12, "Standard Specification for Polyamide 12 Gas Pressure Pipe, Tubing, and Fittings." The standard defines: Material properties; manufacturing tolerances; test methods and requirements, marking requirements; and minimum quality control program requirements.

Manufacturers must comply with these requirements in order to sell pipe as ASTM F2785-12 compliant.

ASTM F2767-12 establishes specifications for electrofusion fittings on PA12 systems. An electrofusion fitting is one with a built-in electric heating element. Passing a current through the fitting bonds the pipe. With new material specific standards being added for PA-12 and other standards

³ The HDB is a reflection of a plastic pipe's ability to resist internal pressure over long periods of time.

being added for components in this rule, there is a need to add F2767 for Electrofusion PA-12 fittings, similar to how ASTM F1055 is currently referenced for PE Electrofusion Fittings.

(2) Summary of Comments

NAPSR, AGA, APGA, Evonik, NGA, PPI, TPA, and Palermo all expressed support for the proposal. Palermo commented that “PA-12 is very similar to PA-11 and both materials are being used very successfully for gas operations internationally.” Palermo further noted that the material has been successful in limited trial use in oil and gas operations in the United States. A number of commenters requested the addition of sizes smaller than one-inch IPS and one-inch CTS for PA-12 similar to those requests made for PE and PA-11.

Evonik commented that the language in the preamble of Section D references to “allow a minimum wall thickness of at least 0.90 inches.” The commenter stated that this is a typographical error. A value of 0.090 inches would be consistent with the original petition and the proposed wall thickness tables in § 192.121 for all of the proposed materials. Correcting this error would significantly reduce the required wall thickness for PA-12 pipe. Continental Industries recommended that the material designation code “PA 42316” be included in the PA-12 design requirements in § 192.121(e). The GPAC concurred with this comment.

(3) PHMSA Response

As for PA-11 and PE, PHMSA agrees with the commenters and has revised § 192.121(e)(4) in the final rule to clarify the table by adding ½' and ¾' IPS and CTS sizes. In response to comments from Evonik Industries and Continental Industries regarding the typographical error, PHMSA has corrected the minimum wall thickness to 0.090 inches, to conform to the initial petition and includes the material designation code in § 192.121(e).

E. Risers

(1) PHMSA's Proposal

In the NPRM, PHMSA proposed to add a new § 192.204 to part 192, to establish specific requirements for the design and construction of risers for plastic pipe. PHMSA also proposed to incorporate by reference ASTM F1973, “Standard Specification for Factory Assembled Anodeless Risers and Transition Fittings in Polyethylene (PE) and Polyamide 11 (PA11) and Polyamide 12 (PA12) Fuel Gas Distribution Systems” ASTM F1973,

which prescribes design requirements for factory-assembled anodeless risers.⁴ This specification covers requirements and test methods for the qualification of factory assembled anodeless risers and transition fittings for use in PE pipe sizes through Nominal Pipe Size (NPS) 8, and for PA-11 and PA-12 sizes through NPS 6. No version of this standard is currently in the CFR. The final rule uses this standard to establish the specifications for the design and specimen testing of factory assembled anodeless risers. The standard also provides a definition for Category 1 fittings on plastic pipe. This item will be added as a Listed Specification in Appendix B to Part 192-Qualification of Pipe and Components.

(2) Summary of Comments

AGA, APGA, NAPSR, NGA and P3 Consulting supported GPTC's petition to allow the use of anodeless plastic risers above ground to meter and regulator stations. A number of commenters opposed the structural support requirements for risers in the NPRM as being too prescriptive. Specifically, those commenters opposed the requirement for a three-foot horizontal base leg on risers. AGA, PPI, NGA, TPA, NORMAC, Lyall, Volgstadt and Associates, and Avista Utilities all suggested either deleting the requirement altogether or applying some type of performance standard. AGA, PPI, TPA, NORMAC, and Lyall & Co. proposed language requiring operators to ensure that risers do not bear external loads and are secured against lateral movement. Volgstadt and DTE supported deleting all references to the horizontal base leg. Other commenters supported performance standards in general. The GPAC unanimously voted to recommend removing the requirement for a three-foot horizontal base leg.

A number of commenters representing manufacturers and third party consultants expressed concerns that the exclusive reference to ASTM F1973, which exclusively applies to factory-assembled risers, would effectively prohibit the use of field-assembled risers that are constructed in accordance with ASTM F2509, “Standard Specification for Field-assembled Anodeless Riser Kits for Use on Outside Diameter Controlled Polyethylene and Polyamide-11 (PA11) Gas Distribution Pipe and Tubing” (ASTM F2509). PPI, Lyall, Volgstadt, and Continental Industries therefore recommended incorporating ASTM F2509 into the

⁴ An anodeless riser is metal-encased plastic pipe carrying gas to a gas meter.

final rule. NORMAC also recommended incorporating ASTM F1948-15, “Standard Specification for Metallic Mechanical Fittings for Use on Outside Diameter Controlled Thermoplastic Gas Distribution Pipe and Tubing” (ASTM F1948-15) since, as in many cases, ASTM F2509 riser fittings may have identical requirements to standard fittings under ASTM F1948-15. The IAUB, the Gas Processors Association (GPA), and TPA commented that, as written, the proposed revision could be interpreted to require that all risers be plastic anodeless risers. These commenters suggested the NPRM should either address other types of risers or the title of the section should be written as to explicitly only apply to anodeless risers.

AGA noted that this requirement should not be applicable to risers installed before the effective date.

IAUB requested clarification on whether anodeless risers will be allowed on structures other than metering and regulating stations, such as pressure recording stations or other installations. IAUB further commented that this scenario might be addressed if the riser is considered a main. NORMAC recommended deleting § 192.204(b), arguing that it is duplicative of the proposed § 192.281(e)(4). If not, it suggested ASTM F2509 be incorporated to allow for field-assembled risers.

NiSource commented that the use of the word “rigid” in § 192.204 is unclear and that, specifically, “rigid” typically refers to an “anodeless riser rigid riser casing” as defined in ASTM F1973. The company argued that if this was PHMSA's intent, then § 192.204(c) should be revised to require anodeless risers to have a rigid riser casing. Additionally, NiSource suggested PHMSA revise § 192.375(a)(2) to permit the use of anodeless flex riser casings.

The GPAC voted unanimously to incorporate this provision if the requirement for a three-foot base leg is removed and PHMSA clarifies that the standards do not apply retroactively.

(3) PHMSA Response

PHMSA concurs with the comments and GPAC recommendations requesting the removal of the requirement for a three-foot horizontal base leg in § 192.204(c) and has therefore removed this requirement from § 192.204(c). PHMSA is retaining, however, the requirement that risers be rigid. As noted by one commenter, PHMSA's intent is to require a rigid riser casing for anodeless risers used to attach plastic mains to regulator stations, and so paragraph (c) has been revised to

reflect that intent. PHMSA subject matter experts believe that risers to regulator and metering stations must be rigid and secure to ensure safety, noting that unsecured risers are already prohibited per § 192.321. Finally, these requirements are not retroactive and the final rule has been revised to make that clear.

PHMSA has also resolved a number of other issues regarding anodeless risers. The intent of the proposed revision is neither to prohibit field-assembled risers nor to imply that all risers must be anodeless risers. Therefore, in this final rule, PHMSA has revised § 192.204(b) to specify that it applies only to factory assembled anodeless risers. For reasons described in the incorporation by reference portion of the final rule, PHMSA has not added a field-assembled riser standard in this final rule. Operators may still install field-assembled anodeless risers, but PHMSA will consider incorporating relevant standards in future rulemaking efforts. Regardless of riser type, § 192.204(a) still applies.

In response to the IAUB, the revised amendments permit anodeless risers for use outside of metering and regulating stations provided they meet the minimum general requirements of § 192.204(a) and (b). In response to NORMAC, the riser design requirements in § 192.204(b) are broader than the joint standards specified in § 192.281(e)(4).

F. Fittings

(1) PHMSA's Proposal

In the NPRM, PHMSA proposed to amend § 192.281(e) to require operators to use only mechanical fittings or joints that are designed and tested to provide a "seal plus resistance" to lateral forces so that a large force on the connection would cause the pipe to yield before the joint does. PHMSA proposed that such joints, fittings, and connections must meet the requirements of a "Category 1" joint as defined in ASTM F1924-12, "Standard Specification for Plastic Mechanical Fittings for Use on Outside Diameter Controlled Polyethylene Gas Distribution Pipe and Tubing" (ASTM F1924-12), ASTM F1948-12, ASTM F1973-13, or ASTM D2513-12ae1 as appropriate.

PHMSA also proposed adding a new paragraph (g) to § 192.455 to clarify that operators must cathodically protect and monitor electrically isolated metal alloy fittings in plastic pipelines that do not meet any of the exemptions in paragraph (f) of that section. Applying cathodic protection to metal fittings on plastic pipe systems helps to control corrosion on those components and

therefore reduces the risk of incidents caused by corrosion.

(2) Summary of Comments

NAPSR and Palermo approved of the revisions proposed for this section. Palermo noted that there is "no reason for a gas operator to use anything but a Category 1 mechanical fitting." APGA submitted comments supportive of the requirements to use specified fittings and the cathodic protection requirements, further noting that, "in fact, some fitting manufacturers ship their fittings already pre-coated, with a sacrificial anode attached." On the other hand, though APGA submitted comments supporting cathodic protection requirements in general, it opposed the cathodic protection monitoring requirements for isolated metal fittings. APGA noted that it would require a test station for each fitting, and operators would incur significant costs. APGA further stated that isolated metal fittings do not face the same corrosion risks since they are isolated by the plastic pipe and don't have significant variances in soil conditions that a long metal pipe system does, therefore burdensome monitoring requirements are often not justified.

TPA, GPA, Norton McMurray, Continental Industries, and GE Dresser Pipeline Solutions (GE) submitted comments encouraging the installation of Category 1 fittings but noted that they are not available in the large diameters frequently found in transmission line service.

TPA and GPA suggested revising the requirement to use Category 1 joints to distribution lines only. Norton McMurray and Continental Industries commented that the justification for requiring Category 1 fittings on higher-diameter lines is unsupported and that Category 2 and 3 joints under ASTM D2513, F1924, F1948, or F1973 should be permitted.

AGA, NGA, and TPA argued that the requirement for Category 1 fittings and cathodic protection should only be for newly installed fittings or those uncovered during maintenance. All three commented that a search and replace program would be very costly, with little corresponding safety benefit.

AGA and NFGDC recommended revising § 192.455 to require monitoring every 10 years rather than the proposed requirement to survey 10 percent of the system each year.

After a lengthy discussion, the GPAC recommended replacing the cathodic protection monitoring requirement for certain electrically isolated metal fittings. Instead, the committee recommended that PHMSA mandate a

maintenance requirement consistent with operators' integrity management plans. This means that instead of imposing explicit prescriptive monitoring requirements, PHMSA would expect operators to maintain electrically isolated fittings based upon the on a risk posed by the fitting.

(3) PHMSA Response

In this final rule, PHMSA amends the PSR to require Category 1 joints on all regulated plastic gas pipelines as originally proposed. PHMSA and State inspectors, and the incident history described in PHMSA Advisory Bulletin ADB-08-02, issued in March 2008, titled "Pipeline Safety: Issues Related to Mechanical Couplings Used in Natural Gas Distribution Systems" have shown that inadequate joints are a safety risk on plastic pipelines. Requiring the use of Category 1 joints significantly reduces the risk of mechanical joints or fittings loosening over time or getting pulled out. Large-diameter lines are not exempt from this requirement. The fact that Category 1 mechanical joints are not available is not sufficient justification to use weaker Category 2 or 3 mechanical joints since other effective joining methods that don't require mechanical fittings are available, such as heat fusion.

PHMSA acknowledges that there may be issues with only mentioning the three specifications in § 192.281(e)(4), specifically ASTM F1924-12, ASTM F1948-12, or ASTM F1973-13. There are other fittings standards also included in this rule and listed in § 192.7 and Appendix B that would be applicable for other material types. For example, ASTM F2145 "Standard Specification for Polyamide 11 (PA 11) and Polyamide 12 (PA12) Mechanical Fittings for Use on Outside Diameter Controlled Polyamide 11 and Polyamide 12 Pipe and Tubing" is applicable for PA-11 and PA-12 mechanical fittings. Rather than adding more standards into the regulatory language § 192.281(e)(4) and potentially missing others, PHMSA is instead revising the language in the final rule to say ". . . must be Category 1 as defined by a listed specification for the applicable material . . ." PHMSA has also clarified the final rule to state explicitly that this provision does not apply retroactively. While all new fittings must be cathodically protected, and meet Category 1 requirements, operators do not have to search for and remove existing mechanical fittings that are non-compliant with the new requirements. Therefore, PHMSA has amended §§ 192.281(e) and 192.367 to state in the headings for those sections that they only apply to plastic pipe

fittings installed after the effective date of the rule. This change should alleviate any concerns raised in comments related to the cost and complexity of replacing or cathodically protecting existing fittings.

In response to comments and the recommendations of the GPAC, PHMSA is revising the cathodic protection requirements to reference paragraph § 192.455(g) in paragraph (a) of the same section and is modifying the monitoring requirement in § 192.455(g). PHMSA amended the proposed § 192.455(g) to require that all newly installed electrically isolated metal fittings be cathodically protected, and maintained in accordance with the operator's integrity management plan, rather than comply with a prescriptive monitoring requirement. PHMSA notes that the existing § 192.455(a)(2) still applies unless an isolated metal fitting meets any of the conditions in paragraphs (b), (c), or (f) of that section.

G. Plastic Pipe Installation

The NPRM proposed several revisions to part 192 regarding the installation of plastic pipe. A summary of each of these topics is presented below along with a summary of public comments and PHMSA's response.

(1) Installation by Trenchless Excavation

(a) PHMSA's Proposal

The NPRM proposed adding new §§ 192.329 and 192.376 to the PSR to include new minimum requirements for trenchless excavation. PHMSA and the States are aware of a number of incidents related to cross-boring, where plastic pipe installed via trenchless excavation has come in contact with or been installed right through another underground utility, such as a sewer line. These conflicts can damage both the pipeline and the other underground structure. PHMSA therefore proposed that operators must ensure that the excavation path for installation and maintenance activities will provide sufficient clearance from other underground utilities and structures. Additionally, PHMSA proposed that operators be required to use a "weak link" device for plastic pipe through the ground during installation to prevent unnecessary, excessive stresses on the pipeline.

(b) Summary of Comments

Nearly all commenters broadly supported the proposed revisions to the trenchless excavation requirements. DTE and PPI supported the proposal, as did NAPS, AGA, APGA, TPA, Avista Utilities, and SW Gas with reservations

about specific provisions or with suggestions for modifications. Avista recommended "a Weak Link to be used on trenchless installations on mains and services" though it suggested that the type of weak link would be up to the discretion of the operator to define based on sound engineering practices. Like other commenters, Avista specifically referenced using a segment of smaller diameter pipe as a weak link method. PPI supported PHMSA's requirement for a weak link and noted that "a properly selected breakaway swivel provides added assurance against damaged pipe and is good engineering practice." NAPS recommended requiring operators to pull through an additional 10 feet beyond the exit of the ground during trenchless excavation. If that segment of pipe shows any damage exceeding 10 percent of wall thickness, NAPS suggested that the operator should be required to replace the installed segment. Additionally, NAPS recommended requiring the use of a tracer wire, though it may be installed on an existing steel pipe if its use on the plastic pipe is not feasible.

A member of the public associated with trenchless technology associations suggested alternative language in the trenchless excavation requirements at § 192.329 to require positive identification of other underground structures prior to trenchless installation. Specifically, he suggested requiring operators to ensure that the excavation path "has provided" sufficient clearance rather than "will provide." He noted that modern best practices and technologies, such as closed-circuit television (CCTV) and robotic CCTV could assure positive identification of other underground infrastructure.

AGA, APGA, TPA, PPI, GPA, Avista, DTE, and SW Gas were all supportive of the use of a "weak link" in trenchless excavation but expressed concern that the use of the word "device" could limit operators to commercially available discrete devices. Some operators commented that they use a piece of weaker pipe or an internal lab-designed device as a weak link. The commenters proposed that PHMSA clarify the language so as not to inadvertently prohibit alternative technologies. The GPAC voted unanimously to support these comments. City Utilities suggested that requiring operators to have written procedures for mitigating and preventing cross-bore incidents would be sufficient to ensure safety.

