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Contents

Federal Register

Vol. 83, No. 227

Monday, November 26, 2018

Separate Parts In This Issue

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.

7 CFR

Proposed Rules:

205.....60373

12 CFR

303.....60333
333.....60333
390.....60333

14 CFR

39.....60337
71 (2 documents) 60339, 60340

Proposed Rules:

39 (2 documents) 60374, 60376
71 (2 documents) 60378, 60380
73.....60382

17 CFR

23.....60341

18 CFR

35.....60347
40.....60347

27 CFR

Proposed Rules:

4.....60562
5.....60562
7.....60562
14.....60562
19.....60562

33 CFR

165.....60360

37 CFR

384.....60362

Proposed Rules:

Ch. III.....60384

39 CFR

Proposed Rules:

3010.....60385

40 CFR

52.....60363
60.....60696
63.....60696
180.....60366

Proposed Rules:

52.....60386
158.....60389

50 CFR

648.....60372

Rules and Regulations

Federal Register
Vol. 83, No. 227
Monday, November 26, 2018

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303, 333, and 390

RIN 3064–AE23

Transferred OTS Regulations Regarding Fiduciary Powers of State Savings Associations and Consent Requirements for the Exercise of Trust Powers

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is adopting a final rule to rescind and remove regulations entitled *Fiduciary Powers of State Savings Associations,* from the Code of Federal Regulations, and to amend current FDIC regulations regarding consent to exercise trust powers to reflect the applicability of these parts to both State savings associations and State nonmember banks.

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

FOR FURTHER INFORMATION CONTACT: Michael W. Orange, Senior Examination Specialist-Trust, Division of Risk Management and Supervision, 678–916–2289, *morange@fdic.gov;* Karen J. Currie, Senior Examination Specialist, Division of Risk Management and Supervision, 202–898–3981, *kcurrie@fdic.gov;* Annmarie Boyd, Counsel, Legal Division, 202–898–3714, *aboyd@fdic.gov;* or Alexander S. Bonander, Attorney, Legal Division, 202–898–3621, *abonander@fdic.gov;* Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Act provided for a substantial reorganization of the regulation of State and Federal savings associations and their holding companies.[1] Beginning July 21, 2011, the transfer date established by section 311 of the Dodd-Frank Act, 12 U.S.C. 5411, the powers, duties, and functions formerly performed by the Office of Thrift Supervision (OTS) were divided between the FDIC, as to State savings associations, the Office of the Comptroller of the Currency (OCC), as to Federal savings associations, and the Board of Governors of the Federal Reserve System, as to savings and loan holding companies. Section 316(b) of the Dodd-Frank Act, 12 U.S.C. 5414(b), provides the manner of treatment for all orders, resolutions, determinations, regulations, and advisory materials, that were issued, made, prescribed, or allowed to become effective by the OTS. The section provides that, if such regulatory issuances were in effect on the day before the transfer date, they continue to be in effect and are enforceable by or against the appropriate successor agency until they are modified, terminated, set aside, or superseded in accordance with applicable law by such successor agency, by any court of competent jurisdiction, or by operation of law.

Section 316(c) of the Dodd-Frank Act, 12 U.S.C. 5414(c), further directed the FDIC and OCC to consult with one another and to publish a list of the continued OTS regulations that would be enforced by each agency. On June 14, 2011, the FDIC's Board of Directors approved a ''List of OTS Regulations to be enforced by the OCC and the FDIC Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act.'' This list was published by the FDIC and the OCC as a Joint Notice in the **Federal Register** on July 6, 2011.[2]

Although section 312(b)(2)(B)(i)(II) of the Dodd-Frank Act, 12 U.S.C. 5412(b)(2)(B)(i)(II), granted the OCC rulemaking authority relating to both State and Federal savings associations, nothing in the Dodd-Frank Act affected the FDIC's existing authority to issue regulations under the Federal Deposit Insurance Act (FDI Act) and other laws as the ''appropriate Federal banking agency'' or under similar statutory terminology. Section 312(c) of the Dodd-Frank Act, 12 U.S.C. 5412(c), amended the definition of ''appropriate Federal banking agency'' contained in section 3(q) of the FDI Act, 12 U.S.C. 1813(q), to add State savings associations to the list of entities for which the FDIC is designated as the ''appropriate Federal banking agency.'' As a result, when the FDIC acts as the designated ''appropriate Federal banking agency'' for State savings associations and State nonmember banks, as it does here, the FDIC is authorized to issue, modify, and rescind regulations involving such institutions.

On June 14, 2011, pursuant to this authority, the FDIC's Board of Directors reissued and redesignated certain transferred regulations of the former OTS as FDIC regulations. When these transferred OTS regulations were published as new FDIC regulations in the **Federal Register** on August 5, 2011,[3] the FDIC specifically noted that it would evaluate the transferred OTS regulations and might later incorporate them into other FDIC rules, amend them, or rescind them, as appropriate.

II. Part 390 Subpart J: Fiduciary Powers of State Savings Associations

The OTS regulation formerly found at 12 CFR 550.10(b)(1), which covered the fiduciary powers (also known as trust powers) of State savings associations, was transferred to the FDIC with only nominal changes and is now found in the FDIC's rules at 12 CFR part 390, subpart J (Subpart J). Subpart J provides that a State savings association must conduct its fiduciary operations in accordance with applicable State law and must exercise its fiduciary powers in a safe and sound manner.

III. State Nonmember Banks and Trust Powers

Unlike the explicit requirement applicable to State savings associations in Subpart J, there is no express rule requiring State nonmember banks to conduct fiduciary operations in accordance with applicable State law and to exercise their fiduciary powers in a safe and sound manner. However, the FDIC has long recognized that State nonmember banks, like State savings associations, must comply with State law when exercising trust or fiduciary powers.[4] This reflects a widely

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010) (12 U.S.C. 5301 *et seq.*).

[2] 76 FR 39247 (July 6, 2011).

[3] 76 FR 47652 (Aug. 5, 2011).

[4] FDIC Trust Examination Manual, *http://www.fdic.gov/regulations/examinations/*

Continued

understood industry principle that the trust powers of State chartered institutions are granted under State law and are primarily administered by the State chartering authority.[5]

State nonmember banks are generally required to file an application for consent to exercise trust powers.[6] Therefore, if a State nonmember bank seeks to change the nature of its current business to include trust activities, section 333.2 requires the bank to obtain the FDIC's prior written consent.[7] Under section 333.101(b), however, prior written consent is not required when a State nonmember bank seeks to act as trustee or custodian of certain qualified retirement, education, and health savings accounts, or other similar accounts in which the bank's duties are essentially custodial or ministerial in nature and the acceptance of such accounts without trust powers is not contrary to applicable State law.[8]

Section 303.242 contains application procedures that a State nonmember bank must follow to obtain the FDIC's prior written consent before engaging in trust activities.[9] Prior to granting such consent, the FDIC considers whether the bank will conduct trust operations in a safe and sound manner, consistent with State law.

IV. The Proposed Rule

On April 10, 2018, the FDIC issued a Notice of Proposed Rulemaking (NPR or Proposed Rule) entitled *Transferred OTS Regulations Regarding Fiduciary Powers of State Savings Associations and Consent Requirements for the Exercise of Trust Powers.*[10] The NPR proposed to: (1) Rescind Subpart J in its entirety; (2) add a new section 333.3 explicitly providing that State savings associations and State nonmember banks must obtain the FDIC's prior written consent before exercising trust powers by following the procedures contained in section 303.242; (3) revise section 333.101 to provide that State savings associations, as well as State nonmember banks, are not considered to be exercising trust powers when acting as trustees or custodians for certain qualified retirement, education, and health savings accounts, or other similar accounts in which the bank's duties are essentially custodial or ministerial in nature and the acceptance of such accounts without trust powers is not contrary to applicable State law; and (4) revise section 303.242 to make its application procedures applicable to both State savings associations and State nonmember banks and incorporate a listing of documents required to be submitted with the application for consent to exercise trust powers.