AGA suggested that these requirements should not apply to service lines below 1.25-inch IPS if an

analysis of incidents shows that no relevant incidents have occurred.

NGA noted that there are other tools available to operators to avoid damage to pipelines installed by trenchless excavation, and that requiring weak link technologies is shortsighted. NGA recommended that PHMSA host a workshop of operators and industry experts to explore trenchless excavation best practices.

A number of operators had concerns about the proposed requirement that operators ensure that the excavation area is clear of other underground structures. AGA, TPA, and NFGDC proposed that operators only be responsible for providing sufficient clearance from underground-structures known at the time of installation. TPA suggested that if an underground-structure owner does not respond to a one-call notification, the plastic pipe operator has no means to ensure appropriate clearance. GPA recommended that PHMSA either drops the requirement or provide operators with a list of specific steps to achieve compliance. The GPAC voted unanimously in favor of revising the language of this section to require operators to take "practicable steps" to maintain adequate clearance from other underground structures in accordance with "best practice" documents.

(c) PHMSA Response

In this final rule, PHMSA has made a number of changes recommended by commenters and the GPAC. PHMSA has revised §§ 192.329(a) and 192.376(a) to specify that operators must take practicable steps to provide sufficient clearance for installation and maintenance activities from other underground utilities and/or structures at the time of installation. Additionally, PHMSA revised the definition of "weak link" in § 192.3 to include "a device or method," which should provide operators more flexibility. These changes address the concerns raised by commenters regarding the flexibility of weak-link options and the need for clarity of an operator's responsibilities. PHMSA has not provided an exception, however, for small-diameter service lines, since small-diameter lines face many of the same risks as larger mains. Additionally, any hazard reduction due to a smaller-diameter pipe is offset by the fact that service lines are typically closer to dwellings and other inhabited structures. PHMSA notes that CCTV technologies may be useful for positive identification of other underground-structures, but the specific recommendations involving CCTV technology have not been subject to

notice and comment or cost-benefit analysis. PHMSA may analyze this issue in a future rulemaking after considering the benefits and limitations of CCTV technologies.

Similarly, PHMSA has not implemented the enhanced requirements recommended by NAPSRS, but is open to enhancing these requirements in future rulemakings and possibly hosting a public workshop on weak links and trenchless excavation. More information on this topic is available in a white paper titled "Meta-Analysis: Cross Bore Practices" issued by the PHMSA/NAPSRS Plastic Pipe Ad Hoc Committee on July 10, 2014.⁵

(2) Joining Plastic Pipe

(a) PHMSA's Proposal

In the NPRM, PHMSA proposed amending § 192.281 to clarify language related to joining plastic pipe. The proposed revisions included clarifying that solvent cement requirements in ASTM D2564-12, "Standard Specification for Solvent Cements for Poly(Vinyl Chloride) (PVC) Plastic Piping Systems" (ASTM D2564-12), apply only to PVC pipe, clarifying that the joining requirements in § 192.281(c) apply to both the pipe and components, requiring heat fusion joints to comply with ASTM F2620-12, "Standard Practice for Heat Fusion Joining of Polyethylene Pipe and Fittings," issued on August 1, 2012, (ASTM F2620-12), and adding a new paragraph (e)(3) to require that each fitting used to make a mechanical joint meets a listed specification in Appendix B of part 192.

(b) Summary of Comments

AGA and NFGDC opposed requiring all types of heat fusion joints to comply with ASTM F2620-12. AGA commented that ASTM F2620-12 is primarily intended for saddle-fusion joints on live pipes. AGA also stated that compliance with ASTM F2620-12 would require operators to re-qualify a number of proven joining procedures and eliminating those that differ from the standard. Those two commenters were specifically concerned about the prohibition of methods differing from the standard, particularly with respect to the use of different heater temperatures. TPA requested that PHMSA allow the continued use of existing qualified joining procedures.

APGA supported PHMSA's proposal to require heat-fusion joints to comply with ASTM F2620-12 and the proposed revisions to § 192.281(d), which require

all mechanical joints and fittings to be classified as Category 1 as defined in ASTM F1924-12, ASTM F1948-12, or ASTM F1973-13.

Arkema commented that since ASTM F2620-12 is specific to PE only, the regulatory language should refer to this standard for only PE heat-fusion joints. Volgstadt and Associates' comments echoed the concerns of Arkema. Volgstadt also noted electrofusion is not covered under ASTM F2620-12 and suggested that §§ 192.281(c) and 192.285(b) be corrected so ASTM F2620-12 only applies to PE hot plate fusion and not to either electrofusion or PA-11. Volgstadt further recommended either revising § 192.281(c) to replace "plastic pipe" with "PE pipe" to avoid requiring an incompatible standard, or revising future editions of ASTM F2620 to include electrofusion methods and PA-11 materials. APGA, TPA, PPI, NAPSRS, PPI, and City Utilities opposed the prohibition of socket-fusion joints above a certain diameter. APGA noted that PHMSA has not provided a rationale for prohibiting socket-fusion on any size of plastic pipe and that the cost of butt-fusion or electrofusion equipment is prohibitive for small operators. APGA further proposed allowing socket-fusion for plastic pipe of four-inch diameter or less. PPI, TPA, NAPSRS, and City Utilities concurred. The GPAC voted unanimously to recommend adoption of the comments requesting removal of the socket-fusion diameter restriction.

NORMAC requested clarification as to whether the proposed § 192.281(e) requires manufacturers of factory-assembled anodeless risers to meet a listed specification as § 192.271(b) states that the requirements do not apply to joints made during the manufacture of a product.

NORMAC also proposed that the requirement for qualifying joining procedures by operators must be separate from the qualification of designs for manufacturers' joint and fitting specifications. ASTM D2513 should not be applied to mechanical joint manufacturing regulations as it is a standard specification rather than a testing performance criterion. NORMAC further suggested deleting § 192.281(e)(1) as it is not written in performance language and is unnecessary as there is no evidence of material incompatibility of plastic materials. It further commented that §§ 192.281(e)(2) and 192.281(e)(3) are duplicative. NORMAC also strongly opposed implying that elastomers in mechanical fittings and joints can loosen or degrade over time. NORMAC stated that PHMSA must provide

publicly cited evidence that elastomer degradation has been a systemic problem or retract unsupported statements on mechanical joints from the docket and elsewhere.

(c) PHMSA Response

PHMSA disagrees with AGA's proposal to restrict ASTM F2620-12 to saddle-fusion joint procedures only. The standard includes procedures for other types of joints.

Regarding concerns on whether operator joining procedures that may differ from ASTM F2620-12 may not be acceptable and would have to be requalified, it would depend on how exactly they differ. PHMSA would expect that if an operator can demonstrate the differences are sound and provide an equivalent or better level of safety compared to ASTM F2620-12 it could be found acceptable. However, if operator procedures are found to be lacking in any way, such as a heating temperatures used, fusion pressures or cooling times, they may not be acceptable.

PHMSA agrees with commenters that noted ASTM F2620-12 is a PE only standard and does not cover electrofusion. PHMSA has made revisions for clarification. For electrofusion, it is not explicitly listed in the code language in §§ 192.281 or 192.285, but electrofusion fittings and joints would ultimately need to comply with requirements of ASTM F1055, a listed specification for electrofusion.

PHMSA supports Volgstadt's suggestion to consider revising ASTM F2620-12 to include electrofusion and other thermoplastic material types (including PA-11), but defers to the ASTM process on how best it should be handled and ultimately vetted.

PHMSA's intent regarding socket-fusion joints was not to prevent the common use of safe components. Therefore, PHMSA has removed the diameter restrictions for socket-fusion joints from § 192.281(c)(2). Such fittings must still comply with the listed specification, which may have their own diameter restrictions.

In response to comments from NORMAC, PHMSA notes all parts of factory assembled risers must comply with the appropriate listed specifications. PHMSA disagrees that § 192.281(e)(2) is duplicative with § 192.281(e)(3) that is incorporated by this final rule; § 192.281(e)(3) requires that newly installed mechanical fittings must meet a listed specification, while § 192.281(e)(2) is a general requirement that applies to all mechanical joints on plastic pipe regardless of the applicable material. Further comments regarding

⁵ http://primis.phmsa.dot.gov/dimp/docs/MetaAnalysis_Cross_bore_practices_07102014%20final%20R3.pdf.

the appropriateness of existing code language regarding gasket material compatibility or comments on past advisory bulletins related to observed wear of elastomers are not within the scope of the rulemaking.

(3) Qualifying Joining Procedures

(a) PHMSA's Proposal

In the NPRM, PHMSA proposed to amend § 192.283(a)(1)(i) to incorporate an updated version of ASTM D2513–12ae1 for PE pipe and the new joining standards applicable to PA–11 and PA–12 pipe in ASTM F2945–12a and ASTM F2785–12 respectively when determining the sustained pressured test or minimum hydrostatic burst test. PHMSA also proposed to remove § 192.283(d), which permitted operators to use pipe or fittings manufactured prior to July 1, 1980, if they are joined in accordance with procedures that the manufacturer certifies will produce a joint as strong as the pipe. Together these changes will codify modern joining procedures for PE, PA–11, and PA–12 pipeline systems.

(b) Summary of Comments

NAPSR supported PHMSA's proposal. NORMAC commented that the three listed specifications in § 192.281(e)(4) do not contain language for qualifying operator joining procedures, unlike the existing provisions in § 192.283. NORMAC further recommended revision of § 192.283 to separate the specification and testing requirements for manufacturers from the regulatory performance standards for operator procedures currently in the PSR.

(c) PHMSA Response

PHMSA believes NORMAC may have incorrectly interpreted the NPRM proposed language in § 192.281(e)(4) and § 192.283(b) related to mechanical joints and applicable pipe standards for qualifying joining procedures. However, PHMSA can see reasoning for the confusion and believes there is the possibility that others could misinterpret as well. The three specifications that were named in § 192.281(e)(4), specifically ASTM F1924–12, ASTM F1948–12, or ASTM F1973–13, were included only to help provide references for the definition for Category 1 depending on the specific type/material of fitting involved, since PHMSA doesn't have an explicit definition for Category 1. The language in § 192.283 (b) that talks about being "qualified in accordance with a listed specification based upon the pipe material" is referring to a listed specification in Appendix B for pipe depending on the material (for instance

ASTM D2513–12ae1 for PE, ASTM F2785–12 for PA–12, or ASTM F2945–12a for PA–11.) PHMSA believes each of those material specific standards or the standards they reference for mechanical fittings (for instance the PA–11 and PA–12 material standards require mechanical fittings to conform to ASTM F2145) provide suitable language related to testing that can help qualify joining procedures. Since each of the standards is written slightly differently and in some cases have additional material specific considerations compared to what was written in § 192.283 previously, PHMSA believes it is appropriate to defer to the listed specification. As mentioned in the PHMSA response in § 192.281(e)(4) and given the confusion between the language in § 192.283 (b), the three listed specifications in § 192.281(e)(4), and considering there are additional listed specifications in Appendix B that also contain material specific considerations and can help with definition for Category 1, PHMSA is editing § 192.281(e)(4) to more generically point to a listed specification. This would also make §§ 192.281(e)(4) and § 192.283 (b) more consistent with how the language is written related to listed specifications.

(4) Qualifying Persons To Make Joints

(a) PHMSA's Proposal

The NPRM proposed amending § 192.285 by modifying the requirements for qualifying persons to make joints. PHMSA proposed to add reference to ASTM F2620–12 to the joiner qualification requirements in § 192.285 (b)(i) as an option for PE pipe. ASTM F2620 provides information on what constitutes a visual acceptable or unacceptable joint.

(b) Summary of Comments

NAPSR supported PHMSA's proposal. The PPI supported the incorporation of ASTM F2620–12 but noted that certain standards it had developed, including PPI TR–33 and TR–41, were equally sound procedures and should also be incorporated. Arkema opposed deleting the joint-testing details from § 192.285. Arkema commented that ASTM F2620–12 is limited only to PE and that § 192.285 should instead refer to ASTM F2620–12 for only PE heat-fusion joints while other joining qualification tests could be regulated under the existing § 192.285 language. Volgstadt and Associates' comments echoed these concerns. Volgstadt also suggested that §§ 192.281(c) and 192.285(b) be corrected as ASTM F2620–12 only applies to PE hot plate fusion and

applies to neither electrofusion nor PA–11. Volgstadt recommended either revising § 192.281(c) to replace "plastic pipe" with "PE pipe" to avoid requiring an incompatible standard, or revising a future ASTM F2620 edition to include electrofusion methods and PA–11 materials.

SoCal Gas and SDG&E jointly commented that ASTM F2620–12 does not address a number of safety concerns that have been incorporated into qualified heat-fusion procedures. They proposed that PHMSA continue to allow the use of procedures qualified under the testing performance standard in § 192.283. They argued that the existing testing standards under § 192.283 are more stringent than the proposed ASTM F2620–12 and should not be eliminated. The commenters proposed that § 192.285 should use more general language that allows the option of relying on sound engineering requirements developed by an operator's own lab testing.

(c) PHMSA Response

The NPRM did not propose to delete any of the testing requirements in the existing § 192.285. ASTM F2620–12 is being incorporated as an additional minimum standardized practice for PE materials to address many gaps and inconsistencies seen through the years with the joining procedures. Regarding concerns on whether operator joining procedures that may differ from ASTM F2620–12 may not be acceptable, it would depend on how they differ. PHMSA would expect that if an operator can demonstrate through an inspection of the procedures that the differences are sound and provide an equivalent or better level of safety compared to ASTM F2620–12 it could be found acceptable. However, if operator procedures are found to be lacking in any way when comparing the operator procedures to ASTM F2620–12, and reviewing results of testing results used to qualify the procedures, they may not be acceptable.

PHMSA agrees with commenters that noted ASTM F2620–12 is a PE only standard and does not cover electrofusion; PHMSA has made revisions for clarification. For electrofusion, it is not explicitly listed in the code language in §§ 192.281 or 192.285 but electrofusion fittings and joints would ultimately need to comply with requirements of ASTM F1055, a listed specification for electrofusion.

PHMSA supports Volgstadt's suggestion to consider revising ASTM F2620–12 to include electrofusion and other thermoplastic material types (including PA–11) but defers to the

ASTM process on how best it should be handled and ultimately vetted.

(5) Bends

(a) PHMSA's Proposal

In the NPRM, PHMSA proposed to revise § 192.313 to prohibit bends in plastic pipe less than the minimum radius specified by the manufacturer. While plastic pipe is somewhat elastic, a bend radius that is too small may compromise the structural integrity of the pipe.

(b) Summary of Comments

AGA and NAPSRS supported PHMSA's bend-specification proposal. PPI and GPA noted a typographical error in the proposed § 192.311(d), stating that PHMSA most likely intended to prohibit bends less than the minimum radius specified by the manufacturer rather than the maximum.

(c) PHMSA Response

PHMSA agrees with the commenters about the typographical error and has corrected § 192.313 to prohibit bends smaller than the minimum radius specified by the manufacturer.

(6) Installation of Plastic Pipe

(a) PHMSA's Proposal

In the NPRM, PHMSA proposed to amend § 192.321 to increase the minimum wall thickness of all plastic pipe to 0.090 inches (2.29 millimeters), to require that operators protect plastic pipe from damage when installing it within a casing, to establish backfill requirements during excavation, and to allow operators to terminate plastic mains aboveground under certain conditions.

(b) Summary of Comments

APGA supported the proposals to require protecting encased plastic pipe from damage at casing entrance and exit points in § 192.321(f), and to allow certain plastic mains to terminate above ground in § 192.321(i).

NAPSRS, AGA, APGA, PPI, SW Gas, TPA, and NFGDC submitted the following comments critical of the proposed backfill requirements in this section:

- The commenters generally concurred with AGA's critique that the phrase "properly compacted" inadvertently added a prescriptive requirement that required further clarification. AGA commented that including the phrase "properly compacted" requires operators to quantify soil compaction, but does not define what is an acceptable level of quantification.

- SW Gas commented that PHMSA must clearly specify compaction and documentation requirements.

- AGA recommended simply requiring that lines be properly supported.

- NAPSRS proposed removing the phrase "such as rocks of a size exceeding those established through sound engineering practices" from § 192.321(i)(1).

- SW Gas argued that backfill requirements are typically prescribed and enforced by the construction permitting agency and therefore, a PHMSA specification was unnecessary.

- PPI recommended that PHMSA clarify the requirements through the incorporation of "PPI Handbook for PE Pipe, Chapter 7—Underground Installation of PE Pipe."