V. Comments

The FDIC issued the NPR with a 60-day comment period that closed on June 11, 2018. The FDIC requested comments on all aspects of the Proposed Rule, including whether Subpart J should be retained and what positive or negative impacts could result from the proposed revisions to parts 333 and 303, including the impact on State savings associations not currently exercising trust powers that would need to obtain FDIC consent if they chose to do so in the future. The FDIC received no comments on the Proposed Rule. Accordingly, the FDIC is adopting the Proposed Rule largely as proposed, but without incorporating the listing of documents in section 303.242. As discussed further below, this change is intended to avoid unnecessary duplication or confusion with the existing application form and further regulatory revisions in the event of any future changes to the documentation listed on the form.

VI. Explanation of the Final Rule

As discussed in the NPR, the FDIC concluded that the rescission of Subpart J would streamline the FDIC rules and regulations, and no comments were received on this issue. Therefore, the final rule removes and rescinds 12 CFR part 390, subpart J in its entirety.

The final rule adds a new section 333.3, unchanged from the NPR, explicitly requiring State savings associations and State nonmember banks to obtain the FDIC's prior written consent before exercising trust powers. For State nonmember banks, section 333.3 makes explicit the FDIC's existing requirement that State nonmember banks receive the FDIC's consent before initially exercising trust powers, as such an action would constitute a change in the bank's general character or business under 12 CFR 333.2. For State savings associations, Section 333.3 adds a new requirement to obtain the FDIC's prior written consent should they choose in the future to exercise trust powers granted by their State chartering authorities. In effect, section 333.3 makes the requirement to file an application consistent for both State savings associations and State nonmember banks.

The final rule, like the NPR, also revises section 333.101(b) to permit both State savings associations and State nonmember banks to act as custodians for qualifying retirement, education, and health savings accounts, or other similar accounts without being deemed to exercise trust powers, and therefore without obtaining the FDIC's prior written consent.

The final rule, like the NPR, makes the application procedures in section 303.242 applicable to both State savings associations and State nonmember banks. Accordingly, under section 303.242(a) of the final rule, neither State savings associations nor State nonmember banks are required to receive the FDIC's prior written consent to exercise trust powers when: (1) The institution received authority to exercise trust powers from its chartering authority prior to December 1, 1950; or (2) the institution continues to conduct trust activities pursuant to authority granted by its chartering authority subsequent to a charter conversion or withdrawal from membership in the Federal Reserve System. The NPR originally proposed to amend section 303.242 (c) to list specific documents typically filed as part of an application to exercise trust powers.[11] Upon further consideration, the FDIC determined not to list these items in the final rule in order to avoid duplication with the items already listed in the instructions on the existing application form for consent to exercise trust powers and the need for additional, corresponding changes to section 303.242(c) to reflect any future updates to the existing

trustmanual/section_10/section_x.html#B1. (The trust powers of State nonmember banks are granted under State law and the administration of trust powers primarily rests with the State as a State nonmember bank's chartering authority.).

[5] *Id.*

[6] Banks granted trust powers by statute or charter prior to December 1, 1950, are considered grandfathered from the requirement to obtain consent to exercise trust powers. *See* 12 CFR 303.242(a).

[7] A State nonmember bank is required to obtain the FDIC's prior written consent before changing its general character or type of business. 12 CFR 333.2.

[8] These accounts include Individual Retirement Accounts (IRAs), Self-Employed Retirement Plans, Roth IRAs, Coverdell Education Savings Accounts, Health Savings Accounts, and other accounts in which: (1) The bank's duties are essentially custodial or ministerial in nature; (2) the bank is required to invest the funds from such plans only in its own time or savings deposits or in any other assets at the direction of the customer; and (3) the bank's acceptance of such accounts without trust powers is not contrary to applicable State law. *See* 12 CFR 333.101(b).

[9] State nonmember banks must file an application to obtain the FDIC's prior written consent to exercise trust powers unless: (1) The bank received authority to exercise trust powers by its chartering authority prior to December 1, 1950; or (2) the insured depository institution continues to conduct trust activities pursuant to the authority granted to it by its chartering authority subsequent to a charter conversion or withdrawal from membership in the Federal Reserve System. 12 CFR 303.242(a).

[10] 83 FR 15327 (Apr. 10, 2018).

[11] 83 FR 15327, 15320.

form.[12] Accordingly, the final rule does not change section 303.242(c), which continues to provide that the required filing shall consist of the completed application form.[13]

VII. Regulatory Process

A. The Paperwork Reduction Act

Certain provisions of the final rule contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995, codified at 44 U.S.C. 3501–3521. In accordance with the PRA, the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control number for this collection of information is 3064–0025.[14] As required by the PRA and OMB implementing regulations (5 CFR part 1320), when the NPR was published, the FDIC submitted the information collection requirements contained in this final rulemaking to OMB for review and approval. OMB filed its Notice of Action preapproving this submission on May 16, 2018.

The final rule, like the NPR, would rescind and remove Part 390, Subpart J from Title 12 of the Code of Federal Regulations, amend Parts 303 and 333 to clarify the existing consent requirements for State nonmember banks, and incorporate references to State savings associations into those parts. These changes would not add additional burden to the FDIC's current information collection under OMB control number 3064–0025, *Application for Consent to Exercise Trust Powers.* However, the revision of Parts 303 and 333 to include State savings associations as potential filers would add additional burden to the FDIC's current information collection under OMB control number 3064–0025, as State savings associations would be required to complete the designated application and submit required documentation to comply with Parts 303 and 333. Currently, there are a total of forty one State savings associations. There is only one State savings association currently exercising trust powers, so there are forty State savings associations that would potentially need to seek the FDIC's consent pursuant to the proposed revisions to Parts 303 and 333 before exercising trust powers.[15]

In the NPR, the FDIC proposed to revise this information collection as follows:

Title: Application for Consent to Exercise Trust Powers.

OMB Number: 3064–0025.

Form Number: FDIC 6200/09.

Affected Public: Insured State nonmember banks and insured State savings associations wishing to exercise trust powers.

	Type of burden	Estimated number of respondents	Estimated hours per response	Frequency of response	Total annual estimated burden (hours)
Eligible depository institutions	Reporting	9	8	On Occasion	72
Not-eligible depository institutions.	Reporting	4	24	On Occasion	96
Totals		13			168

The FDIC did not receive any comments on its proposed revisions to this information collection. Accordingly, the information collection revisions are adopted as proposed in the NPR and replicated in the chart above.

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)[16] requires that, in connection with a final rulemaking, an agency prepare and make available for public comment a final regulatory flexibility analysis that describes the impact of the proposed rule on small entities (defined in regulations promulgated by the United States Small Business Administration to include banking organizations with total assets of less than or equal to $550 million). However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short explanatory statement in the **Federal Register** together with the rule.[17] As discussed above and in the NPR, the FDIC has authority to issue, modify and rescind regulations as the appropriate Federal banking agency for State savings associations and State nonmember banks. In addition to the approach taken in the NPR and final rule, the FDIC also considered the alternative of maintaining the status quo, which would have retained the separate regulatory regimes for State savings associations and State non-member banks.

The final rule amends part 333 to state that both State savings associations and State nonmember banks seeking to exercise trust powers must obtain FDIC consent. The final rule is not expected to impact State nonmember banks, as it results in no substantive changes for those institutions. Prior to the final rule, State nonmember banks were subject to the longstanding interpretation that the initial exercise of trust powers granted by a chartering authority constituted a change in the character of the bank's business under 12 CFR 333.2, and thereby required the FDIC's prior written approval. The final rule clarifies this issue by explicitly stating the longstanding requirement that State nonmember banks obtain the FDIC's prior written approval before exercising trust powers for the first time.

As discussed above, the revisions to part 333 require a filing by those State savings associations that seek to exercise trust powers in the future. However, a State savings association's application for the FDIC's consent to exercise trust powers would be a one-time process that is not anticipated to create a significant economic impact. The information requested on the application form would require a State savings association to identify the type of trust power it seeks to exercise and to provide documentation that includes

[12] FDIC, *Application for Consent to Exercise Trust Powers, https://www.fdic.gov/formsdocuments/6200-09.pdf.*

[13] 12 CFR 303.242(c).

[14] The information collection for Application for Consent to Exercise Trust Powers, OMB No. 3064–0025, was renewed by OMB on August 30, 2017, and now expires on August 31, 2020.

[15] Call Report Data, June 2018.

[16] 5 U.S.C. 601 *et seq.*

[17] The FDIC supervises 3,675institutions, of which 2,850 are ''small entities'' according to the terms of RFA. There are 2,832 small state nonmember banks and 38 small state savings associations. *See* Call Report Data, June 2018.

proof of the adoption of the FDIC's Statement of Principles of Trust Department Management, identification of the applicable trust officer, trust committee, trust counsel, servicing arrangements, proof of the requisite approvals by the appropriate State authority, a projection of the proposed trust activity's three-year performance, and a statement of its impact on the applicant.[18]

Based on the FDIC's supervisory experience, most of the documentation required, such as State approval, servicing arrangements, and designation of personnel to serve as appropriate trust counsel, trust officer, and trust committee directors, is based on information and resources that a State savings association applicant would already possess or have to establish in order to exercise trust powers, regardless of whether it seeks the FDIC's prior written consent. Submitting existing information is not expected to create significant, additional expenses for a State savings association seeking the FDIC's prior written consent to exercise trust powers. The FDIC estimates that it will receive relatively few applications, given the small overall number of State savings associations (40) that would be affected by the rule if they sought to exercise trust powers. In addition, no comments were received pertaining to the RFA discussion in the NPR.

For these reasons, the FDIC certifies that the final rule would not have a significant economic impact on a substantial number of small entities, within the meaning of those terms as used in the RFA. Accordingly, a regulatory flexibility analysis is not required.

C. Small Business Regulatory Enforcement Fairness Act

The OMB has determined that the final rule is not a ''major rule'' within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).[19] As required by SBREFA, the FDIC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

D. Plain Language

Section 722 of the Gramm-Leach-Bliley Act[20] requires each Federal banking agency to use plain language in all of its proposed and final rules published after January 1, 2000. In the NPR, the FDIC invited comments on whether the Proposed Rule was clearly stated and effectively organized, and how the FDIC might make it easier to understand. Although no comments were received, the FDIC has sought to present the final rule in a simple and straightforward manner.

E. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[21] in determining the effective date and administrative compliance requirements for a new regulation that imposes additional reporting, disclosure, or other requirements on insured depository institutions, each Federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosure, or other new requirements on insured depository institutions generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.[22]

In accordance with these provisions, the FDIC considered any administrative burdens, as well as benefits, that the final rule would place on depository institutions and their customers in determining the effective date and administrative compliance requirements of the final rule. The final rule imposes a new requirement on State savings associations to obtain the FDIC's consent before exercising trust powers granted by State chartering authorities and, in accordance with RCDRIA and the Administrative Procedure Act,[23] will be effective no earlier than the first day of the calendar quarter that is at least 30 days following the date on which the final rule is published in the **Federal Register**. However, as discussed above, the application primarily requires submission of pre-existing documentation and is not expected to be burdensome for depository institutions or their customers. The final rule also provides greater clarity to FDIC-supervised institutions and results in greater consistency in the application process.

F. The Economic Growth and Regulatory Paperwork Reduction Act

Under section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA), the FDIC is required to review all of its regulations at least once every ten years in order to identify any outdated or otherwise unnecessary regulations imposed on insured institutions.[24] The FDIC, along with the other Federal banking agencies, submitted a Joint Report to Congress on March 21, 2017 (EGRPRA Report), discussing how the review was conducted, what has been done to date to address regulatory burden, and further measures to address issues identified during the review process. As noted in the EGRPRA Report, the FDIC is continuing to streamline and clarify its regulations through the OTS rule integration process. By removing outdated or unnecessary regulations, such as Subpart J, and amending Parts 303 and 333, this rule complements other actions the FDIC has taken, separately and with the other Federal banking agencies, to further the EGRPRA mandate.

List of Subjects

12 CFR Part 303

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Savings associations, Trusts and trustees.

12 CFR Part 333

Banks, banking, Corporate powers, Savings associations, Trusts and trustees.

12 CFR Part 390

Administrative practice and procedure, Advertising, Aged, Civil rights, Conflict of interests, Credit, Crime, Equal employment opportunity, Fair housing, Government employees, Individuals with disabilities, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation amends 12 CFR parts 308, 333, and 390 as follows:

PART 303—FILING PROCEDURES

■ 1. The authority citation for part 303 is revised to read as follows:

[18] FDIC 6200/09 (10–05).

[19] 5 U.S.C. 801 *et seq.*

[20] Public Law 106–102, section 722, 113 Stat. 1338, 1471 (1999).

[21] 12 U.S.C. 4802(a).

[22] 12 U.S.C. 4802.

[23] 5 U.S.C. 553(d).

[24] Public Law 104–208, 110 Stat. 3009 (1996).

Authority: 12 U.S.C. 378, 1464, 1813, 1815, 1817, 1818, 1819(a) (Seventh and Tenth), 1820, 1823, 1828, 1831a, 1831e, 1831o, 1831p–1, 1831w, 1835a, 1843(l), 3104, 3105, 3108, 3207, 5414, 5415 and 15 U.S.C. 1601–1607.

■ 2. Revise § 303.242 to read as follows:

§ 303.242 Exercise of trust powers.

(a) *Scope.* This section contains the procedures to be followed by a State nonmember bank or State savings association that seeks to obtain the FDIC's prior written consent to exercise trust powers. The FDIC's prior written consent to exercise trust powers is not required in the following circumstances:

(1) Where a State nonmember bank or State savings association received authority to exercise trust powers from its chartering authority prior to December 1, 1950; or

(2) Where the institution continues to conduct trust activities pursuant to authority granted by its chartering authority subsequent to a charter conversion or withdrawal from membership in the Federal Reserve System.

(b) *Where to file.* Applicants shall submit to the appropriate FDIC office a completed form, ''Application for Consent to Exercise Trust Powers.'' This form may be obtained from any FDIC regional director.

(c) *Content of filing.* The filing shall consist of the completed trust application form.

(d) *Additional information.* The FDIC may request additional information at any time during processing of the filing.

(e) *Expedited processing for eligible depository institutions.* An application filed under this section by an eligible depository institution as defined in § 303.2(r) will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided with the basis for that decision. The FDIC may remove an application from expedited processing for any of the reasons set forth in § 303.11(c)(2.). Absent such removal, an application processed under expedited procedures will be deemed approved 30 days after the FDIC's receipt of a substantially complete application.