As for the proposed change in the minimum wall thickness requirement for new and replaced pipe, three entities submitted comments:

- APGA noted that the proposed requirement for a minimum wall thickness of 0.090 inches for plastic pipe might be inconsistent with the proposed § 192.121(b)(3), which established a minimum plastic pipe thickness of 0.062 inches.

- APGA did not have a strong opinion either way but recommended that the rule be revised to remain consistent.

- DTE strongly opposed any change from the current minimum wall thickness of 0.062 inches.

The GPAC recommended approval of all the proposed changes in the NPRM, provided that PHMSA removed the enhanced backfill requirements.

(c) PHMSA Response

PHMSA concurs with the comments and the recommendations of the GPAC, and has therefore removed the proposed enhanced backfill requirements from the final rule. PHMSA notes that operators must still avoid issues with backfill under the more general requirements in §§ 192.319(b) and 192.361(b). The existing § 192.319(b)(1) already requires that backfill for transmission lines provide adequate support for the pipeline, while § 192.361 has similar requirements for service lines. Section 192.319(b)(2) further requires that operators must backfill transmission lines with materials that prevents damage.

For clarity, PHMSA has revised § 192.321 to refer to § 192.121 rather than repeat the minimum wall thickness requirement.

(7) Service Lines; General Requirements for Connections to Main Piping

(a) PHMSA's Proposal

In the NPRM, PHMSA proposed to add a new paragraph (b)(3) to § 192.367 that required operators use Category 1 joints for service line connections to gas mains. Category 1 joints are defined in ASTM F1924–12, ASTM F1948–12, or ASTM F1973–13 for the applicable material and must provide a seal plus resistance to a force on the pipe joint equal to or greater than that which will cause no less than 25 percent elongation of the pipe or would cause the pipe to fail outside of the joint area during the tensile strength test prescribed by the applicable standard. In other words, the fitting must be designed such that the pipe will fail before the joint does.

(b) Summary of Comments

NAPSRS supported PHMSA's proposal. NORMAC submitted comments arguing that, in the context of § 192.367(b), the word "connection" is synonymous with "joint." Therefore, NORMAC suggested that the proposed § 192.367(b)(3) and the existing § 192.367(b)(1) should be deleted, as these regulations repeat §§ 192.281(e)(3) and 192.283(b), which specify compression fittings. NORMAC further commented that gaskets are used beyond just connections to mains. Therefore, the performance standards for gaskets should be included in the general requirements in § 192.273 while § 192.367 should only address issues unique to main connections.

(c) PHMSA Response

PHMSA recognizes that § 192.367(b) and the existing language in §§ 192.81(e)(3) and 192.283(b) may be redundant; however, § 192.367 applies to more than just plastic pipe materials and therefore has not been removed because referencing these standards in both sections is prudent. The gasket requirements proposed in § 192.367 are specific to service line connections to mains. PHMSA may consider standards for gaskets in the future if PHMSA identifies a safety need for such standards.

PHMSA acknowledges that there may be issues with only mentioning the three specifications in § 192.367(b) specifically ASTM F1924–12, ASTM F1948–12, or ASTM F1973–13. There are other fittings standards also included in this rule and listed in Appendix B that would be applicable for other material types. For example, ASTM F2145 "Standard Specification for Polyamide 11 (PA 11) and Polyamide 12 (PA12) Mechanical

Fittings for Use on Outside Diameter Controlled Polyamide 11 and Polyamide 12 Pipe and Tubing” is applicable for PA–11 and PA–12 mechanical fittings and also has a definition for Category 1. Rather than adding more standards into the regulatory language § 192.367(b) and potentially missing others, PHMSA is instead revising the language in the final rule to say “. . . must be Category 1 as defined by a listed specification for the applicable material . . .” As described above, the mechanical fitting standards all define a category 1 fitting as one in which the surrounding pipe fails before the joint during tensile strength testing.

(8) Equipment Maintenance; Plastic Pipe Joining

(a) PHMSA’s Proposal

In the NPRM, PHMSA proposed adding a new § 192.756 to establish minimum maintenance, calibration and testing, and recordkeeping provisions for plastic pipe joining equipment. Proper calibration and maintenance of plastic pipe joining equipment is important due to the difficulty in assessing the quality of field joints.

(b) Summary of Comments

NAPSR and Lael supported the proposed recordkeeping requirements. Lael suggested strengthening the requirements under this part and suggested adding a requirement for operators to have written procedures for equipment calibration and maintenance. Specifically, Lael commented that daily or periodic adjustment records are also important, and therefore recommended eliminating the recordkeeping exception for those records. AGA, APGA, GPA, TPA, Avista Utilities, DTE, and SW Gas submitted comments that agreed with the importance of proper equipment maintenance and calibration but critical of prescriptive recordkeeping requirements. The commenters viewed the proposed § 192.756 as excessively prescriptive, limiting, and burdensome. The commenters claim that, as proposed, the NPRM was not sensitive to varying maintenance and recordkeeping requirements recommended by equipment manufacturers. The GPAC recommended that PHMSA withdraw the proposed changes in paragraphs (b) through (d) of § 192.756.

GPA suggested alternative language clarifying that equipment maintenance and calibration must be appropriate for the equipment being evaluated

(c) PHMSA’s Response

In consideration of the comments and the recommendations of the GPAC, PHMSA has removed the additional

calibration and recordkeeping requirements in paragraphs (b) through (d). Therefore, the retention of records of daily equipment calibrations and adjustments suggested by Lael has not been implemented. Commenters suggested that the proposed requirements were overly prescriptive and burdensome. PHMSA may revisit this issue if problems are identified in the future. The final rule retains the requirement that operators must maintain joining equipment in accordance with the manufacturer’s recommended practices or with written procedures that have been proven by test and experience to produce acceptable joints.

H. Repair of Plastic Pipe

(1) PHMSA’s Proposal

In the NPRM, PHMSA proposed to amend the plastic pipe repair criteria in § 192.311 to require operators to replace plastic pipe or components if they have a scratch or gouge exceeding 10 percent of the wall thickness. The purpose of the proposed amendment was to add a clearer standard of what constitutes the type of defect that necessitates repair. The current § 192.311 merely states that an operator must repair or remove “[E]ach imperfection or damage that would impair the serviceability” of plastic pipe.

PHMSA further proposed adding a new § 192.720 to prohibit the use of leak repair clamps as a permanent repair on plastic gas pipelines. PHMSA and States have observed issues where some operators have used stainless steel band clamps, intended and designed for temporary repairs on plastic pipe used in gas distribution, as a permanent repair solution. While clamps can be an effective temporary solution in certain situations, such as during an incident to stop the release of gas, PHMSA believes that these clamps should be used only as a temporary repair measure until the pipe can be replaced. PHMSA is also aware of at least one manufacturer that has issued a letter saying its repair clamps are intended for temporary repairs only and should be replaced with a more permanent solution.

(2) Summary of Comments

NAPSR supported both the repair standard for plastic pipe and prohibiting the permanent use of leak repair clamps. Regarding the 10-percent-gouge-depth repair criteria, PPI “supports this proposal as a reasonable and conservative maximum scratch or gouge depth.” However, PPI stated that wider tolerances were acceptable since their research showed that 30 percent gouges

were found to not have significant long-term performance impacts. PPI commented that less-precise methods such as visual inspections were sufficient for determining gouge depth and should be allowed.

AGA, APGA, and TPA were critical of the 10-percent-gouge-depth threshold for requiring repair or replacement. AGA noted that the 10-percent threshold is an industry rule of thumb that is too stringent for a regulatory requirement and instead proposed a 20-percent threshold as a reasonable repair standard.

AGA and NGA had concerns that the proposed § 192.311(a) as written could prevent the use of electrofusion sleeves for plastic pipe repair.

The GPAC voted unanimously to recommend approval of these provisions, conditioned on the removal of the 10-percent threshold for repair criteria and the clarification that the prohibition on mechanical leak-repair clamps would not require operators to remove existing clamps. Members of the GPAC likewise considered the 10-percent gouge depth criteria to be an industry rule of thumb that was too stringent for a regulatory requirement. While the GPAC did not recommend implementing the 10-percent threshold for repair criteria, members did agree that some sort of repair criteria for plastic pipe was necessary. The GPAC recommended that PHMSA and the Committee support research to develop technically acceptable plastic pipe repair criteria in the near future.

(3) PHMSA’s Response

Based on the recommendations of the GPAC, PHMSA has removed the proposed repair criteria from the final rule and therefore did not incorporate the alternative 20-percent-gouge-depth repair criteria proposed by AGA and APGA. PHMSA believes it is appropriate to seek additional technical data and public comment on any proposed repair criteria for plastic pipe. PHMSA intends to revisit this issue and will consider proposing plastic pipe repair criteria in future rulemaking.

PHMSA inspectors have identified the permanent use of leak repair clamps on plastic pipe as an inadequate and risky practice. Furthermore, the lack of clear language in the code has led to enforcement uncertainty. While PHMSA is aware of guidance applicable to repair clamps, such as ASTM F1025, PHMSA is not aware of technical standards for permanent repair clamps on plastic pipe. Section 192.311 does not preclude the use of electrofusion repair sleeves, but for the sake of clarity, PHMSA has revised § 192.720 to specify that a

“mechanical leak repair clamp” may not be used as a permanent repair. PHMSA may revisit this issue if an acceptable standard for permanent mechanical repair clamps on plastic pipe is developed. In general, if a repair device such as an electrofusion sleeve can provide a Category 1 joint, it is effectively permanent. Like other provisions of this final rule, the prohibition of the permanent use of leak repair clamps is not retroactive.

I. General Provisions

In the NPRM, PHMSA proposed several general revisions to the PSR as follows:

(1) Incorporation by Reference

(a) PHMSA’s Proposal

PHMSA proposed to incorporate by reference several new or revised standards for plastic pipe and components. Summaries of each of the standards incorporated by reference in this final rule, and a discussion of the availability of those standards during the rulemaking process, are available in Part IV, *Standards Incorporated by Reference*, in the preamble to this document. Additionally, the effects of these standards are discussed under the topic area to which they are applicable. Section II, *Availability of Standards Incorporated by Reference*, of the NPRM preamble provided information on the reasonable availability of these standards.

(b) Summary of Comments

NAPSR supported PHMSA’s proposal to incorporate by reference new standards and currently referenced consensus standards. Several commenters suggested incorporating more recent editions of certain standards that this rule incorporates by reference. Aaron Adamczyk provided a list of standards proposed in the NPRM that have since been updated by the respective standards development organization. Volgstadt and Associates and Arkema also noted that there were upcoming revisions to certain standards that could impact the NPRM.

GPA and TPA submitted comments arguing that the standards incorporated by reference in the NPRM are intended for distribution systems and that applying them to gas transmission and gathering lines would be improper. The commenters suggested that PHMSA restrict the scope of these standards to distribution lines and pursue a separate rulemaking to incorporate applicable standards for transmission and gathering lines.

PublicResource.org submitted a comment claiming that PHMSA had

acted improperly at the NPRM stage by not making the standards proposed for incorporation by reference into the PSR available to the public for free, on the internet, on an unrestricted and permanent basis, as required by law.

(c) PHMSA’s Response

As for the recommendation that PHMSA incorporate by reference more recent versions of the consensus standards, PHMSA can only incorporate by reference versions of standards that have been proposed at the NPRM stage of the rulemaking process. For this rulemaking, PHMSA contacted the applicable Standards Development Organizations (SDO), requesting that each SDO provides access to the standards proposed for incorporation by reference during the comment period. During this period, all standards proposed for incorporation by reference were made available to the public for free.

PHMSA does not propose new editions or versions of standards at the final rule stage without an opportunity for public comment. However, PHMSA may consider more recent versions for incorporation by reference in future rulemaking actions if the newer editions of these standards are technically acceptable and consistent with applicable law.

PHMSA does not agree with the comments that suggested limiting the applicability of certain materials standards to distribution facilities. While the scope of some of the plastic pipe standards incorporated by reference in this final rule may have been developed primarily for gas mains and service lines, there is nothing that precludes their use in gathering and transmission systems, as long as all appropriate testing and other considerations are met (e.g., chemical compatibility testing.) In fact, PHMSA is aware of many gathering and transmission systems that are already using ASTM D2513 pipe. To avoid confusion, several SDOs are in the process of expanding the scope of these standards. PHMSA is also aware of other standards, either recently published or still under development, specific to transmission or gathering systems; however, for the time being, pipeline facilities must be constructed in accordance with standards incorporated by reference. PHMSA may, if appropriate, update standards with those clarifications or incorporate by reference transmission and gathering-specific standards in future rulemakings.

PHMSA also disagrees with the comment that incorporating only parts

of consensus standards by reference is inconsistent with the intent of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113. Section 12(d) of NTTAA directs Federal agencies to use standards developed by voluntary consensus standards bodies in lieu of government standards whenever it is practical and consistent with law. The Office of Management and Budget (OMB) issued OMB Circular A–119 to serve as guidance to Federal agencies on the use of such standards. Specifically, OMB Circular A–119 explains the term “use” to mean “incorporation of a standard in whole, in part, or by reference in regulation(s).” OMB Circular A–119, at p. 20. OMB Circular A–119 also provides a list of factors that an agency should consider when evaluating whether to use a standard, which includes the level of protection a standard provides, the costs and benefits of implementing a standard, and the ability of the agency to use and enforce compliance with a standard in the regulatory process. *Id.*, at p. 17–18.

Neither NTTAA nor OMB Circular A–119 establishes a requirement for Federal agencies to incorporate such standards in whole or to adopt the most recent edition of standards. Further, pursuant to 49 U.S.C. 60102(b)(1), standards adopted by PHMSA must be practicable and designed to meet the need for gas pipeline safety and protecting the environment. Accordingly, PHMSA may not adopt standards and portions of standards that fail either to serve its safety-program needs or it deems to be impracticable.

PHMSA also disagrees with comments from *Public Resource.Org* suggesting that PHMSA has failed to make standards incorporated by reference “reasonably available” and that it acted illegally and arbitrarily by proposing the incorporation of standards that were not neither reprinted verbatim in the **Federal Register** nor made available to the public for free, on the internet, on a permanent and unrestricted basis.

PHMSA supports the broad dissemination and public availability of consensus standards that have been incorporated by reference into federal regulations and that govern pipeline safety in this country. First, it complies with the procedures set by the Office of the Federal Register to ensure the reasonable availability of standards proposed for incorporation by reference in the rulemaking process. As *Public Resource.Org* noted in its comment, PHMSA worked with SDOs to provide free, read-only access to all standards proposed for incorporation by reference

during the comment period. Providing free, read-only access to standards proposed for incorporation by reference during the comment period is listed under section 5(f) of OMB Circular A-119 (revised, 2016) as a measure that Federal agencies can take to ensure that such standards are made “reasonably available.” Additionally, PHMSA has worked to make these materials reasonably available to interested parties. Section IV, “Standards Incorporation by Reference”, of this final rule provides information on how interested parties can view the standards to be incorporated by reference online or via hardcopy at U.S. DOT headquarters and the Office of the Federal Register. This free online availability, which PHMSA also provided during the comment period, meets PHMSA’s statutory requirements at 49 U.S.C. 60102(p), requiring that such standards incorporated by reference be made available to the public, free of charge.

Public Resource.Org has not provided sufficient evidence to support its interpretation that “reasonably available” requires Federal agencies, such as PHMSA, to provide internet access to copyrighted standards on a permanent and unrestricted basis free of charge. PHMSA therefore defers to the interpretation set forth in OMB Circular A-119. Broader questions raised by *Public Resource.Org* regarding the applicability of copyright law to standards, what constitutes fair use of standards incorporated by reference, and the economics of copyright protection are all beyond the scope of this rulemaking.

(2) Plastic Pipe Material

(a) PHMSA’s Proposal

The NPRM proposed several revisions regarding material requirements for plastic pipe. PHMSA proposed to revise § 192.59 to require that new plastic pipe be free from visible defects and permit the installation of plastic pipe that had been previously used in “gas” service, as defined in § 192.3, rather than the current language, which is restricted to “natural gas.” PHMSA also proposed to prohibit the installation of PVC pipe and components for new installations after the effective date of the rule and proposed to incorporate ASTM F2817-10, “Standard Specification for Poly (Vinyl Chloride) (PVC) Gas Pressure Pipe and Fittings for Maintenance or Repair,” issued on February 1, 2010 (ASTM F2817-10), “Standard Specification for Poly (Vinyl Chloride) (PVC) Gas Pressure Pipe and Fittings for Maintenance or Repair” (PVC

components only) 02/01/2010 (ASTM F2817-10), to reestablish standards for PVC components that are still permitted on existing PVC pipe segments.

(b) Summary of Comments

APGA and NAPSRS supported PHMSA’s proposal to prohibit the installation of new PVC gas piping. NAPSRS stated that it “feels the exclusion of PVC pipe for new installations will increase safety.”

The PVC Pipe Association, a trade group representing PVC pipe manufacturers, submitted comments opposed to PHMSA’s proposal to prohibit new installation of PVC pipe in gas service. The PVC Pipe Association argued that prohibiting PVC pipe would restrict competition in the plastic piping sector with negative impacts on price and innovation. The PVC Pipe Association proposed permitting PVC pipe in low-diameter, SDR-11 applications. NiSource noted that PVC pipe could be effectively used as regulator and vent piping, arguing that prohibiting new PVC gas piping in these applications would increase pipeline risk by leading to increased use of metal pipe, which carries a corrosion risk. NiSource proposed adopting ANSI/UL 651, “Standard for Schedule 40, 80, Type EB and A Rigid PVC Conduit and Fittings, for rigid PVC conduits and fittings as permitted in NFPA 54, “National Fuel Gas Code.” The GPAC recommended removing the PVC restrictions.

(c) PHMSA’s Response

PHMSA has removed the restrictions on PVC pipe after considering the public comments and the recommendations of the GPAC. PHMSA notes that the use of PVC pipe has decreased since the mid-1980s without regulatory intervention due, in large part, to operator preferences. Gas distribution annual reports also show operators are phasing-out this material in the absence of a regulatory restriction.

(3) Plastic Pipe Storage and Handling

(a) PHMSA’s Proposal

The NPRM proposed adding a new § 192.67 that would require operators to have written procedures for the storage and handling of plastic pipe that met applicable listed specifications.

(b) Summary of Comments

NAPSRS and APGA supported the proposed amendments. APGA agreed “that proper storage and handling of plastic pipe and components is important to ensure that these pipe and components are not damaged during

storage and handling.” However, APGA sought clarification as to whether a simple, generic storage and handling procedure provided by the pipe and component manufacturer, trade association or another central source would satisfy the requirement.

AGA requested background information on PHMSA’s addition of § 192.67, which AGA stated may be due to the adoption of ASTM D2513-09a.

(c) PHMSA’s Response

Most commenters supported the addition of this section. In the final rule, PHMSA is issuing these provisions as proposed. In response to AGA’s comment, PHMSA developed this requirement due to unsafe handling practices observed by PHMSA inspectors in the field. For example, PHMSA has observed operators dragging plastic pipe with backhoes and other heavy machinery, carrying pipe suspended from chains, and carrying large-diameter pipes with thin straps. In response to APGA’s comment, PHMSA notes that operators may use procedures provided by a trade association, the pipe manufacturer, or another central source, provided that those procedures meet the minimum requirements specified in the code and applicable listed specifications and are included in the operator’s operations and maintenance manual.

(4) Gathering Lines

(a) PHMSA’s Proposal

The NPRM proposed adding language in paragraph § 192.9(d) to specify that Type B regulated onshore gas gathering pipelines made of plastic must comply with all the requirements of part 192 applicable to plastic pipe.

(b) Summary of Comments

NAPSRS and DTE submitted comments supporting PHMSA’s proposal. However, DTE commented that PHMSA may have inadvertently omitted the leakage survey requirements for Type B gathering lines already in § 192.9(d)(7). DTE suggested placing the new requirements for plastic pipe and components in a more logical order in § 192.9(d).

(c) PHMSA’s Response

As commenters noted, PHMSA’s intent was not to repeal the recently promulgated leakage survey requirements in what was previously § 192.9(d)(7). In this final rule, PHMSA has therefore reorganized this section as recommended by the commenters and re-designated the leakage survey requirement as § 192.9(d)(8).

(5) Merger of Sections 192.121 and 192.123

(a) PHMSA's Proposal

The NPRM proposed merging the design limitations for plastic pipe in § 192.123 with the calculations for design pressure at § 192.121 so the design pressure and limitations were in one section and more clearly broken out by material type. PHMSA also proposed to revise the PSR to raise the maximum permitted design factor for PE pipe, increase the design pressure limitations of PA-11 pipe, and add design factor and pressure limitations for the use of PA-12 plastic pipe. These requirements would apply to materials produced after the effective date of the rule.

(b) Summary of Comments

Arkema and Palermo recommended that PHMSA allow the installation of plastic pipe designed with a hydrostatic design basis (HDB) at 180 °F, in addition to 73 °F, 100 °F, 120 °F and 140 °F currently in the regulations. The commenters noted that PA-11 and other materials (including PA-12) have an HDB with a rating of 180 °F, so it should be listed along with the other standard temperatures. As described in the sections for PE, PA-11, and PA-12 provision, a number of commenters suggested expansions and revisions to the minimum wall thickness tables in § 192.121 for each material to include entries for pipe with nominal pipe sizes of one-inch CTS and below one-inch IPS.

(c) PHMSA's Response

The comments filed under this subsection primarily concern revisions to the PE, PA-11, and PA-12 tables and HDB temperature ratings for PA-11 and PA-12. As described in the discussions of those topics, PHMSA is revising the minimum wall thickness tables for clarity and to include additional sizes but is not permitting the installation or operation of pipe at temperatures higher than 140 °F. As noted in the discussions for PE, PA-11, and PA-12, not all compounds are rated at that temperature, and inclusion could wrongly imply that operators are permitted to operate any plastic pipe at that temperature. This doesn't preclude an operator from using a pipe with an HDB rating at 180 °F, however, that rating would need to be interpolated back to one of the temperatures listed in § 192.121. See the discussions of the PE, PA-11, and PA-12 provisions in sections III.B, III.C, and III.D of the preamble of this final rule for more detailed information on these subjects. PHMSA also notes this particular

consideration for pipe rated at higher temperatures is already in § 192.121, which allows an operator to use an HDB of a higher temperature when using arithmetic interpolation using procedures called out in Part D.2 of PPI TR-3, (incorporated by reference, *see* § 192.7).

(6) General Design Requirements for Components

(a) PHMSA's Proposal

The NPRM proposed adding a new paragraph (c) to § 192.143 to specify that components used for plastic pipe must be able to withstand the operating pressures and anticipated loads in accordance with a listed specification. This revision makes § 192.191 redundant as the requirements for fittings to meet listed specifications are detailed in other parts of the code; therefore, PHMSA proposed to eliminate § 192.191.

(b) Summary of Comments

NAPSR supported the proposal but suggested revising § 192.143 to include the language, "in accordance with the listed specification for the plastic component being installed." NAPSR commented that this wording would provide additional clarification.

NiSource and R.W. Lyall expressed concern that, as written, the proposal would require excess flow valves (EFVs) to meet a listed specification. However an EFV specification has not yet been incorporated. The commenters suggested that PHMSA either exempt EFVs from the specification requirement or incorporate by reference an EFV specification such as ASTM F2138, "Standard Specification for Excess Flow Valves for Natural Gas Service" (ASTM F2138).

(c) PHMSA's Response

PHMSA appreciates NAPSR's desire to clarify the applicability of certain standards, but, after careful consideration, PHMSA believes the existing language and the referenced standards are sufficiently clear for operators to know to use the standard for the appropriate component type and material. Therefore, PHMSA is not making further changes to this requirement in this final rule.

Regarding EFVs, PHMSA did not intend to create conflict with EFV requirements. PHMSA has therefore revised the final rule to exempt EFVs from the requirement to meet a listed specification since there is not one specifically listed in Appendix B to part 192. PHMSA will consider incorporating appropriate standards, such as ASTM F2138, in the future.

(7) General Design Requirements for Valves

(a) PHMSA's Proposal

PHMSA proposed adding a new § 192.145(f) to specify that valves on plastic pipe must meet a "listed specification" as defined in § 192.3. In other words, valves must be manufactured in accordance with the appropriate consensus standard incorporated by reference into § 192.7. PHMSA also proposed that plastic valves must not be used under operating conditions that exceed the applicable temperature or temperature ratings detailed in the listed specification and consistent with § 192.145(a).

(b) Summary of Comments

AGA and TPA requested that the language in § 192.145(f) be revised to clarify that the requirements for new valves do not apply retroactively.

NAPSR suggested revising the specification requirement to require that valves meet the listed specification for the particular valve being installed.

(c) PHMSA's Response

PHMSA notes that the requirements in § 192.145 do not apply retroactively. PHMSA appreciates NAPSR's desire to clarify the applicability of certain standards; however, the agency believes the existing language and the referenced standards are sufficiently clear for operators to know to use the appropriate standard for the valve type and material being installed. Therefore, PHMSA is not making further changes to this requirement in this final rule.

(8) General Design Requirements for Standard Fittings

(a) PHMSA's Proposal

PHMSA proposed adding § 192.149(c) to clarify that a plastic pipe fitting may only be used if it meets a listed specification. This ensures that standard fittings meet minimum technical standards detailed in industry consensus standards.

(b) Summary of Comments

NAPSR supported the proposal but suggested revising the language to require components to meet the listed specification for the specific part being installed.

Volgstadt and Associates suggested incorporating ASTM D3261 for PE butt-fusion fittings and ASTM D2683 for PE socket-fusion fittings.

(c) PHMSA's Response

In this final rule, PHMSA is issuing this section as originally proposed. As with the previous section, PHMSA has

determined that the language of this requirement is sufficiently clear with the existing wording. Regarding the additional standards proposed, PHMSA cannot incorporate additional standards in the final rule stage that were not proposed and commented on in the NPRM stage. However, PHMSA will consider incorporating applicable standards in future rulemakings.

(9) Test Requirements for Plastic Pipelines

(a) PHMSA's Proposal

The NPRM proposed revising § 192.513(c) to reduce the maximum test-pressure limit for plastic pipe to from 3.0 to 2.5 times the pressure determined under § 192.121. Given the other design limitations in the current § 192.123 for PE and PA-11, and the revisions being proposed in this rule for PE, PA-11, and PA-12, PHMSA believes that plastic pipe will potentially be overstressed if tested to 3 times the pressure determined under § 192.121.

(b) Summary of Comments

NAPSR and Arkema submitted comments supporting the proposed changes.

(c) PHMSA's Response

PHMSA did not receive comments critical of this proposal. Therefore, the final rule incorporates this requirement as originally proposed.

IV. Standards Incorporated by Reference

A. Summary of New and Revised Standards

Consistent with the amendments in this document, PHMSA is incorporating by reference several standards as described in more detail below. Some of these standards are simply updates to existing standards that are already incorporated by reference, while others provide a technical basis for corresponding regulatory changes in the Final Rule, notably the provisions related to PA-11 and PA-12 piping systems.

- ASTM D2513-12a¹ "Standard Specification for Polyethylene (PE) Gas Pressure Pipe, Tubing, and Fittings," 4/12/2012. This specification covers requirements and test methods for material dimensions and tolerances; hydrostatic burst strength; chemical resistance; and rapid crack resistance of polyethylene pipe, tubing, and fittings for use in fuel gas mains and services for direct burial and reliner applications. The pipe and fittings covered by this specification are for use in the

distribution of natural gas. Requirements for the qualifying of polyethylene systems for use with liquefied petroleum gas are also covered.

This standard is an update to standard ASTM D2513-09a (12/1/2009), which is currently incorporated by reference in the CFR. The updated version of this standard adds ASTM F2897

"Specification for Tracking and Traceability Encoding System of Natural Gas Distribution Components (Pipe, Tubing, Fittings, Valves, and Appurtenances)" to its referenced document list in Section 2. There is also a new Section 7.6 to address additional marking requirements for incorporating the 16-character code onto PE Pipe and Fittings. The standard also now limits pipe material designation codes to PE 2708 and PE4710 to be consistent with PHMSA DOT Part 192.

- ASTM F2785-12 "Standard Specification for Polyamide 12 Gas Pressure Pipe, Tubing, and Fittings," 8/1/2012. This specification covers requirements and test methods for the characterization of PA-12 pipe, tubing, and fittings for use in fuel gas mains and services for direct burial and reliner applications. The pipe and fittings covered by this specification are for use in the distribution of natural gas. No version of this specification is currently in the CFR.

The final rule will permit the use of PA-12 plastic pipe, which is not permitted under existing regulations. In order to facilitate this change, PA-12 pipe and fittings will need to follow a listed specification, and reference to commonly used industry standards (ASTM F2785) is a preferred approach. Adding dedicated and material specific standards for both PA-11 and PA-12 will also allow PHMSA to remove two much older versions of ASTM D2513 (ASTM D2513-87 and ASTM D2513-99) that are currently referenced for thermoplastic materials other than PE. Overall, this change gives operators additional flexibility in choice of material.

- ASTM F2945-12a "Standard Specification for Polyamide 11 Gas Pressure Pipe, Tubing, and Fittings," 11/27/2012. This specification covers requirements and test methods for the characterization of PA-11 pipe, tubing, and fittings for use in fuel gas piping. No version of this specification is currently in the CFR.

The final rule will expand operators' ability to use PA-11 plastic pipe. PA-11 is currently allowed but with certain limitations on pressure and dimensions. The rule will also update regulations to align with more current industry

standards for PA-11 (*i.e.* the ASTM F2945 standard). Adding dedicated and newer material specific standards for both PA-11 and PA-12 will also allow PHMSA to remove two much older versions of ASTM D2513 (ASTM D2513-87 and ASTM D2513-99) that are currently referenced for thermoplastic materials other than PE. Overall, these changes give operators additional flexibility in choice of material.

- ASTM F2620-12 "Standard Practice for Heat Fusion Joining of Polyethylene Pipe and Fittings," 8/01/2013. This practice describes procedures for making joints with PE pipe and fittings by means of heat-fusion joining in, but not limited to, a field environment. The parameters and procedures are applicable only to joining PE pipe and fittings of related polymer chemistry. No version of this standard is currently in the CFR.

The final rule includes a new provision related to heat fusion joints for PE pipe, stating that these must comply with the relevant standard (ASTM F2620-12). Although some comments were received objecting to this change, these were either based on a misunderstanding of the proposal or of the standard itself, as discussed in the comment summary above. PHMSA believes that this will help address gaps and inconsistencies in joining procedures.

- ASTM D2564-12 "Standard Specification for Solvent Cements for Poly (Vinyl Chloride) (PVC) Plastic Piping Systems" 08/01/2012. This specification covers requirements for solvent cements used in joining PVC piping systems.

The final rule includes a minor correction updating and providing a more direct reference to the technical standard for solvent cements and noting that the requirements in this standard apply only to PVC pipe. ASTM D2564 had been a referenced document in the previous versions of ASTM D2513 that applied to all thermoplastics, which in turn was incorporated by reference into PHMSA regulation. With the removal of ASTM D2513-99 and ASTM D2513-99 that is currently referenced for all thermoplastics other than PE, standards need to be included to apply to PVC piping systems that are still in use today (although typically for maintenance or repair only). In addition to referencing ASTM F2817-10 for Maintenance and Repair of PVC, PHMSA believes it is important to reference this standard for the specific solvent to be used. Even with it being included as a referenced document within the standard previously, PHMSA and States have

found cases occasionally where non-listed solvents were used contributing to improper joints.

- ASTM F1924–12, “Standard Specification for Plastic Mechanical Fittings for Use on Outside Diameter Controlled Polyethylene Gas Distribution Pipe and Tubing,” 4/01/2012. This specification describes test methods and material requirements for plastic mechanical fittings for use with outside diameter-controlled PE gas distribution pipe smaller than 2-inch IPS. No version of this specification is currently in the CFR.

The final rule revises the regulations for mechanical joints and fittings by adding requirements for seal plus pullout resistance and citing the relevant industry standard(s). The allowable fittings are already widely in use and have little to no cost difference from other fittings for either labor or materials. This item would be added as a Listed Specification in Appendix B to Part 192-Qualification of Pipe and Components.

- ASTM F2817–10 “Standard Specification for Poly (Vinyl Chloride) (PVC) Gas Pressure Pipe and Fittings for Maintenance or Repair,” (PVC components only) 02/01/2010. This specification covers requirements for PVC pipe and tubing for use only to maintain or repair existing PVC gas piping. No version of this specification is currently in the CFR.