(f) *Standard processing.* For those applications that are not processed pursuant to the expedited procedures, the FDIC will provide the applicant with written notification of the final action when the decision is rendered.

PART 333—EXTENSION OF CORPORATE POWERS

■ 3. The authority citation for part 333 is revised to read as follows:

Authority: 12 U.S.C. 1816; 1817(i); 1818; 1819(a) (''Seventh'', ''Eighth'', and ''Tenth''), 1828, 1828(m), 1831p–1(c), 5414 and 5415.

■ 4. Add § 333.3 to read as follows:

§ 333.3 Consent required for exercise of trust powers.

Except as provided in 12 CFR 303.242(a), a State nonmember bank or State savings association seeking to exercise trust powers must obtain prior written consent from the FDIC. Procedures for obtaining the FDIC's prior written consent are set forth in 12 CFR 303.242.

■ 5. Revise § 333.101(b) to read as follows:

§ 333.101 Prior consent not required.

* * * * *

(b) An insured State nonmember bank or State savings association, not exercising trust powers, may act as trustee or custodian of Individual Retirement Accounts established pursuant to the Employee Retirement Income Security Act of 1974 (26 U.S.C. 408), Self-Employed Retirement Plans established pursuant to the Self-Employed Individuals Retirement Act of 1962 (26 U.S.C. 401), Roth Individual Retirement Accounts and Coverdell Education Savings Accounts established pursuant to the Taxpayer Relief Act of 1997 (26 U.S.C. 408A and 530 respectively), Health Savings Accounts established pursuant to the Medicare Prescription Drug Improvement and Modernization Act of 2003 (26 U.S.C. 223), and other similar accounts without the prior written consent of the Corporation provided:

(1) The bank's or savings association's duties as trustee or custodian are essentially custodial or ministerial in nature,

(2) The bank or savings association is required to invest the funds from such plans only

(i) In its own time or savings deposits, or

(ii) In any other assets at the direction of the customer, provided the bank or savings association does not exercise any investment discretion or provide any investment advice with respect to such account assets, and

(3) The bank's or savings association's acceptance of such accounts without trust powers is not contrary to applicable State law.

PART 390—REGULATIONS TRANSFERRED FROM THE OFFICE OF THRIFT SUPERVISION

■ 6. The authority citation for part 390 is revised to read as follows:

Authority: 12 U.S.C. 1819.

Subpart J—[Removed and reserved]

■ 7. Remove and reserve subpart J, consisting of § 390.190.

Dated at Washington, DC, on November 20, 2018.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2018–25659 Filed 11–23–18; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0582; Product Identifier 2018–NM–085–AD; Amendment 39–19503; AD 93–14–19R1]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

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

ACTION: Final rule; removal.

SUMMARY: We are removing Airworthiness Directive (AD) 93–14–19, which applied to certain The Boeing Company Model 767–200 and –300 series airplanes. AD 93–14–19 required inspections for disbonding of the trailing edge wedge of the leading edge slat; and repair, if necessary. We issued AD 93–14–19 to prevent the loss of a trailing edge wedge, which could result in reduced maneuver margins, reduced speed margins to stall, and unexpected roll before stall warning, all of which would adversely affect the controllability of the airplane. Since we issued AD 93–14–19, an updated stability and control analysis showed that the worst-case scenario of a trailing edge wedge disbond in-flight would not adversely affect the controllability of the airplane. Accordingly, AD 93–14–19 is removed.

DATES: This AD becomes effective November 26, 2018.

ADDRESSES:

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0582; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the

regulatory evaluation, any comments received, and other information. The address for Docket Operations (telephone 800–647–5527) is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Wayne Lockett, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3524; email: *wayne.lockett@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by removing AD 93–14–19, Amendment 39–8644 (58 FR 41177, August 3, 1993) (''AD 93–14–19''). AD 93–14–19 applied to certain The Boeing Company Model 767–200 and –300 series airplanes. The NPRM published in the **Federal Register** on July 17, 2018 (83 FR 33162) (''the NPRM''). The NPRM was prompted by an updated stability and control analysis that showed the worst-case scenario of a trailing edge wedge disbond in-flight would not adversely affect the controllability of the airplane. The NPRM proposed to remove AD 93–14–19. We are issuing this AD to remove AD 93–14–19.

Comments

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

Support for the NPRM

Boeing and Delta Air Lines (DAL) stated their support for the proposed AD. United Airlines stated that it has no objection to the proposed rule.

Request to Withdraw the NPRM

Airline Pilots Association, International (ALPA) stated that it opposes the rescission of AD 93–14–19 because the FAA continues to issue similar ADs effective to other airplanes. ALPA also noted that the required actions of AD 93–14–19 are relatively low cost.

From these statements, we infer that ALPA was requesting that we withdraw the NPRM. We do not agree with the commenter's request. Updated stability and control data for the affected airplanes shows that damage and disbonding of the leading edge slat wedge is insufficient to be considered an airplane-level safety item. The updated data shows that there is sufficient lateral control up to stick shaker to counter any rolling moment caused by a missing or damaged slat wedge. Therefore, we have not changed this AD in this regard.

Request to Rescind Similar AD on another Airplane Model

DAL asked if AD 2017–22–12, Amendment 39–19092 (82 FR 55027, November 20, 2017) (''AD 2017–22–12''), would also be considered for rescission. DAL reasoned that AD 2017–22–12 required, among other things, inspection of the same structure (the trailing edge slat wedge of the leading edge slats) on The Boeing Company Model 757 series airplanes for the same reason (disbonding of slats) as AD 93–14–19.

We agree to clarify. We do not find it appropriate to rescind AD 2017–22–12 at this time. The flight characteristics of The Boeing Company Model 757 series airplanes are different than the flight characteristics of The Boeing Company Model 767 series airplanes, and the stability and control analysis of the one model does not transfer to the other model. However, if new data indicates that the identified unsafe condition no longer exists on Model 757 airplanes, we might consider additional rulemaking at that time. We have not changed this AD in this regard.

Conclusion

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

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

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority.

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 93–14–19, Amendment 39–8644 (58 FR 41177, August 3, 1993), and adding the following new AD:

93–14–19R1 The Boeing Company: Amendment 39–19503; Docket No. FAA–2018–0582; Product Identifier 2018–NM–085–AD.

(a) Effective Date

This AD becomes effective November 26, 2018.

(b) Affected AD

This AD removes AD 93–14–19, Amendment 39–8644 (58 FR 41177, August 3, 1993).

(c) Applicability

This action applies to The Boeing Company Model 767 series airplanes, certificated in any category, line numbers 1 through 488 inclusive.

(d) Subject

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

(e) Related Information

For more information about this AD, contact Wayne Lockett, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3524; email: *wayne.lockett@faa.gov*.

Issued in Des Moines, Washington, on November 8, 2018.

Chris Spangenberg,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–25494 Filed 11–23–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0744; Airspace Docket No. 18–ASO–14]

RIN 2120–AA66

Establishment of Class E Airspace, and Amendment of Class D Airspace and Class E Airspace; Dothan, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E surface airspace at Dothan Regional Airport, Dothan, AL. The Class E surface airspace is established for the safety of aircraft landing and departing the airport when the air traffic control tower is closed. Also, this action amends Class D airspace by updating the airport's name and geographic coordinates, as well as replacing the outdated term 'Airport/Facility Directory' with 'Chart Supplement'. Additionally, the geographic coordinates of the airport and Wiregrass VORTAC are adjusted in the associated Class E airspace to match the FAA's aeronautical database; as well as removing the part-time status of the airspace for Class E airspace designated as an extension to a Class D surface area. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at this airport.