This item would be added as a Listed Specification in Appendix B to Part 192-Qualification of Pipe and Components. With the removal of ASTM D2513–99 and ASTM D2513–99 that is currently referenced for all thermoplastics other than PE, standards need to be included to apply to PVC piping systems that are still in use today (although typically for maintenance or repair only).

- ASTM F 2600–09 “Standard Specification for Electrofusion Type Polyamide-11 Fittings for Outside Diameter Controlled Polyamide-11 Pipe and Tubing,” 4/1/2009. This specification covers PA–11 electrofusion fittings for use with outside-diameter controlled PA–11 pipe covered by Specification D2513. Requirements for materials, workmanship, and testing performance are included. No version of this specification is currently in the CFR.

This item would be added as a Listed Specification in Appendix B to Part 192-Qualification of Pipe and Components. With new material specific standards being added for PA–11 and other standards being added for components in this rule, there is a need to add F2600 for Electrofusion PA–11 fittings, similar

to how ASTM F1055 is currently referenced for PE Electrofusion Fittings.

- ASTM F2767–12 “Specification for Electrofusion Type Polyamide-12 Fittings for Outside Diameter Controlled Polyamide-12 Pipe and Tubing for Gas Distribution” 10/15/2012.—This specification applies to PA–12 electrofusion fittings for use with outside diameter-controlled PA–12 pipes addressed by Specification F2785. No version of this specification is currently in the CFR.

This item would be added as a Listed Specification in Appendix B to Part 192-Qualification of Pipe and Components. With new material, specific standards being added for PA–12 and other standards being added for components in this rule, there is a need to add F2767 for Electrofusion PA–12 fittings, similar to how ASTM F1055 is currently referenced for PE Electrofusion Fittings.

- ASTM F2145–13 “Standard Specification for Polyamide 11 (PA 11) and Polyamide 12 (PA12) Mechanical Fittings for Use on Outside Diameter Controlled Polyamide 11 and Polyamide 12 Pipe and Tubing,” 05/01/2013. This specification describes requirements and test methods for the qualification of PA–11 and PA–12 bodied mechanical fittings for use with outside diameter-controlled PA–11 and PA–12, with 2-inch-and-smaller IPS complying with Specification D2513 and F2785. In addition, it specifies general requirements of the material from which these fittings are made. No version of this specification is currently in the CFR.

This item would be added as a Listed Specification in Appendix B to Part 192-Qualification of Pipe and Components. With new material specific standards being added for PA–11 and PA–12 and other standards being added for components in this rule, there is a need to add F2145 for PA–11 and PA–12 mechanical fittings.

- ASTM F1948–12 “Standard Specification for Metallic Mechanical Fittings for Use on Outside Diameter Controlled Thermoplastic Gas Distribution Pipe and Tubing,” 04/01/2012. This specification covers requirements and test methods for the qualification of metallic mechanical fittings for use with outside diameter-controlled thermoplastic gas distribution pipe and tubing as specified in Specification D2513. No version of this specification is currently in the CFR.

The final rule revises the regulations for mechanical joints and fittings by adding requirements for seal plus pullout resistance and citing the relevant industry standard(s). The

allowable fittings are already widely in use.

This item would be added as a Listed Specification in Appendix B to Part 192-Qualification of Pipe and Components. With new material specific standards being added and other standards being added for components in this rule, there is a need to add F1948 for metallic mechanical fittings on thermoplastic pipe. This standard would apply to metallic fittings used on multiple types of thermoplastic pipe (*i.e.* PE, PA–11 and PA–12).

- ASTM F1973–13 “Standard Specification for Factory Assembled Anodeless Risers and Transition Fittings in Polyethylene (PE) and Polyamide 11 (PA11) and Polyamide 12 (PA12) Fuel Gas Distribution Systems,” 05/01/2013. This specification covers requirements and test methods for the qualification of factory assembled anodeless risers and transition fittings for use in PE pipe sizes through Nominal Pipe Size (NPS) 8, and for PA–11 and PA–12 sizes through NPS 6. No version of this standard is currently in the CFR.

The final rule uses this standard to establish the procedures for designing and testing factory assembled anodeless risers. The standard also provides a definition for Category 1 fittings on plastic pipe. This item would be added as a Listed Specification in Appendix B to Part 192-Qualification of Pipe and Components.

- ASME B16.40–08 “Manually Operated Thermoplastic Gas Shutoffs and Valves in Gas Distribution Systems,” 03/18/2008. This standard defines design qualification requirements for manually operated thermoplastic valves in nominal valve sized from ½- through 12 inches that are intended for use below ground in thermoplastic fuel gas distribution mains and service lines. No version of this standard is currently in the CFR.

This item would be added as a Listed Specification in Appendix B to Part 192-Qualification of Pipe and Components. This standard is included based on a petition to include thermoplastic valves.

- PPI TR–4, HDB/HDS/SDB/MRS, Listed Materials, “PPI Listing of Hydrostatic Design Basis (HDB), Hydrostatic Design Stress (HDS), Strength Design Basis (SDB), Pressure Design Basis (PDB) and Minimum Required Strength (MRS) Rating For Thermoplastic Piping Materials or Pipe,” updated March, 2011. This report lists thermoplastic piping materials with a PPI recommended HDB, Strength Design Basis (SDB), Pressure Design Basis (PDB), or Minimum Required Strength (MRS) rating for thermoplastic piping materials or pipe. These listings

have been established in accordance with PPI TR-3. No version of this listing is currently in the CFR directly, although PPI TR-4 has been incorporated indirectly through PPI TR-3 and other requirements for determining design pressure for pipe.

The final rule requires that all plastic pipe, when designed, must have a listed Hydrostatic Design Basis (HDB) rating in accordance with this standard.

PHMSA also updated the following standards, which are summarized below:

- ASTM F1055-98 (reapproved 2006) "Standard Specification for Electrofusion Type Polyethylene Fittings for Outside Diameter Controlled Polyethylene Pipe and Tubing," 3/1/2006. This specification covers electrofusion polyethylene fittings for use with outside diameter-controlled polyethylene pipe covered by Specifications D2447, D 2513, D2737, D3035, and F714. This specification is a 2006 reaffirmed version of the 1998 version, meaning the technical content of the standard hasn't changed, but the ASTM technical committee procedurally reviewed it to keep it active.

With the changes being made to the regulations and other component specifications for other materials such as PA-11 and PA-12 being added, the language in 192.283(a) that previously only mentioned F1055 for PE is being revised. Along with the applicable component specifications for other material types, this item would be added as a Listed Specification in Appendix B to Part 192-Qualification of Pipe and Components.

- PPI TR-3/2012, HDB/HDS/PDB/SDB/MRS/CRS, Policies, "Policies and Procedures for Developing Hydrostatic Design Basis (HDB), Hydrostatic Design Stresses (HDS), Pressure Design Basis (PDB), Strength Design Basis (SDB), Minimum Required Strength (MRS) Ratings, and Categorized Required Strength (CRS) for Thermoplastic Piping Materials or Pipe," updated November 2012. This report presents the policies and procedures used by the HSB (Hydrostatic Stress Board) of PPI to develop recommendations of long-term strength ratings for commercial thermoplastic piping materials or pipe. This version is an update to the 2008 version currently incorporated by reference. A more detailed summary of updates to the 2010 version (successor to the 2008 version) is available in the 2012 document itself.

Recommendations are published in PPI TR-4. Both documents are freely available on the internet as of the date of publication of this final rule.

The final rule describes the standard as a procedure that can be used to determine a design pressure rating. This is an updated version of the standard currently referenced in the regulations.

B. Availability of Standards Incorporated by Reference

PHMSA currently incorporates by reference into 49 CFR parts 192, 193, and 195 all or parts of more than 60 standards and specifications developed and published by SDOs. In general, SDOs update and revise their published standards every two to five years to reflect modern technology and best technical practices. ASTM often updates some of its more widely used standards every year. Sometimes multiple editions are published in a given year.

In accordance with the NTTAA, PHMSA has the responsibility for determining, via petitions or otherwise, which currently referenced standards should be updated, revised, or removed, and which standards should be added to 49 CFR parts 192, 193, and 195. Revisions to incorporated by reference materials in parts 192, 193, and 195 are handled via the rulemaking process, which allows for the public and regulated entities to provide input. During the rulemaking process, PHMSA must also obtain approval from the Office of the Federal Register to incorporate by reference any new materials.

On January 3, 2012, President Obama signed the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011, Public Law 112-90. Section 24 of that law states: "Beginning 1 year after the date of enactment of this subsection, the Secretary may not issue guidance or a regulation pursuant to this chapter that incorporates by reference any documents or portions thereof unless the documents or portions thereof are made available to the public, free of charge, on an internet website." 49 U.S.C. 60102(p).

On August 9, 2013, Public Law 113-30 revised 49 U.S.C. 60102(p) to replace "1 year" with "3 years" and remove the phrases "guidance or" and, "on an internet website." This resulted in the current language in 49 U.S.C. 60102(p), which now reads as follows:

Beginning 3 years after the date of enactment of this subsection, the Secretary may not issue a regulation pursuant to this chapter that incorporates by reference any documents or portions thereof unless the documents or portions thereof are made available to the public, free of charge.

On November 7, 2014, the Office of the Federal Register issued a final rule that revised 1 CFR 51.5 to require that Federal agencies include a discussion in

the preamble of the final rule "the ways the materials it incorporates by reference are reasonably available to interested parties and how interested parties can obtain the materials." 79 FR 66278. To meet its statutory obligation for this final rule, PHMSA negotiated an agreement with ASTM to provide viewable copies of standards incorporated by reference in the PSR available to the public at no cost. The Plastics Pipe Institute provides free electronic copies of their standards on their website (<http://plasticpipe.org/publications/technical-reports.html>). Each organization's mailing address and the website are listed in § 192.7.

In addition, PHMSA will provide individual members of the public temporary access to any standard that is incorporated by reference that is not otherwise available for free. This includes the one ASME standard described in the previous paragraph. Requests for access can be sent to the following email address: PHMSAPHPStandards@dot.gov

V. Regulatory Analysis and Notices

Summary/Legal Authority for This Rulemaking

This final rule is published under the authority of the Federal pipeline safety statutes. 49 U.S.C. 60101 *et seq.* Section 60102 authorizes the Secretary of Transportation to issue regulations governing the design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of pipeline facilities. Further, section 60102(l) of the Federal pipeline safety statutes states that the Secretary shall, to the extent appropriate and practicable, update incorporated industry standards that have been adopted as a part of the PSR. This final rule will modify the PSR applicable to plastic pipe used in the transportation of gas.

Executive Order 12866, Executive Order 13563, Executive Order 13771, and DOT Regulatory Policies and Procedures

This final rule is a significant regulatory action under Executive Order 12866, 58 FR 51735, and the Regulatory Policies and Procedures of the Department of Transportation. The rule was therefore reviewed by the Office of Management and Budget. A Regulatory Impact Analysis with estimates of the costs and benefits of the final rule is available in the docket. Executive Order 12866, as supplemented by Executive Order 13563, 76 FR 3821, requires agencies to regulate in the "most cost-effective manner," to make a "reasoned

determination that the benefits of the intended regulation justify its costs,” and to develop regulations that “impose the least burden on society.” PHMSA is amending the PSR with regard to plastic pipe to improve compliance with these regulations by updating and adding references to technical standards and providing clarification. PHMSA anticipates that the amendments contained in this final rule will have net economic benefits to the public. The final rule enhances safety, reduces costs for the regulated community, improves regulatory clarity, increases ease of compliance, and provides additional flexibility in gas pipeline material choices. A copy of the regulatory evaluation is available for review in the docket.

This final rule is considered an E.O. 13771 deregulatory action. Details on the estimated cost savings of this rule can be found in the rule’s economic analysis.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. 5 U.S.C. 601 *et seq.* This final rule has been developed in accordance with Executive Order 13272, “Proper Consideration of Small Entities in Agency Rulemaking,” 67 FR 53461, and DOT’s procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of rules on small entities are properly considered.

While PHMSA does not collect information on the number of employees or revenues of pipeline operators, it does continuously seek information on the number of small pipeline operators to more fully determine any impacts PHMSA’s proposed regulations may have on small entities. This final rule proposes to require small and large operators to comply with these requirements. Based on the results of PHMSA’s Final Regulatory Flexibility Analysis, PHMSA has determined that the final rule will not have a significant economic impact on a substantial number of small entities. The final Regulatory Flexibility Act Analysis is included in the Regulatory Impact Analysis, available via regulations.gov.

Executive Order 13175

PHMSA has analyzed this final rule according to the principles and criteria in Executive Order 13175, “Consultation and Coordination with

Indian Tribal Governments,” 65 FR 67249. Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

Paperwork Reduction Act

PHMSA has analyzed this final rule in accordance with the Paperwork Reduction Act of 1995 (PRA). Public Law 96–511. The PRA requires federal agencies to minimize paperwork burden imposed on the American public by ensuring maximum utility and quality of Federal information, ensuring the use of information technology to improve Government performance and improving the Federal government’s accountability for managing information collection activities. This final rule does not impose any new information collection requirements.

Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. Public Law 104–4. It would not result in costs of \$100 million, adjusted for inflation, or more in any one year to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the final rule.

National Environmental Policy Act

PHMSA analyzed this final rule in accordance with section 102(2)(c) of the National Environmental Policy Act, 42 U.S.C. 4332, the Council on Environmental Quality regulations, 40 CFR parts 1500–1508, and U.S. DOT Order 5610.1C, and has determined that this action will not significantly affect the quality of the human environment. An environmental assessment of this rulemaking is available in the docket.

Privacy Act Statement

Anyone can search the electronic form of written communications and comments received into our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT’s complete Privacy Act Statement, published on April 11, 2000 (65 FR 19476), in the **Federal Register** at: <https://www.gpo.gov/fdsys/pkg/FR-2000-04-11/pdf/00-8505.pdf>.

Executive Order 13132

PHMSA has analyzed this final rule according to Executive Order 13132,

“Federalism,” 64 FR 43255. The final rule does not have a substantial direct effect on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. This final rule does not impose substantial direct compliance costs on State and local governments. This final rule does not preempt State law for intrastate pipelines. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply *Executive Order 13211*.

This final rule is not a “significant energy action” under Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,” 66 FR 28355. It is not likely to have a significant adverse effect on energy supply, distribution, or use. Further, the Office of Information and Regulatory Affairs has not designated this final rule as a significant energy action.

Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in the spring and fall of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

VI. Section-by-Section Analysis

Section 192.3 Definitions

Section 192.3 provides definitions for various terms used throughout part 192. In support of other provisions in this final rule, PHMSA has added a definition for “weak link” that outlines methods used to avoid overstressing plastic pipe during trenchless excavation.

Section 192.7 What documents are incorporated by reference partly or wholly in this part?

Section 192.7 contains a list of all standards incorporated by reference in part 192. This final rule adds or updates a number of standards related to plastic pipe, fittings, and other components made of PE, PA–11, and PA–12. PHMSA is also adding a standard for maintenance or repair of PVC segments.

Section 192.9 What requirements apply to gathering lines?

Section 192.9 identifies those portions of part 192 that apply to regulated gas gathering lines. PHMSA amended this section by adding a new paragraph (d)(3) to specify that newly constructed

Type B regulated gas gathering pipelines made of plastic must comply with all requirements of part 192 applicable to plastic pipe. The previously existing language in paragraphs (d)(3)–(d)(7) have remained the same, but have been reordered to paragraphs (d)(4)–(d)(8) in this final rule.

Section 192.59 Plastic Pipe

Section 192.59 specifies requirements for plastic pipe materials. This final rule amends this section by requiring operators to verify that all pipe is free of visible defects prior to installation and permit the use of pipe that had been previously used in gas service other than natural gas.

Section 192.63 Marking of Materials

Section 192.63 currently specifies requirements for the type and content of markings of pipe segments, valves, and fittings. In this final rule, PHMSA revises paragraph (a) to delete paragraphs (a)(1) and (a)(2). The revised paragraph (a) requires that materials be marked in accordance with the appropriate listed specification.

Section 192.67 Storage and Handling of Plastic Pipelines

The newly added § 192.67 establishes storage and handling standards for plastic pipeline components.