DATES: Effective 0901 UTC, January 3, 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 on line at *http://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11C at NARA, call (202) 741–6030, or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html*.

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

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Ave, College Park, GA 30337; telephone (404) 305–6364.

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 establishes Class E surface airspace and amends Class D airspace and Class E airspace at Dothan Regional Airport, Dothan, AL, to support IFR operations at this airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (83 FR 47581, September 20, 2018) for Docket No. FAA–2018–0744 to establish Class E surface airspace, and amend Class D airspace, Class E airspace designated as an extension to a Class D surface area, and Class E airspace extending upward from 700 feet above the surface at Dothan Regional Airport, Dothan, AL. 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 D and Class 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 part 71.1. The Class D and 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 Class D airspace at Dothan Regional Airport, Dothan, AL by recognizing the airport name change to Dothan Regional Airport (formerly Dothan Airport), and adjusting the geographic coordinates of the airport to be in concert with the FAA's aeronautical database. Also, this action makes an editorial change replacing the term ''Airport/Facility Directory'' with the term ''Chart Supplement'' in the airspace legal description;

Establishes Class E surface area airspace within a 4.7-mile radius of Dothan Regional Airport, Dothan, AL, for the safety of aircraft landing and departing the airport after the air traffic control tower closes;

Amends Class E airspace designated as an extension to a Class D surface area by adjusting the geographic coordinates of the airport and the Wiregrass VORTAC to be in concert with the

FAA's aeronautical database. In addition, the part-time status is removed from this airspace description, as the airspace is continuously active; and

Amends Class E airspace extending upward from 700 feet above the surface at Dothan Regional Airport, Dothan, AL, by adjusting the geographic coordinates of the airport and the Wiregrass VORTAC to be in concert with the FAA's aeronautical database, and by recognizing the airport name change to Dothan Regional Airport (formerly Dothan Airport).

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under 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 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace.

* * * * *

ASO AL D Dothan, AL [Amended]

Dothan Regional Airport, AL
(Lat. 31°19′16″ N, long. 85°26′58″ W)

That airspace extending upward from the surface to and including 2,900 feet MSL within a 4.7-mile radius of Dothan Regional Airport. 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 Designated as Surface Areas.

* * * * *

ASO AL E2 Dothan, AL [New]

Dothan Regional Airport, AL
(Lat. 31°19′16″ N, long. 85°26′58″ W)

That airspace extending upward from the surface within a 4.7-mile radius of Dothan Regional Airport. This Class E surface 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 to a Class D Surface Area.

* * * * *

ASO AL E4 Dothan, AL [Amended]

Dothan Regional Airport, AL
(Lat. 31°19′16″ N, long. 85°26′58″ W)
Wiregrass VORTAC
(Lat. 31°17′05″ N, long. 85°25′52″ W)

That airspace extending upward from the surface within 3.2 miles each side of the Wiregrass VORTAC 156° radial, extending from the 4.7-mile radius of Dothan Regional Airport to 7-miles southeast of the VORTAC.

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

* * * * *

ASO AL E5 Dothan, AL [Amended]

Dothan Regional Airport, AL
(Lat. 31°19′16″ N, long. 85°26′58″ W)
Wiregrass VORTAC
(Lat. 31°17′05″ N, long. 85°25′52″ W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Dothan Regional Airport within 3.2 miles each side of Wiregrass VORTAC 156° radial, extending from the 6.7-mile radius to 7 miles SE of the VORTAC excluding that airspace within the Fort Rucker, AL, Class E airspace area.

Issued in College Park, Georgia, on November 14, 2018.

Matthew Cathcart,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2018–25569 Filed 11–23–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0194; Airspace Docket No. 18–AGL–6]

RIN 2120–AA66

Amendment of Class E Airspace; Madison, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace extending up to 700 feet above the surface at Lac Qui Parle County Airport, Madison, MN, to accommodate new standard instrument approach procedures for instrument flight rules (IFR) operations at the airport. The FAA is taking this action due to the decommissioning of the Madison non-directional radio beacon (NDB) and cancellation of the associated approach. This enhances the safety and management of IFR operations at the 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: Walter Tweedy, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5900.

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 would amend controlled airspace in Class E airspace, at Lac Qui Parle County Airport, Madison, MN, to support instrument flight rules (IFR) operations at the airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (83 FR 44248; August 30, 2018) for Docket No. FAA–2018–0194 to amend Class E airspace extending upward from 700 feet above the surface at Lac Qui Parle County Airport, Madison, MN. 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 Class E airspace extending upward from 700 feet above the surface within a 6.4-mile radius (increased from a 6.3-mile radius) at Lac Qui Parle County Airport, Madison, MN. The segment 7.4 miles southeast of the airport will be removed due to the decommissioning of the Madison NDB and cancellation of the associated approach. This action enhances the safety and management of the standard instrument approach procedures for IFR operations at the airport.

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 MN E5 Madison, MN [Amended]

Madison-Lac Qui Parle Airport, MN
(Lat. 44°59′11″ N, long. 96°10′40″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Madison-Lac Qui Parle Airport, MN.

Issued in Fort Worth, Texas, on November 14, 2018.

Anthony Schneider,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2018–25576 Filed 11–23–18; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 23

RIN 3038–AE71

Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is adopting amendments (''Final Rule'') to its margin requirements for uncleared swaps for swap dealers (''SD'') and major swap participants (''MSP'') for which there is no prudential regulator (''CFTC Margin Rule''). The Commission is adopting these amendments in light of the rules recently adopted by the Board of Governors of the Federal Reserve System (''Board''), the Federal Deposit Insurance Corporation (''FDIC''), and the Office of the Comptroller of the Currency (''OCC'') (collectively, the

''QFC Rules'') that impose restrictions on certain uncleared swaps and uncleared security-based swaps and other financial contracts. Specifically, the Commission is amending the definition of ''eligible master netting agreement'' in the CFTC Margin Rule to ensure that master netting agreements of firms subject to the CFTC Margin Rule are not excluded from the definition of ''eligible master netting agreement'' based solely on such agreements' compliance with the QFC Rules. The Commission also is amending the CFTC Margin Rule such that any legacy uncleared swap (*i.e.,* an uncleared swap entered into before the applicable compliance date of the CFTC Margin Rule) that is not now subject to the margin requirements of the CFTC Margin Rule will not become so subject if it is amended solely to comply with the QFC Rules. These amendments are consistent with amendments that the Board, FDIC, OCC, the Farm Credit Administration (''FCA''), and the Federal Housing Finance Agency (''FHFA'' and, together with the Board, FDIC, OCC, and FCA, the ''Prudential Regulators''), jointly published in the **Federal Register** on October 10, 2018.

DATES: This final rule is effective December 26, 2018.

FOR FURTHER INFORMATION CONTACT: Matthew Kulkin, Director, (202) 418–5213, *mkulkin@cftc.gov;* Frank Fisanich, Chief Counsel, (202) 418–5949, *ffisanich@cftc.gov; or* Jacob Chachkin, Special Counsel, (202) 418–5496, *jchachkin@cftc.gov,* Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

A. The CFTC Margin Rule

Section 731 of the Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') [1] added a new section 4s to the Commodity Exchange Act (''CEA'') [2] setting forth various requirements for SDs and MSPs. Section 4s(e) of the CEA directs the Commission to adopt rules establishing minimum initial and variation margin requirements on all swaps [3] that are (i) entered into by an SD or MSP for which there is no Prudential Regulator [4] (collectively, ''covered swap entities'' or ''CSEs'') and (ii) not cleared by a registered derivatives clearing organization (''uncleared swaps'').[5] To offset the greater risk to the SD or MSP [6] and the financial system arising from the use of uncleared swaps, these requirements must (i) help ensure the safety and soundness of the SD or MSP and (ii) be appropriate for the risk associated with the uncleared swaps held as an SD or MSP.[7]

To this end, the Commission promulgated the CFTC Margin Rule in January 2016,[8] establishing requirements for a CSE to collect and post initial margin [9] and variation margin [10] for uncleared swaps. These requirements vary based on the type of counterparty to such swaps.[11] These requirements generally apply only to uncleared swaps entered into on or after the compliance date applicable to a particular CSE and its counterparty (''covered swap'').[12] An uncleared swap entered into prior to a CSE's applicable compliance date for a particular counterparty (''legacy swap'') is generally not subject to the margin requirements in the CFTC Margin Rule.[13]

To the extent that more than one uncleared swap is executed between a CSE and its covered counterparty, the CFTC Margin Rule permits the netting of required margin amounts of each swap under certain circumstances.[14] In particular, the CFTC Margin Rule, subject to certain limitations, permits a CSE to calculate initial margin and variation margin, respectively, on an aggregate net basis across uncleared swaps that are executed under the same eligible master netting agreement (''EMNA'').[15] Moreover, the CFTC Margin Rule permits swap counterparties to identify one or more separate netting portfolios (*i.e.,* a specified group of uncleared swaps the margin obligations of which will be netted only against each other) under the same EMNA, including having separate netting portfolios for covered swaps and legacy swaps.[16] A netting

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[2] 7 U.S.C. 1 *et seq.*

[3] For the definition of swap, *see* section 1a(47) of the CEA and Commission regulation 1.3. 7 U.S.C. 1a(47) and 17 CFR 1.3. It includes, among other things, an interest rate swap, commodity swap, credit default swap, and currency swap.

[4] *See* 7 U.S.C. 6s(e)(1)(B). SDs and MSPs for which there is a Prudential Regulator must meet the margin requirements for uncleared swaps established by the applicable Prudential Regulator. 7 U.S.C. 6s(e)(1)(A). *See also* 7 U.S.C. 1a(39) (defining the term ''Prudential Regulator'' to include the Board; the OCC; the FDIC; the FCA; and the FHFA). The definition further specifies the entities for which these agencies act as Prudential Regulators. The Prudential Regulators published final margin requirements in November 2015. *See* Margin and Capital Requirements for Covered Swap Entities, 80 FR 74840 (Nov. 30, 2015) (''Prudential Margin Rule'').

[5] *See* 7 U.S.C. 6s(e)(2)(B)(ii). In Commission regulation 23.151, the Commission further defined this statutory language to mean all swaps that are not cleared by a registered derivatives clearing organization or a derivatives clearing organization that the Commission has exempted from registration as provided under the CEA. 17 CFR 23.151.

[6] For the definitions of SD and MSP, *see* section 1a of the CEA and Commission regulation 1.3. 7 U.S.C. 1a and 17 CFR 1.3.

[7] 7 U.S.C. 6s(e)(3)(A).

[8] Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 636 (Jan. 6, 2016). The CFTC Margin Rule, which became effective April 1, 2016, is codified in part 23 of the Commission's regulations. 17 CFR 23.150–23.159, 23.161.

[9] Initial margin, as defined in Commission regulation 23.151 (17 CFR 23.151), is the collateral (calculated as provided by § 23.154 of the Commission's regulations) that is collected or posted in connection with one or more uncleared swaps. Initial margin is intended to secure potential future exposure following default of a counterparty (*i.e.,* adverse changes in the value of an uncleared swap that may arise during the period of time when it is being closed out), while variation margin is provided from one counterparty to the other in consideration of changes that have occurred in the mark-to-market value of the uncleared swap. *See* CFTC Margin Rule, 81 FR at 664 and 683.

[10] Variation margin, as defined in Commission regulation 23.151 (17 CFR 23.151), is the collateral provided by a party to its counterparty to meet the performance of its obligation under one or more uncleared swaps between the parties as a result of a change in the value of such obligations since the trade was executed or the last time such collateral was provided.

[11] *See* Commission regulations 23.152 and 23.153, 17 CFR 23.152 and 23.153. For example, the CFTC Margin Rule does not require a CSE to collect margin from, or post margin to, a counterparty that is neither a swap entity nor a financial end user (each as defined in 17 CFR 23.151). Pursuant to section 2(e) of the CEA, 7 U.S.C. 2(e), each counterparty to an uncleared swap must be an eligible contract participant (''ECP''), as defined in section 1a(18) of the CEA, 7 U.S.C. 1a(18).

[12] Pursuant to Commission regulation 23.161, compliance dates for the CFTC Margin Rule are staggered such that SDs must come into compliance in a series of phases over four years. The first phase affected SDs and their counterparties, each with the largest aggregate outstanding notional amounts of uncleared swaps and certain other financial products. These SDs began complying with both the initial and variation margin requirements of the CFTC Margin Rule on September 1, 2016. The second phase began March 1, 2017, and required SDs to comply with the variation margin requirements of Commission regulation 23.153 with all relevant counterparties not covered in the first phase. *See* 17 CFR 23.161. On each September 1 thereafter ending with September 1, 2020, SDs will begin to comply with the initial margin requirements with counterparties with successively lesser outstanding notional amounts.

[13] *See* CFTC Margin Rule, 81 FR at 651 and Commission regulation 23.161. 17 CFR 23.161.

[14] *See* CFTC Margin Rule, 81 FR at 651 and Commission regulations 23.152(c) and 23.153(d). 17 CFR 23.152(c) and 23.153(d).

[15] *Id.* The term EMNA is defined in Commission regulation 23.151. 17 CFR 23.151. Generally, an EMNA creates a single legal obligation for all individual transactions covered by the agreement upon an event of default following certain specified permitted stays. For example, an International Swaps and Derivatives Association (''ISDA'') form Master Agreement may be an EMNA, if it meets the specified requirements in the EMNA definition.

[16] *See* CFTC Margin Rule, 81 FR at 651 and Commission regulations 23.152(c)(2)(ii) and

portfolio that contains only legacy swaps is not subject to the initial and variation margin requirements set out in the CFTC Margin Rule.[17] However, if a netting portfolio contains any covered swaps, the entire netting portfolio (including all legacy swaps) is subject to such requirements.[18]

A legacy swap may lose its legacy treatment under the CFTC Margin Rule, causing it to become a covered swap and causing any netting portfolio in which it is included to be subject to the requirements of the CFTC Margin Rule. For reasons discussed in the CFTC Margin Rule, the Commission elected not to extend the meaning of legacy swaps to include (1) legacy swaps that are amended in a material or nonmaterial manner; (2) novations of legacy swaps; and (3) new swaps that result from portfolio compression of legacy swaps.[19] Therefore, and as relevant here, a legacy swap that is amended after the applicable compliance date may become a covered swap subject to the initial and variation margin requirements in the CFTC Margin Rule. In that case, netting portfolios that were intended to contain only legacy swaps and, thus, not be subject to the CFTC Margin Rule may become so subject.