Section 192.121 Design of Plastic Pipe

Section 192.121 has been amended to specify the design requirements for newly installed plastic tubing made of PE, PA–11, and PA–12. In response to petitions, PHMSA has revised the maximum specifications for PE pipe and permitted the use of PA–12 in gas service. New and replaced PE pipe may now operate with a design factor of 0.40 (previously 0.32), though it is limited to a minimum wall thickness of 0.090 inches. New and replaced PA–11 pipe may now be operated with a design factor of 0.40, a maximum pressure up to 250 psig (previously 200) and a maximum diameter of 6 inches (previously 4). Operators are now permitted to install PA–12 with a design factor of 0.40, a maximum pressure up to 250 psig, and a maximum diameter of 6 inches. Finally, the design limitations which were previously located in § 192.123 have been merged into this section.

Section 192.123 [Removed and Reserved]

Section 192.123 previously contained design limitations for plastic pipe; however, this content has been merged into § 192.121.

Section 192.143 General Requirements

Section 192.143 contains general design provisions for pipeline components. For clarity, PHMSA added a new paragraph (c) to specify that components used for plastic pipe must be able to withstand operating pressures and anticipated loads in accordance with a listed specification, as defined in § 192.3.

Section 192.145 Valves

Section 192.143 contains general design provisions for pipeline valves. For clarity, PHMSA has added a new paragraph (f) to specify that plastic valves must be designed to meet a “listed specification” as defined in § 192.3 and not operated in conditions that exceed the applicable pressure or temperature ratings detailed in the applicable listed specification.

Section 192.149 Standard Fittings

Section 192.149 contains general design provisions for pipeline fittings. For clarity, PHMSA added a new paragraph (c) to specify that a plastic fitting may only be installed if it meets a listed specification, as defined in § 192.3.

Section 192.191 Design Pressure of Plastic Fittings [Removed and Reserved]

Section 192.191 is now redundant with the addition of § 192.143(c) and has been removed and reserved.

Section 192.204 Risers

Section 192.204 is new and establishes requirements for the design and construction of risers. PHMSA now requires all riser designs to be tested to ensure safe performance under anticipated external and internal loads. This section also requires factory assembled anodeless risers to be designed and tested in accordance with ASTM F1973 and allows the use of plastic risers from plastic mains to regulator stations with certain expectations and limitations.

Section 192.281 Plastic Pipe

Section 192.281 details the requirements for joining plastic pipe. To reduce confusion and promote safety, PHMSA is making several revisions to § 192.281. Paragraphs (b)(2) and (3) are revised to clarify that solvent cements may only be used to join PVC components and may not be heated or cooled to accelerate setting. Paragraph (c) is revised to specify that the joining requirements apply to both the pipe and components that are joined to the pipe, and for PE joints except for electrofusion must comply with ASTM

F2620–12. Paragraphs (e)(3) and (4) are added to require that newly installed mechanical fittings must meet a listed specification and provide Category 1 seal and resistance.

Section 192.283 Plastic Pipe: Qualifying Joining Procedures

Section 192.283 details the requirements for qualifying plastic pipe joining procedures. PHMSA is incorporating requirements for mechanical joints or fittings to be Category 1. Since PHMSA is also incorporating new standards applicable to PE, PA–11 and PA–12 materials as part of this rule, this section is revised to remove references to two versions of ASTM D2513 (depending on whether it's PE or plastic materials other than PE) and instead require operators test procedures in accordance with the appropriate listed specification. PHMSA is also repealing the obsolete § 192.283(d), which allowed operators to install used pipe or fittings manufactured before July 1, 1980, if they are joined in accordance with procedures that the manufacturer certifies will produce a joint strong as the pipe.

Section 192.285 Plastic Pipe: Qualifying Persons To Make Joints

Section 192.285 details the requirements for qualifying persons to make joints. This final rule amends § 192.285 to incorporate several revisions. Section 192.285(a)(2) previously specified that a person must make a specimen joint that is subjected to the testing detailed in § 192.285(b). PHMSA referenced ASTM F2620–12 (Standard Practice for Heat Fusion Joining of Polyethylene Pipe and Fittings) applicable to PE pipe and fittings (except for electrofusion).

Section 192.313 Bends and Elbows

Section 192.313 details standards for bends and elbows in pipe, however, it did not previously address plastic pipe. This final rule adds a new paragraph (d) requiring that operators may only make bends in plastic pipe with a bend radius greater than the minimum bend radius specified by the manufacturer.

Section 192.321 Installation of Plastic Pipelines

Section 192.321 details requirements for the installation of plastic pipe transmission lines and mains. This final rule makes several amendments to this section. Paragraph (d) is revised to require newly installed plastic pipe have a wall thickness consistent with § 192.121. PHMSA has also revised paragraph (f) to specify that the plastic

pipe must be protected from damage at both the entrance and exit of the casing during the installation process. Due to the merger of §§ 192.121 and 192.123, PHMSA has corrected § 192.321(h)(3) to refer to § 192.121. Finally, a new paragraph (i) has been added to allow for the aboveground termination of plastic mains under certain conditions.

Section 192.329 Installation of Plastic Pipelines by Trenchless Excavation

The newly added § 192.329 establishes requirements for the installation of plastic pipe by trenchless excavation. During trenchless installation of plastic pipe, operators must now use a weak link as defined in § 192.3 and take practicable steps to avoid striking other underground structures.

Section 192.367 Service Lines: General Requirements for Connections to Main Piping

Section 192.367 specifies requirements for service line connections to mains. Paragraph (b) specifies requirements for compression-type fittings for service-line main connections. Similar to the new requirements for other fittings, paragraph (b) is amended to require that operators must use Category 1 compression-type fittings.

Section 192.375 Service Lines: Plastic

Section 192.375 requires that plastic service lines be installed underground with limited exceptions. The final rule amends this section to apply the riser standards in § 192.204 to aboveground service lines.

Section 192.376 Installation of Plastic Service Lines by Trenchless Excavation

Section 192.376 is a new section that establishes new requirements for trenchless excavation installation of plastic service lines. Similar to § 192.329, during trenchless installation of service lines, operators must now take steps to avoid other underground structures and use a weak link device during the pull through process to avoid overstressing the pipeline.

Section 192.455 External Corrosion Control: Buried or Submerged Pipelines Installed After July 31, 1971

Section 192.455 details the external corrosion control requirements for all buried or submerged pipe. PHMSA has added a new paragraph (g) to require cathodic protection on electrically isolated metal fittings on plastic pipelines not meeting the exceptions in paragraph (f) installed after the effective date of the rule. Such fittings must also

be maintained in accordance with the operator’s integrity management plans.

Section 192.513 Test Requirements for Plastic Pipelines

Section 192.513 details the minimum initial testing requirements for plastic pipelines. The final rule amends paragraph (c) to reduce the maximum limit for testing pressure from 3 times the pressure determined under § 192.121 to 2.5 times the maximum pressure to avoid overstressing the line during testing.

Section 192.720 Distribution Systems: Leak Repair

The final rule adds a new § 192.720 prohibiting the use of temporary mechanical leak repair clamps as a permanent repair of plastic pipe used in distribution service.

Section 192.756 Joining Plastic Pipe by Heat Fusion; Equipment Maintenance

The final rule adds a new § 192.756 that establishes minimum requirements for equipment maintenance for equipment used in the heat fusion of plastic pipe.

List of Subjects in 49 CFR Part 192

Incorporation by reference, Pipeline safety, Plastic pipe, Security measures.

In consideration of the foregoing, PHMSA is amending 49 CFR part 192 as follows:

PART 192—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

■ 1. The authority citation for part 192 is revised to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, 60116, 60118, 60137, and 60141; and 49 CFR 1.97.

■ 2. In § 192.3, add a definition of “weak link” in alphabetical order to read as follows:

§ 192.3 Definitions.

* * * * *

Weak link means a device or method used when pulling polyethylene pipe, typically through methods such as horizontal directional drilling, to ensure that damage will not occur to the pipeline by exceeding the maximum tensile stresses allowed.

* * * * *

■ 3. Amend § 192.7 as follows:

■ a. Redesignate paragraphs (c)(3) through (c)(9) as paragraphs (c)(4) through (c)(10);

■ b. Add new paragraph (c)(3);

■ c. Revise paragraphs (d)(11) through (d)(15);

■ d. Add paragraphs (d)(16) through (d)(24); and

■ e. Revise paragraph (j)(1) and add paragraph (j)(2).

The additions and revisions read as follows:

§ 192.7 What documents are incorporated by reference partly or wholly in this part?

* * * * *

(c) * * *

(3) ASME B16.40–2008, “Manually Operated Thermoplastic Gas Shutoffs and Valves in Gas Distribution Systems,” March 18, 2008, approved by ANSI, (ASME B16.40–2008), IBR approved for Item I, Appendix B to Part 192.

* * * * *

(d) * * *

(11) ASTM D2513–12ae1, “Standard Specification for Polyethylene (PE) Gas Pressure Pipe, Tubing, and Fittings,” April 1, 2012, (ASTM D2513–12ae1), IBR approved for Item I, Appendix B to Part 192.

(12) ASTM D2517–00, “Standard Specification for Reinforced Epoxy Resin Gas Pressure Pipe and Fittings,” (ASTM D 2517), IBR approved for §§ 192.191(a); 192.281(d); 192.283(a); and Item I, Appendix B to Part 192.

(13) ASTM D2564–12, “Standard Specification for Solvent Cements for Poly (Vinyl Chloride) (PVC) Plastic Piping Systems,” Aug. 1, 2012, (ASTM D2564–12), IBR approved for § 192.281(b)(2).

(14) ASTM F1055–98 (Reapproved 2006), “Standard Specification for Electrofusion Type Polyethylene Fittings for Outside Diameter Controlled Polyethylene Pipe and Tubing,” March 1, 2006, (ASTM F1055–98 (2006)), IBR approved for § 192.283(a), Item I, Appendix B to Part 192.

(15) ASTM F1924–12, “Standard Specification for Plastic Mechanical Fittings for Use on Outside Diameter Controlled Polyethylene Gas Distribution Pipe and Tubing,” April 1, 2012, (ASTM F1924–12), IBR approved for Item I, Appendix B to Part 192.

(16) ASTM F1948–12, “Standard Specification for Metallic Mechanical Fittings for Use on Outside Diameter Controlled Thermoplastic Gas Distribution Pipe and Tubing,” April 1, 2012, (ASTM F1948–12), IBR approved for Item I, Appendix B to Part 192.

(17) ASTM F1973–13, “Standard Specification for Factory Assembled Anodeless Risers and Transition Fittings in Polyethylene (PE) and Polyamide 11 (PA11) and Polyamide 12 (PA12) Fuel Gas Distribution Systems,” May 1, 2013, (ASTM F1973–13), IBR approved for § 192.204(b); and Item I, Appendix B to Part 192.

(18) ASTM F2145–13, “Standard Specification for Polyamide 11 (PA 11) and Polyamide 12 (PA12) Mechanical Fittings for Use on Outside Diameter Controlled Polyamide 11 and Polyamide 12 Pipe and Tubing,” May 1, 2013, (ASTM F2145–13), IBR approved for Item I, Appendix B to Part 192.

(19) ASTM F 2600–09, “Standard Specification for Electrofusion Type Polyamide-11 Fittings for Outside Diameter Controlled Polyamide–11 Pipe and Tubing,” April 1, 2009, (ASTM F 2600–09), IBR approved for Item I, Appendix B to Part 192.

(20) ASTM F2620–12, “Standard Practice for Heat Fusion Joining of Polyethylene Pipe and Fittings,” Aug. 1, 2012, (ASTM F2620–12), IBR approved for §§ 192.281(c) and 192.285(b)(2)(i).

(21) ASTM F2767–12, “Specification for Electrofusion Type Polyamide-12 Fittings for Outside Diameter Controlled Polyamide–12 Pipe and Tubing for Gas Distribution,” Oct. 15, 2012, (ASTM F2767–12), IBR approved for Item I, Appendix B to Part 192.

(22) ASTM F2785–12, “Standard Specification for Polyamide 12 Gas Pressure Pipe, Tubing, and Fittings,” Aug. 1, 2012, (ASTM F2785–12), IBR approved for Item I, Appendix B to Part 192.

(23) ASTM F2817–10, “Standard Specification for Poly (Vinyl Chloride) (PVC) Gas Pressure Pipe and Fittings for Maintenance or Repair,” Feb. 1, 2010, (ASTM F2817–10), IBR approved for Item I, Appendix B to Part 192.

(24) ASTM F2945–12a “Standard Specification for Polyamide 11 Gas Pressure Pipe, Tubing, and Fittings,” Nov. 27, 2012, (ASTM F2945–12a), IBR approved for Item I, Appendix B to Part 192.

* * * * *

(j) * * * *

(1) PPI TR–3/2012, HDB/HDS/PDB/SDB/MRS/CRS, Policies, “Policies and Procedures for Developing Hydrostatic Design Basis (HDB), Hydrostatic Design Stresses (HDS), Pressure Design Basis (PDB), Strength Design Basis (SDB), Minimum Required Strength (MRS) Ratings, and Categorized Required Strength (CRS) for Thermoplastic Piping Materials or Pipe,” updated November 2012, (PPI TR–3/2012), IBR approved for § 192.121.

(2) PPI TR–4, HDB/HDS/SDB/MRS, Listed Materials, “PPI Listing of Hydrostatic Design Basis (HDB), Hydrostatic Design Stress (HDS), Strength Design Basis (SDB), Pressure Design Basis (PDB) and Minimum Required Strength (MRS) Rating For Thermoplastic Piping Materials or Pipe,” updated March, 2011, (PPI TR–4/2012), IBR approved for § 192.121.

■ 4. In § 192.9 revise paragraph (d) to read as follows:

§ 192.9 What requirements apply to gathering lines?

* * * * *

(d) *Type B lines.* An operator of a Type B regulated onshore gathering line must comply with the following requirements:

(1) If a line is new, replaced, relocated, or otherwise changed, the design, installation, construction, initial inspection, and initial testing must be in accordance with requirements of this part applicable to transmission lines;

(2) If the pipeline is metallic, control corrosion according to requirements of subpart I of this part applicable to transmission lines;

(3) If the pipeline contains plastic pipe or components, the operator must comply with all applicable requirements of this part for plastic pipe components;

(4) Carry out a damage prevention program under § 192.614;

(5) Establish a public education program under § 192.616;

(6) Establish the MAOP of the line under § 192.619;

(7) Install and maintain line markers according to the requirements for transmission lines in § 192.707; and

(8) Conduct leakage surveys in accordance with the requirements for transmission lines in § 192.706, using leak-detection equipment, and promptly repair hazardous leaks in accordance with § 192.703(c).

* * * * *

■ 5. Amend § 192.59 as follows:

■ a. Revise paragraphs (a)(1) and (a)(2);

■ b. Add paragraph (a)(3); and

■ c. Revise paragraph (b)(3).

The revisions and addition read as follows:

§ 192.59 Plastic pipe.

(a) * * *

(1) It is manufactured in accordance with a listed specification;

(2) It is resistant to chemicals with which contact may be anticipated; and

(3) It is free of visible defects.

(b) * * *

(3) It has been used only in gas

service;

* * * * *

■ 6. Amend § 192.63 by revising paragraph (a) and adding paragraph (e) to read as follows:

§ 192.63 Marking of materials.

(a) Except as provided in paragraph (d) and (e) of this section, each valve, fitting, length of pipe, and other component must be marked as prescribed in the specification or standard to which it was manufactured.

* * * * *

(e) All plastic pipe and components must also meet the following requirements:

(1) All markings on plastic pipe prescribed in the listed specification and the requirements of paragraph (e)(2) of this section must be repeated at intervals not exceeding two feet.

(2) Plastic pipe and components manufactured after December 31, 2019 must be marked in accordance with the listed specification.

(3) All physical markings on plastic pipelines prescribed in the listed specification and paragraph (e)(2) of this section must be legible until the time of installation.

■ 7. Add § 192.67 to subpart B to read as follows:

§ 192.67 Storage and handling of plastic pipe and associated components.

Each operator must have and follow written procedures for the storage and handling of plastic pipe and associated components that meet the applicable listed specifications.

■ 8. Revise § 192.121 to read as follows:

§ 192.121 Design of plastic pipe.

(a) *Design formula.* Design formulas for plastic pipe are determined in accordance with either of the following formulas:

$$P = 2S \frac{t}{(D - t)} (DF)$$

$$P = \frac{2S}{(SDR - 1)} (DF)$$

P = Design pressure, gage, psi (kPa).

S = For thermoplastic pipe, the hydrostatic design basis (HDB) is determined in accordance with the listed specification at a temperature equal to 73 °F (23 °C), 100 °F (38 °C), 120 °F (49 °C), or 140 °F (60 °C). In the absence of an HDB established at the specified temperature, the HDB of a higher temperature may be used in determining a design pressure rating at the specified temperature by arithmetic interpolation using the procedure in Part D.2 of PPI TR–3/2012, (incorporated by reference, *see* § 192.7). For reinforced thermosetting plastic pipe, 11,000 psig (75,842 kPa).

t = Specified wall thickness, inches (mm).

D = Specified outside diameter, inches (mm).

SDR = Standard dimension ratio, the ratio of the average specified outside diameter to the minimum specified wall thickness, corresponding to a value from a common numbering system that was derived from the American National Standards Institute (ANSI) preferred number series 10.

DF = Design Factor, a maximum of 0.32 unless otherwise specified for a particular material in this section

(b) *General requirements for plastic pipe and components.* (1) Except as provided in paragraphs (c) through (f) of this section, the design pressure for plastic pipe may not exceed a gauge pressure of 100 psig (689 kPa) for pipe used in:

- (i) Distribution systems; or
- (ii) Transmission lines in Class 3 and 4 locations.

(2) Plastic pipe may not be used where operating temperatures of the pipe will be:

- (i) Below -20 °F (-29 °C), or below -40 °F (-40 °C) if all pipe and pipeline components whose operating temperature will be below -20 °F (-29 °C) have a temperature rating by the manufacturer consistent with that operating temperature; or
- (ii) Above the temperature at which the HDB used in the design formula under this section is determined.

(3) Unless specified for a particular material in this section, the wall thickness of plastic pipe may not be less than 0.062 inches (1.57 millimeters).

(4) All plastic pipe must have a listed HDB in accordance with PPI TR-4/2012 (incorporated by reference, see § 192.7).

(c) *Polyethylene (PE) pipe requirements.* (1) For PE pipe produced after July 14, 2004, but before January 22, 2019, a design pressure of up to 125 psig may be used, provided:

- (i) The material designation code is PE2406 or PE3408.
- (ii) The pipe has a nominal size (Iron Pipe Size (IPS) or Copper Tubing Size (CTS)) of 12 inches or less (above nominal pipe size of 12 inches, the design pressure is limited to 100 psig); and
- (iii) The wall thickness is not less than 0.062 inches (1.57 millimeters).

(2) For PE pipe produced after January 22, 2019, a DF of 0.40 may be used in the design formula, provided:

- (i) The design pressure does not exceed 125 psig;
- (ii) The material designation code is PE2708 or PE4710;
- (iii) The pipe has a nominal size (IPS or CTS) of 12 inches or less; and
- (iv) The wall thickness for a given outside diameter is not less than that listed in the following table:

PE PIPE—MINIMUM WALL THICKNESS AND SDR VALUES

| Pipe size (inches) | Minimum wall thickness (inches) | Corresponding SDR (values) |
|--------------------|---------------------------------|----------------------------|
| 1/2" CTS | 0.090 | 7 |
| 3/4" CTS | 0.090 | 9.7 |
| 1/2" IPS | 0.090 | 9.3 |
| 3/4" IPS | 0.095 | 11 |

PE PIPE—MINIMUM WALL THICKNESS AND SDR VALUES—Continued

| Pipe size (inches) | Minimum wall thickness (inches) | Corresponding SDR (values) |
|--------------------|---------------------------------|----------------------------|
| 1" CTS | 0.119 | 11 |
| 1" IPS | 0.119 | 11 |
| 1 1/4" IPS | 0.151 | 11 |
| 1 1/2" IPS | 0.173 | 11 |
| 2" | 0.216 | 11 |
| 3" | 0.259 | 13.5 |
| 4" | 0.265 | 17 |
| 6" | 0.315 | 21 |
| 8" | 0.411 | 21 |
| 10" | 0.512 | 21 |
| 12" | 0.607 | 21 |

(d) *Polyamide (PA-11) pipe requirements.* (1) For PA-11 pipe produced after January 23, 2009, but before January 22, 2019, a DF of 0.40 may be used in the design formula, provided:

- (i) The design pressure does not exceed 200 psig;
 - (ii) The material designation code is PA32312 or PA32316;
 - (iii) The pipe has a nominal size (IPS or CTS) of 4 inches or less; and
 - (iv) The pipe has a standard dimension ratio of SDR-11 or less (*i.e.*, thicker wall pipe).
- (2) For PA-11 pipe produced on or after January 22, 2019, a DF of 0.40 may be used in the design formula, provided:
- (i) The design pressure does not exceed 250 psig;
 - (ii) The material designation code is PA32316;
 - (iii) The pipe has a nominal size (IPS or CTS) of 6 inches or less; and
 - (iv) The minimum wall thickness for a given outside diameter is not less than that listed in the following table:

PA-11 PIPE—MINIMUM WALL THICKNESS AND SDR VALUES

| Pipe size (inches) | Minimum wall thickness (inches) | Corresponding SDR (values) |
|--------------------|---------------------------------|----------------------------|
| 1/2" CTS | 0.090 | 7.0 |
| 3/4" CTS | 0.090 | 9.7 |
| 1/2" IPS | 0.090 | 9.3 |
| 3/4" IPS | 0.095 | 11 |
| 1" CTS | 0.119 | 11 |
| 1" IPS | 0.119 | 11 |
| 1 1/4" IPS | 0.151 | 11 |
| 1 1/2" IPS | 0.173 | 11 |
| 2" IPS | 0.216 | 11 |
| 3" IPS | 0.259 | 13.5 |
| 4" IPS | 0.333 | 13.5 |
| 6" IPS | 0.491 | 13.5 |

(e) *Polyamide (PA-12) pipe requirements.* For PA-12 pipe produced after January 22, 2019, a DF of 0.40 may be used in the design formula, provided:

- (1) The design pressure does not exceed 250 psig;
- (2) The material designation code is PA42316;
- (3) The pipe has a nominal size (IPS or CTS) of 6 inches or less; and
- (4) The minimum wall thickness for a given outside diameter is not less than that listed in the following table.

PA-12 PIPE—MINIMUM WALL THICKNESS AND SDR VALUES

| Pipe size (inches) | Minimum wall thickness (inches) | Corresponding SDR (values) |
|--------------------|---------------------------------|----------------------------|
| 1/2" CTS | 0.090 | 7 |
| 3/4" CTS | 0.090 | 9.7 |
| 1/2" IPS | 0.090 | 9.3 |
| 3/4" IPS | 0.095 | 11 |
| 1" CTS | 0.119 | 11 |
| 1" IPS | 0.119 | 11 |
| 1 1/4" IPS | 0.151 | 11 |
| 1 1/2" IPS | 0.173 | 11 |
| 2" IPS | 0.216 | 11 |
| 3" IPS | 0.259 | 13.5 |
| 4" IPS | 0.333 | 13.5 |
| 6" IPS | 0.491 | 13.5 |

(f) *Reinforced thermosetting plastic pipe requirements.* (1) Reinforced thermosetting plastic pipe may not be used at operating temperatures above 150 °F (66 °C).

(2) The wall thickness for reinforced thermosetting plastic pipe may not be less than that listed in the following table:

| Nominal size in inches (millimeters) | Minimum wall thickness in inches (millimeters) |
|--------------------------------------|--|
| 2 (51) | 0.060 (1.52) |
| 3 (76) | 0.060 (1.52) |
| 4 (102) | 0.070 (1.78) |
| 6 (152) | 0.100 (2.54) |

§ 192.123 [Removed and Reserved]

- 9. Remove and reserve § 192.123
- 10. In § 192.143, add paragraph (c) to read as follows:

§ 192.143 General requirements.

* * * * *

(c) Except for excess flow valves, each plastic pipeline component installed after January 22, 2019 must be able to withstand operating pressures and other anticipated loads in accordance with a listed specification.

- 11. In § 192.145, add paragraph (f) to read as follows:

§ 192.145 Valves.

* * * * *

(f) Except for excess flow valves, plastic valves installed after January 22,

2019, must meet the minimum requirements of a listed specification. A valve may not be used under operating conditions that exceed the applicable pressure and temperature ratings contained in the listed specification.

■ 12. In § 192.149, add paragraph (c) to read as follows:

§ 192.149 Standard fittings.

* * * * *

(c) Plastic fittings installed after January 22, 2019, must meet a listed specification.

§ 192.191 [Removed and Reserved]

■ 13. Remove and reserve § 192.191.

■ 14. Add § 192.204 to subpart D to read as follows:

§ 192.204 Risers installed after January 22, 2019.

(a) Riser designs must be tested to ensure safe performance under anticipated external and internal loads acting on the assembly.

(b) Factory assembled anodeless risers must be designed and tested in accordance with ASTM F1973-13 (incorporated by reference, see § 192.7).

(c) All risers used to connect regulator stations to plastic mains must be rigid and designed to provide adequate support and resist lateral movement. Anodeless risers used in accordance with this paragraph must have a rigid riser casing.

■ 15. Amend § 192.281 by revising paragraphs (b)(2), (b)(3), and (c) and adding paragraphs (e)(3) and (e)(4) to read as follows:

§ 192.281 Plastic pipe.

* * * * *

(b) * * *

(2) The solvent cement must conform to ASTM D2564-12 for PVC (incorporated by reference, see § 192.7).

(3) The joint may not be heated or cooled to accelerate the setting of the cement.

(c) Heat-fusion joints. Each heat fusion joint on a PE pipe or component, except for electrofusion joints, must comply with ASTM F2620-12 (incorporated by reference in § 192.7) and the following:

(1) A butt heat-fusion joint must be joined by a device that holds the heater element square to the ends of the pipe or component, compresses the heated ends together, and holds the pipe in proper alignment in accordance with the appropriate procedure qualified under § 192.283.

(2) A socket heat-fusion joint must be joined by a device that heats the mating surfaces of the pipe or component, uniformly and simultaneously, to

establish the same temperature. The device used must be the same device specified in the operator's joining procedure for socket fusion.

(3) An electrofusion joint must be made using the equipment and techniques prescribed by the fitting manufacturer, or using equipment and techniques shown, by testing joints to the requirements of § 192.283(a)(1)(iii), to be equivalent to or better than the requirements of the fitting manufacturer.

(4) Heat may not be applied with a torch or other open flame.

* * * * *

(e) * * *

(3) All mechanical fittings must meet a listed specification based upon the applicable material.

(4) All mechanical joints or fittings installed after January 22, 2019, must be Category 1 as defined by a listed specification for the applicable material, providing a seal plus resistance to a force on the pipe joint equal to or greater than that which will cause no less than 25% elongation of pipe, or the pipe fails outside the joint area if tested in accordance with the applicable standard.

■ 16. Revise § 192.283 to read as follows:

§ 192.283 Plastic pipe: Qualifying joining procedures.

(a) Heat fusion, solvent cement, and adhesive joints. Before any written procedure established under § 192.273(b) is used for making plastic pipe joints by a heat fusion, solvent cement, or adhesive method, the procedure must be qualified by subjecting specimen joints that are made according to the procedure to the following tests, as applicable:

(1) The test requirements of—

(i) In the case of thermoplastic pipe, based on the pipe material, the Sustained Pressure Test or the Minimum Hydrostatic Burst Test per the listed specification requirements. Additionally, for electrofusion joints, based on the pipe material, the Tensile Strength Test or the Joint Integrity Test per the listed specification.

(ii) In the case of thermosetting plastic pipe, paragraph 8.5 (Minimum Hydrostatic Burst Pressure) or paragraph 8.9 (Sustained Static Pressure Test) of ASTM D2517- 00 (incorporated by reference, see § 192.7).

(iii) In the case of electrofusion fittings for polyethylene (PE) pipe and tubing, paragraph 9.1 (Minimum Hydraulic Burst Pressure Test), paragraph 9.2 (Sustained Pressure Test), paragraph 9.3 (Tensile Strength Test), or paragraph 9.4 (Joint Integrity Tests) of

ASTM F1055-98(2006) (incorporated by reference, see § 192.7).

(2) For procedures intended for lateral pipe connections, subject a specimen joint made from pipe sections joined at right angles according to the procedure to a force on the lateral pipe until failure occurs in the specimen. If failure initiates outside the joint area, the procedure qualifies for use.

(3) For procedures intended for non-lateral pipe connections, perform testing in accordance with a listed specification. If the test specimen elongates no more than 25% or failure initiates outside the joint area, the procedure qualifies for use.

(b) Mechanical joints. Before any written procedure established under § 192.273(b) is used for making mechanical plastic pipe joints, the procedure must be qualified in accordance with a listed specification based upon the pipe material.

(c) A copy of each written procedure being used for joining plastic pipe must be available to the persons making and inspecting joints.

■ 17. In § 192.285, revise paragraph (b)(2)(i) to read as follows:

§ 192.285 Plastic pipe: Qualifying persons to make joints.

* * * * *

(b) * * *

(2) * * *

(i) Tested under any one of the test methods listed under § 192.283(a), or for PE heat fusion joints (except for electrofusion joints) visually inspected and tested in accordance with ASTM F2620-12 (incorporated by reference, see § 192.7) applicable to the type of joint and material being tested;

* * * * *

■ 18. In § 192.313, add paragraph (d) to read as follows:

§ 192.313 Bends and elbows.

* * * * *

(d) An operator may not install plastic pipe with a bend radius that is less than the minimum bend radius specified by the manufacturer for the diameter of the pipe being installed.

■ 19. Amend § 192.321 by revising paragraphs (a), (d), (f), and (h)(3) and adding paragraph (i) to read as follows:

§ 192.321 Installation of plastic pipelines.

(a) Plastic pipe must be installed below ground level except as provided in paragraphs (g), (h), and (i) of this section.

* * * * *

(d) Plastic pipe must have a minimum wall thickness in accordance with § 192.121.

* * * * *

(f) Plastic pipe that is being encased must be inserted into the casing pipe in a manner that will protect the plastic. Plastic pipe that is being encased must be protected from damage at all entrance and all exit points of the casing. The leading end of the plastic must be closed before insertion.

* * * * *

(h) * * *

(3) Not allowed to exceed the pipe temperature limits specified in § 192.121.

(i) Plastic mains may terminate above ground level provided they comply with the following:

(1) The above-ground level part of the plastic main is protected against deterioration and external damage.

(2) The plastic main is not used to support external loads.

(3) Installations of risers at regulator stations must meet the design requirements of § 192.204.

■ 20. Add § 192.329 to subpart G to read as follows:

§ 192.329 Installation of plastic pipelines by trenchless excavation.

Plastic pipelines installed by trenchless excavation must comply with the following:

(a) Each operator must take practicable steps to provide sufficient clearance for installation and maintenance activities from other underground utilities and/or structures at the time of installation.

(b) For each pipeline section, plastic pipe and components that are pulled through the ground must use a weak link, as defined by § 192.3, to ensure the pipeline will not be damaged by any excessive forces during the pulling process.

■ 21. Amend § 192.367 by revising paragraphs (b)(1) and (b)(2) and adding paragraph (b)(3) to read as follows:

§ 192.367 Service lines: General requirements for connections to main piping.

* * * * *

(b) * * *

(1) Be designed and installed to effectively sustain the longitudinal pull-out or thrust forces caused by contraction or expansion of the piping, or by anticipated external or internal loading;

(2) If gaskets are used in connecting the service line to the main connection fitting, have gaskets that are compatible with the kind of gas in the system; and

(3) If used on pipelines comprised of plastic, be a Category 1 connection as defined by a listed specification for the applicable material, providing a seal plus resistance to a force on the pipe

joint equal to or greater than that which will cause no less than 25% elongation of pipe, or the pipe fails outside the joint area if tested in accordance with the applicable standard.

■ 22. In § 192.375, revise paragraph (a)(2) to read as follows:

§ 192.375 Service lines: Plastic.

(a) * * *

(2) It may terminate above ground level and outside the building, if—

(i) The above ground level part of the plastic service line is protected against deterioration and external damage;

(ii) The plastic service line is not used to support external loads; and

(iii) The riser portion of the service line meets the design requirements of § 192.204.

* * * * *

■ 23. Add § 192.376 to read as follows:

§ 192.376 Installation of plastic service lines by trenchless excavation.

Plastic service lines installed by trenchless excavation must comply with the following:

(a) Each operator shall take practicable steps to provide sufficient clearance for installation and maintenance activities from other underground utilities and structures at the time of installation.

(b) For each pipeline section, plastic pipe and components that are pulled through the ground must use a weak link, as defined by § 192.3, to ensure the pipeline will not be damaged by any excessive forces during the pulling process.