B. The QFC Rules

In late 2017, as part of the broader regulatory reform effort following the financial crisis to promote U.S. financial stability and increase the resolvability and resiliency of U.S. global systemically important banking institutions (''U.S. GSIBs'') [20] and the U.S. operations of foreign global systemically important banking institutions (together with U.S. GSIBS, ''GSIBs''), the Board, FDIC, and OCC adopted the QFC Rules. The QFC Rules establish restrictions on and requirements for uncleared qualified financial contracts [21] (collectively, ''Covered QFCs'') of GSIBs, the subsidiaries of U.S. GSIBs, and certain other very large OCC-supervised national banks and Federal savings associations (collectively, ''Covered QFC Entities'').[22] They are designed to help ensure that a failed company's passage through a resolution proceeding—such as bankruptcy or the special resolution process created by the Dodd-Frank Act—would be more orderly, thereby helping to mitigate destabilizing effects on the rest of the financial system.[23] Two aspects of the QFC Rules help achieve this goal.[24]

First, the QFC Rules generally require the Covered QFCs of Covered QFC Entities to contain contractual provisions explicitly providing that any default rights or restrictions on the transfer of the Covered QFC are limited to the same extent as they would be pursuant to the Federal Deposit Insurance Act (''FDI Act'')[25] and Title II of the Dodd-Frank Act. Requiring these points to be stated as explicit contractual provisions in the Covered QFCs is expected to reduce the risk that the relevant limitations on default rights or transfer restrictions would be challenged by a court in a foreign jurisdiction.[26]

Second, the QFC Rules generally prohibit Covered QFCs from allowing counterparties to Covered QFC Entities to exercise default rights related, directly or indirectly, to the entry into resolution of an affiliate of the Covered QFC Entity (''cross-default rights'').[27] This is to ensure that if an affiliate of a solvent Covered QFC Entity fails, the counterparties of that solvent Covered QFC Entity cannot terminate their contracts with it based solely on the failure of its affiliate.[28]

Covered QFC Entities are required to enter into amendments to certain pre-existing Covered QFCs to explicitly provide for these requirements and to ensure that Covered QFCs entered into after the applicable compliance date for the rule explicitly provide for the same.[29]

C. Interaction of CFTC Margin Rule and QFC Rules

As noted above, the current definition of EMNA in Commission regulation 23.151 allows for certain specified permissible stays of default rights of the CSE. Specifically, consistent with the QFC Rules, the current definition provides that such rights may be stayed pursuant to a special resolution regime such as Title II of the Dodd-Frank Act, the FDI Act, and substantially similar foreign resolution regimes.[30] However, the current EMNA definition does not explicitly recognize certain restrictions on the exercise of a CSE's cross-default rights required under the QFC Rules.[31] Therefore, a pre-existing EMNA that is amended in order to become compliant with the QFC Rules or a new master netting agreement that conforms to the QFC Rules will not meet the current definition of EMNA, and a CSE that is a counterparty under such a master netting agreement—one that does not meet the definition of EMNA—would be required to measure its exposures from covered swaps on a gross basis, rather than aggregate net basis, for purposes of the CFTC Margin Rule.[32] Further, if a legacy swap were amended to comply

23.153(d)(2)(ii). 17 CFR 23.152(c)(2)(ii) and 23.153(d)(2)(ii).

[17] *Id.*

[18] *Id.*

[19] *See* CFTC Margin Rule, 81 FR at 675. The Commission notes that certain limited relief has been given from this standard. *See* CFTC Staff Letter No. 17–52 (Oct. 27. 2017), available at *http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/17-52.pdf.*

[20] *See* 12 CFR 217.402 (defining global systemically important banking institution).

[21] Qualified financial contract (''QFC'') is defined in section 210(c)(8)(D) of the Dodd-Frank Act to mean any securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, and any similar agreement that the FDIC determines by regulation, resolution, or order to be a qualified financial contract. 12 U.S.C. 5390(c)(8)(D).

[22] *See, e.g.,* 12 CFR 252.82(c) (defining Covered QFC). *See also* 82 FR 42882 (Sep. 12, 2017) (for the Board's QFC Rule). *See also* 82 FR 50228 (Oct. 30, 2017) (for FDIC's QFC Rule). *See also* 82 FR 56630 (Nov. 29, 2017) (for the OCC's QFC Rule). The effective date of the Board's QFC Rule is November 13, 2017, and the effective date for the OCC's QFC Rule and the substance of the FDIC's QFC Rule is January 1, 2018. The QFC Rules include a phased-in conformance period for a Covered QFC Entity, beginning on January 1, 2019 and ending on January 1, 2020, that varies depending upon the counterparty type of the Covered QFC Entity. *See, e.g.,* 12 CFR 252.82(f).

[23] *See, e.g.,* Board's QFC Rule at 42883. In particular, the QFC Rules seek to facilitate the orderly resolution of a failed GSIB by limiting the ability of the firm's Covered QFC counterparties to terminate such contracts immediately upon entry of the GSIB or one of its affiliates into resolution. Given the large volume of QFCs to which covered entities are a party, the exercise of default rights en masse as a result of the failure or significant distress of a covered entity could lead to failure and a disorderly resolution if the failed firm were forced to sell off assets, which could spread contagion by increasing volatility and lowering the value of similar assets held by other firms, or to withdraw liquidity that it had provided to other firms.

[24] *Id.*

[25] 12 U.S.C. 1811 *et seq.*

[26] *See, e.g.,* Board's QFC Rule at 42883 and 42890 and 12 CFR 252.83(b).

[27] *See, e.g.,* Board's QFC Rule at 42883 and 12 CFR 252.84(b). Covered QFC Entities are similarly generally prohibited from entering into Covered QFCs that would restrict the transfer of a credit enhancement supporting the Covered QFC from the Covered QFC Entity's affiliate to a transferee upon the entry into resolution of the affiliate. *See, e.g.,* Board's QFC Rule at 42890 and 12 CFR 252.84(b)(2).

[28] *Id.*

[29] *See, e.g.,* 12 CFR 252.82(a) and (c). The QFC Rules require a Covered QFC Entity to conform Covered QFCs (i) entered into, executed, or to which it otherwise becomes a party on or after January 1, 2019 or (ii) entered into, executed, or to which it otherwise became a party before January 1, 2019, if the Covered QFC Entity or any affiliate that is a Covered QFC Entity also enters, executes, or otherwise becomes a party to a new Covered QFC with the counterparty to the pre-existing Covered QFC or a consolidated affiliate of the counterparty on or after January 1, 2019.

[30] 17 CFR 23.151.

[31] *Id.*

[32] *See* CFTC Margin Rule, 81 FR at 651 and Commission regulations 23.152(c) and 23.153(d). 17 CFR 23.152(c) and 23.153(d).

with the QFC Rules,[33] it would become a covered swap subject to initial and variation margin requirements under the CFTC Margin Rule.[34]

II. Proposal

On May 23, 2018, the Commission published a Notice of Proposed Rulemaking (''Proposal'') [35] to amend Commission regulations 23.151 and 23.161 to protect CSEs and their counterparties from being disadvantaged because their master netting agreements do not satisfy the definition of an EMNA, solely because such agreements' comply with the QFC Rules or because such agreements would have to be amended to achieve compliance. Specifically, the Commission proposed to (i) revise the definition of EMNA in Commission regulation 23.151 such that a master netting agreement that meets the requirements of the QFC Rules may be an EMNA and (ii) amend Commission regulation 23.161 such that a legacy swap will not be a covered swap under the CFTC Margin Rule if it is amended solely to conform to the QFC Rules.

The Commission requested comments on the Proposal and also solicited comments on the impact of the Proposal on small entities, the Commission's cost benefit considerations, and any anti-competitive effects of the Proposal. The comment period for the Proposal ended on July 23, 2018.

III. Summary of Comments

The Commission received four relevant comments in response to the Proposal—from the Institute of International Bankers (''IIB''), ISDA, Navient Corporation (''Navient''), and NEX Group plc (''NEX''), respectively.[36] Though these comments raised issues unrelated to the Proposal or suggested additions that would go beyond the scope of the Proposal,[37] the comments were generally supportive of the aims of the Proposal.