■ 24. Amend § 192.455 by revising paragraph (a) introductory text and adding paragraph (g) to read as follows:

§ 192.455 External corrosion control: Buried or submerged pipelines installed after July 31, 1971.

(a) Except as provided in paragraphs (b), (c), (f), and (g) of this section, each buried or submerged pipeline installed after July 31, 1971, must be protected against external corrosion, including the following:

* * * * *

(g) Electrically isolated metal alloy fittings installed after January 22, 2019, that do not meet the requirements of paragraph (f) must be cathodically protected, and must be maintained in accordance with the operator's integrity management plan.

■ 25. In § 192.513, revise paragraph (c) to read as follows:

§ 192.513 Test requirements for plastic pipelines.

* * * * *

(c) The test pressure must be at least 150% of the maximum operating pressure or 50 psi (345 kPa) gauge, whichever is greater. However, the maximum test pressure may not be more than 2.5 times the pressure determined under § 192.121 at a temperature not less than the pipe temperature during the test.

* * * * *

■ 26. Add § 192.720 to read as follows:

§ 192.720 Distribution systems: Leak repair.

Mechanical leak repair clamps installed after January 22, 2019 may not be used as a permanent repair method for plastic pipe.

■ 27. Add § 192.756 to subpart M to read as follows:

§ 192.756 Joining plastic pipe by heat fusion; equipment maintenance and calibration.

Each operator must maintain equipment used in joining plastic pipe in accordance with the manufacturer's recommended practices or with written procedures that have been proven by test and experience to produce acceptable joints.

■ 28. In Appendix B to Part 192, revise the appendix heading and the list under "I." to read as follows:

Appendix B to Part 192—Qualification of Pipe and Components

I. List of Specifications

A. Listed Pipe Specifications

API Spec 5L—Steel pipe, "API Specification for Line Pipe" (incorporated by reference, *see* § 192.7).

ASTM A53/A53M—Steel pipe, "Standard Specification for Pipe, Steel Black and Hot-Dipped, Zinc-Coated, Welded and Seamless" (incorporated by reference, *see* § 192.7).

ASTM A106/A-106M—Steel pipe, "Standard Specification for Seamless Carbon Steel Pipe for High Temperature Service" (incorporated by reference, *see* § 192.7).

ASTM A333/A333M—Steel pipe, "Standard Specification for Seamless and Welded Steel Pipe for Low Temperature Service" (incorporated by reference, *see* § 192.7).

ASTM A381—Steel pipe, "Standard Specification for Metal-Arc-Welded Steel Pipe for Use with High-Pressure Transmission Systems" (incorporated by reference, *see* § 192.7).

ASTM A671/A671M—Steel pipe, "Standard Specification for Electric-Fusion-Welded Pipe for Atmospheric and Lower Temperatures" (incorporated by reference, *see* § 192.7).

ASTM A672/A672M-09—Steel pipe, "Standard Specification for Electric-Fusion-Welded Steel Pipe for High-Pressure Service at Moderate Temperatures" (incorporated by reference, *see* § 192.7).

ASTM A691/A691M-09—Steel pipe, “Standard Specification for Carbon and Alloy Steel Pipe, Electric-Fusion-Welded for High Pressure Service at High Temperatures” (incorporated by reference, *see* § 192.7).

ASTM D2513-12ae1 “Standard Specification for Polyethylene (PE) Gas Pressure Pipe, Tubing, and Fittings” (incorporated by reference, *see* § 192.7).

ASTM D 2517-00—Thermosetting plastic pipe and tubing, “Standard Specification for Reinforced Epoxy Resin Gas Pressure Pipe and Fittings” (incorporated by reference, *see* § 192.7).

ASTM F2785-12 “Standard Specification for Polyamide 12 Gas Pressure Pipe, Tubing, and Fittings” (PA-12) (incorporated by reference, *see* § 192.7).

ASTM F2817-10 “Standard Specification for Poly (Vinyl Chloride) (PVC) Gas Pressure Pipe and Fittings for Maintenance or Repair” (incorporated by reference, *see* § 192.7).

ASTM F2945-12a “Standard Specification for Polyamide 11 Gas Pressure Pipe, Tubing, and Fittings” (PA-11) (incorporated by reference, *see* § 192.7).

B. Other Listed Specifications for Components

ASME B16.40-2008 “Manually Operated Thermoplastic Gas Shutoffs and Valves in Gas Distribution Systems” (incorporated by reference, *see* § 192.7).

ASTM D2513-12ae1 “Standard Specification for Polyethylene (PE) Gas Pressure Pipe, Tubing, and Fittings” (incorporated by reference, *see* § 192.7).

ASTM D 2517-00—Thermosetting plastic pipe and tubing, “Standard Specification for Reinforced Epoxy Resin Gas Pressure Pipe and Fittings” (incorporated by reference, *see* § 192.7).

ASTM F2785-12 “Standard Specification for Polyamide 12 Gas Pressure Pipe, Tubing, and Fittings” (PA-12) (incorporated by reference, *see* § 192.7).

ASTM F2945-12a “Standard Specification for Polyamide 11 Gas Pressure Pipe, Tubing, and Fittings” (PA-11) (incorporated by reference, *see* § 192.7).

ASTM F1055-98 (2006) “Standard Specification for Electrofusion Type Polyethylene Fittings for Outside Diameter Controlled Polyethylene Pipe and Tubing” (incorporated by reference, *see* § 192.7).

ASTM F1924-12 “Standard Specification for Plastic Mechanical Fittings for Use on Outside Diameter Controlled Polyethylene Gas Distribution Pipe and Tubing” (incorporated by reference, *see* § 192.7).

ASTM F1948-12 “Standard Specification for Metallic Mechanical Fittings for Use on Outside Diameter Controlled Thermoplastic Gas Distribution Pipe and Tubing” (incorporated by reference, *see* § 192.7).

ASTM F1973-13 “Standard Specification for Factory Assembled Anodeless Risers and Transition Fittings in Polyethylene (PE)

and Polyamide 11 (PA 11) and Polyamide 12 (PA 12) Fuel Gas Distribution Systems” (incorporated by reference, *see* § 192.7).

ASTM F 2600-09 “Standard Specification for Electrofusion Type Polyamide-11 Fittings for Outside Diameter Controlled Polyamide-11 Pipe and Tubing” (incorporated by reference, *see* § 192.7).

ASTM F2145-13 “Standard Specification for Polyamide 11 (PA 11) and Polyamide 12 (PA12) Mechanical Fittings for Use on Outside Diameter Controlled Polyamide 11 and Polyamide 12 Pipe and Tubing” (incorporated by reference, *see* § 192.7).

ASTM F2767-12 “Specification for Electrofusion Type Polyamide-12 Fittings for Outside Diameter Controlled Polyamide-12 Pipe and Tubing for Gas Distribution” (incorporated by reference, *see* § 192.7).

ASTM F2817-10 “Standard Specification for Poly (Vinyl Chloride) (PVC) Gas Pressure Pipe and Fittings for Maintenance or Repair” (incorporated by reference, *see* § 192.7).

* * * * *

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Howard R. Elliott,
Administrator.

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Vol. 83, No. 224

Tuesday, November 20, 2018

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| | |
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FEDERAL REGISTER PAGES AND DATE, NOVEMBER

| | |
|-------------|----|
| 54861-55092 | 1 |
| 55093-55246 | 2 |
| 55247-55452 | 5 |
| 55453-55600 | 6 |
| 55601-55812 | 7 |
| 55813-55930 | 8 |
| 55931-56254 | 9 |
| 56255-56698 | 13 |
| 56699-57306 | 14 |
| 57307-57670 | 15 |
| 57671-58174 | 16 |
| 58175-58462 | 19 |
| 58463-58720 | 20 |

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

| | |
|-------------------------------|-------|
| Executive Orders: | |
| 13850 | 55243 |
| Administrative Orders: | |
| Memorandums: | |
| Memorandum of | |
| October 26, 2018 | 57671 |
| Presidential | |
| Determinations: No. | |
| 2019-04 of October | |
| 31, 2018 | 57673 |
| Proclamations: | |
| 9814 | 55453 |
| 9815 | 55455 |
| 9816 | 55457 |
| 9817 | 55459 |
| 9818 | 55461 |
| 9819 | 55463 |
| 9820 | 57303 |
| 9821 | 57305 |
| 9822 | 57661 |
| 9823 | 57665 |
| 9824 | 57667 |
| 9825 | 57669 |
| Administrative Orders: | |
| Memorandums: | |
| Memorandum of | |
| October 29, 2018 | 56697 |
| Notices: | |
| Notice of October 31, | |
| 2018 | 55239 |
| Notice of November 8, | |
| 2018 | 56251 |
| Notice of November 8, | |
| 2018 | 56253 |
| Notice of November | |
| 16, 2018 | 58461 |
| Presidential | |
| Determinations: | |
| No. 2019-01 of | |
| October 4, 2018 | 55091 |

5 CFR

| | |
|---------|-------|
| 250 | 55931 |
| 894 | 58175 |
| Ch. XIV | 54862 |
| Ch. CI | 54861 |

7 CFR

| | |
|------------------------|-------|
| 906 | 55931 |
| 927 | 56255 |
| 1728 | 55465 |
| Proposed Rules: | |
| 932 | 57691 |
| 981 | 56742 |
| 987 | 55111 |

8 CFR

| | |
|------|-------|
| 208 | 55934 |
| 1003 | 55934 |
| 1208 | 55934 |

10 CFR

| | |
|------------------------|--------------|
| 26 | 58463 |
| 30 | 58463 |
| 40 | 58463 |
| 50 | 58463 |
| 70 | 58463 |
| 72 | 55601 |
| 73 | 58463 |
| 110 | 58463 |
| Proposed Rules: | |
| 50 | 56156, 58509 |
| 72 | 55643 |
| 170 | 55113 |
| 171 | 55113 |
| 430 | 54883, 56746 |
| 431 | 54883 |

12 CFR

| | |
|-----|-------|
| 209 | 58466 |
| 652 | 55093 |
| 700 | 55467 |
| 701 | 55467 |
| 702 | 55467 |
| 703 | 55467 |
| 713 | 55467 |
| 723 | 55467 |
| 747 | 55467 |

Proposed Rules:

| | |
|--------|-------|
| Ch. II | 57351 |
| 52 | 58432 |
| 208 | 58432 |
| 268 | 57343 |
| 304 | 58432 |
| 701 | 56640 |
| 1281 | 55114 |

13 CFR

| | |
|------------------------|-------|
| 120 | 55478 |
| Proposed Rules: | |
| 103 | 57693 |
| 120 | 57693 |
| 121 | 57693 |

14 CFR

| | |
|----|-----------------------------|
| 25 | 55247 |
| 39 | 55249, 55252, 55255, |
| | 55258, 55606, 55610, 55614, |
| | 55617, 55619, 55813, 55816, |
| | 55953, 56699, 56702, 56704, |
| | 56709, 56765, 58184 |
| 71 | 54864, 55479, 56711, |
| | 58467, 58468, 58471, 58492 |
| 91 | 55263 |
| 97 | 55818, 55821, 58473, |
| | 58475 |

Proposed Rules:

| | |
|----|-----------------------------|
| 39 | 55294, 55297, 55299, |
| | 55303, 55496, 55498, 55502, |
| | 55825, 55828, 55830, 55833, |
| | 57364, 58191, 58194, 58196, |
| | 58199 |
| 71 | 55306, 55308, 55310 |

| | | | |
|------------------------------|------------------------------|------------------------------|------------------------------|
| 93.....55133, 55134 | Proposed Rules: | Ch. III.....55334 | 156.....56015 |
| 15 CFR | 630.....56758 | 38 CFR | 1148.....55504 |
| 740.....55099 | 635.....56758 | 4.....54881 | 46 CFR |
| 742.....55099 | 24 CFR | 40 CFR | 35.....55272, 56271 |
| 744.....55099 | 3282.....57677 | 9.....57689 | Proposed Rules: |
| 772.....55099 | 25 CFR | 51.....56713, 57324, 58506 | 10.....56272 |
| 774.....55099 | 23.....55267 | 52.....56734, 56736, 57324, | 47 CFR |
| 922.....55956 | 26 CFR | 58188 | 20.....55106 |
| Proposed Rules: | 1.....55632, 58476 | 55.....56259 | Proposed Rules: |
| 744.....58201 | 54.....57336, 57592 | 60.....56713, 58506 | 1.....56031 |
| 16 CFR | Proposed Rules: | 63.....56713, 58506 | 61.....58510 |
| Proposed Rules: | 1.....55324, 55646, 56763 | 180.....55491, 55970, 56262, | 73.....56031, 56038, 58513 |
| 609.....57693 | 53.....55653 | 57333, 58506 | |
| 17 CFR | 300.....58202 | 282.....55286 | |
| 1.....56666 | 28 CFR | 721.....57689 | 48 CFR |
| 232.....55264, 57677 | 2.....58499, 58500 | Proposed Rules: | 509.....56739 |
| 240.....55486, 58338 | 29 CFR | 49.....55994 | Proposed Rules: |
| 242.....58338 | 1926.....56198 | 52.....55335, 55338, 55656, | 16.....54901 |
| 249.....56257 | 2590.....57336, 57592 | 55994, 56002, 56770, 56773, | 52.....54901 |
| 20 CFR | 4022.....57307 | 56775, 56777, 56781, 57701, | 501.....55838 |
| 418.....55626 | Proposed Rules: | 57704, 58206 | 536.....55838 |
| Proposed Rules: | Ch. I.....55329 | 60.....56015, 57387 | 552.....55838 |
| 620.....55311 | 570.....57386 | 81.....56781 | |
| 655.....55977, 55985 | 31 CFR | 86.....55837 | 49 CFR |
| 401.....57366 | App. A to Ch.V.....55269 | 282.....55340 | 171.....55792 |
| 404.....57368 | 547.....57308 | 355.....56791 | 172.....55792 |
| 416.....57368 | 560.....55269 | 721.....57634 | 173.....55792 |
| 21 CFR | 32 CFR | 770.....54892 | 176.....55792 |
| 73.....54869, 56258 | Proposed Rules: | 42 CFR | 178.....55792 |
| 101.....55266 | 111.....55329 | 409.....56406 | 180.....55792 |
| 862 (2 documents).....54873, | 33 CFR | 413.....56922 | 192.....58694 |
| 54875 | 100.....55271, 55967 | 414.....56922 | Proposed Rules: |
| Proposed Rules: | 117.....55099, 55100, 55967, | 424.....56406 | 192.....57388 |
| 15.....55318 | 55969, 57689, 58185 | 484.....56406 | |
| 50.....57378 | 147.....55967 | 486.....56406 | 50 CFR |
| 101.....55323 | 164.....55272 | 488.....56406 | 218.....57076 |
| 112.....54888 | 165.....55101, 55282, 55284, | Proposed Rules: | 300.....55636 |
| 175.....56750 | 55488, 55967, 55969, 56258, | 10.....55135 | 622.....55107, 55292, 55293, |
| 176.....56750 | 57318, 57319, 57321, 57322, | 422.....54982 | 55975, 57339 |
| 177.....56750 | 58186, 58501, 58504 | 423.....54982 | 635.....55108, 55638, 57340 |
| 178.....56750 | Proposed Rules: | 438.....54982, 57264 | 648.....55640 |
| 179.....54891 | 165.....55332, 56768 | 457.....57264 | 665.....55641 |
| 312.....57378 | 37 CFR | 482.....55105 | 679.....54881, 55109, 55641, |
| 807.....54891 | 1.....55102 | 484.....55105 | 55823, 56740, 57341 |
| 812.....57378 | Proposed Rules: | 485.....55105 | Proposed Rules: |
| 1002.....54891 | 201.....57386 | 498.....54982 | 17.....55341 |
| 1010.....54891 | 38 CFR | 44 CFR | 253.....55137 |
| 1040.....54891 | 1.....55102 | 64.....56269 | 600.....56039, 57705 |
| 23 CFR | Proposed Rules: | 45 CFR | 622.....55850, 56039, 58522 |
| 625.....54876 | 201.....57386 | 147.....57336, 57592 | 648.....54903, 55665, 57389, |
| | | Proposed Rules: | 57395, 58219 |
| | | 155.....56015 | 697.....56039 |

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. This list is also available online at <http://www.archives.gov/federal-register/laws>.

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H.R. 3359/P.L. 115-278
Cybersecurity and
Infrastructure Security Agency
Act of 2018 (Nov. 16, 2018;
132 Stat. 4168)

Last List November 7, 2018

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