Navient and NEX were supportive of the Commission's Proposal in full. ISDA was supportive of the Commission's proposal to revise the definition of EMNA. IIB did not comment on this aspect of the Proposal. ISDA and IIB were appreciative of the proposal on the treatment of legacy swaps impacted by the QFC Rules, but, on balance, thought broad guidance on the treatment of amendments to legacy swaps more generally was a better alternative to the proposed limited amendment of the CFTC Margin Rule relating to the QFC Rules. Such broad guidance requested by ISDA and IIB is outside of the scope of the Proposal.

IV. Final Rule

After consideration of relevant comments, the Commission is adopting this Final Rule as proposed.

Accordingly, the Commission is adding a new paragraph (2)(ii) to the definition of ''eligible master netting agreement'' in Commission regulation 23.151 and making other minor related changes to that definition such that a master netting agreement may be an EMNA even though the agreement limits the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of the counterparty to the extent necessary for the counterparty to comply with the requirements of any of the following parts of Title 12 of the Code of Federal Regulations: Part 47, subpart I of part 252, or part 382, as applicable. These enumerated provisions contain the relevant requirements that have been added by the QFC Rules.

Further, so that a legacy swap will not be a covered swap under the CFTC Margin Rule if it is amended solely to conform to the QFC Rules, the Commission is adding a new paragraph (d) to the end of Commission regulation 23.161, as shown in the rule text in this document. This addition will provide certainty to a CSE and its counterparties about the treatment of legacy swaps and any applicable netting arrangements in light of the QFC Rules. However, if, in addition to amendments required to comply with the QFC Rules, the parties enter into any other amendments, the amended legacy swap will be a covered swap in accordance with the application of the CFTC Margin Rule.

This Final Rule is consistent with amendments to the Prudential Margin Rule that the Prudential Regulators jointly published in the **Federal Register** on October 10, 2018.[38] Making amendments to the CFTC Margin Rule that are consistent with those of the Prudential Regulators furthers the Commission's efforts to harmonize its margin regime with the Prudential Regulators' margin regime and is responsive to suggestions received as part of the Commission's Project KISS initiative.[39]

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires Federal agencies, in promulgating regulations, to consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, to provide a regulatory flexibility analysis regarding the economic impact on those entities. In the Proposal, the Commission certified that the Proposal would not have a significant economic impact on a substantial number of small entities. The Commission requested comments with respect to the RFA and received no such comments.

As discussed in the Proposal, this Final Rule only affects certain SDs and

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[33] Covered QFC Entities must conform to the requirements of the QFC Rules for Covered QFCs entered into on or after January 1, 2019 and, in some instances, Covered QFCs entered into before that date.[33] To do so, a Covered QFC Entity may need to amend the contractual provisions of its pre-existing Covered QFCs.

[34] Note, therefore, that such amendment would affect all parties to the legacy swap, not only the Covered QFC Entity subject to the QFC Rules.

[35] 83 FR 23842 (May 23, 2018).

[36] The Commission also received one comment that was not relevant to the Proposal. All of the comments are available at *https://comments.cftc.gov/PublicComments/CommentList.aspx?id=2878*.

[37] Navient requested relief from covered swap status arising from certain amendments to legacy swaps involving special purpose vehicles created for securitization purposes (''Securitization SPVs'') and more generally requested an exemption from the CFTC Margin Rule for certain Securitization SPVs. NEX requested relief from covered swap status for legacy swaps which are compressed in a multilateral portfolio compression exercise. ISDA and IIB requested the Commission, in conjunction with the Prudential Regulators, more generally provide broad guidance on amendments to legacy swaps, including that amendments required by domestic or foreign regulatory or legislative developments (*e.g.,* reforms of benchmark interest rates) will not cause them to become covered swaps. These requests for additional changes and exemptions to the CFTC Margin Rule are outside of the scope of the Proposal, as the Proposal relates solely to changes to the CFTC Margin Rule in relation to the requirements of the QFC Rules. However, as the Commission continues to assess industry developments such as interest rate benchmark reform, it will take into account any associated implementation ramifications surrounding the treatment of legacy swaps under the CFTC Margin Rule.

[38] Margin and Capital Requirements for Covered Swap Entities; Final Rule, 83 FR 50805 (Oct. 10, 2018).

[39] *See* Project KISS Initiatives, available at *https://comments.cftc.gov/KISS/KissInitiative.aspx*. The Commission received requests to coordinate revisions to the CFTC Margin Rule with the Prudential Regulators. *See* comments from Credit Suisse (''CS''), the Financial Services Roundtable (''FSR''), ISDA, the Managed Funds Association (''MFA''), and SIFMA Global Foreign Exchange Division (''GFMA''). GFMA requested that the Commission coordinate with the Prudential Regulators on proposing or making any changes to the CFTC Margin Rule to ensure harmonization and consistency across the respective rule sets. In addition, CS, FSR, ISDA, and MFA, as well as GFMA requested that the Commission make certain specific changes to the CFTC Margin Rule in coordination with the Prudential Regulators relating to, for example, initial margin calculations and requirements, margin settlement timeframes, netting product sets, inter-affiliate margin exemptions, and cross-border margin issues. Project KISS suggestions are available at *https://comments.cftc.gov/KISS/KissInitiative.aspx*.

MSPs that are subject to the QFC Rules and their covered counterparties, all of which are required to be ECPs.[40] The Commission has previously determined that SDs, MSPs, and ECPs are not small entities for purposes of the RFA.[41] Therefore, the Commission finds that this Final Rule will not have a significant economic impact on a substantial number of small entities, as defined in the RFA.

Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that this Final Rule will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'')[42] imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. The Commission may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number. As discussed in the Proposal, this Final Rule contains no requirements subject to the PRA.

C. Cost-Benefit Considerations

The Commission received no comments with regard to its preliminary cost-benefit considerations in the Proposal. Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) considerations.

This Final Rule prevents certain CSEs and their counterparties from being disadvantaged because their master netting agreements do not satisfy the definition of an EMNA, solely because such agreements' comply with the QFC Rules or because such agreements would have to be amended to achieve compliance. It revises the definition of EMNA such that a master netting agreement that meets the requirements of the QFC Rules may be an EMNA and provides that an amendment to a legacy swap solely to conform to the QFC Rules will not cause that swap to be a covered swap under the CFTC Margin Rule.

The Commission notes that the consideration of costs and benefits below is based on the understanding that the markets function internationally, with many transactions involving United States firms taking place across international boundaries; with some Commission registrants being organized outside of the United States; with leading industry members typically conducting operations both within and outside the United States; and with industry members commonly following substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, the below discussion of costs and benefits refers to the effects of this Final Rule on all activity subject to it, whether by virtue of the activity's physical location in the United States or by virtue of the activity's connection with or effect on United States commerce under CEA section 2(i).[43] In particular, the Commission notes that some persons affected by this rulemaking are located outside of the United States.

The baseline against which the benefits and costs associated with this Final Rule is compared is the uncleared swaps markets as they exist today, with the QFC Rules in effect.[44] With this as the baseline for this Final Rule, the following are the benefits and costs of this Proposal.

1. Benefits

As described above, this Final Rule will allow parties whose master netting agreements satisfy the proposed revised definition of EMNA to continue to calculate initial margin and variation margin, respectively, on an aggregate net basis across uncleared swaps that are executed under that EMNA. Otherwise, a CSE that is a counterparty under a master netting agreement that complies with the QFC Rules and, thus, does not satisfy the current definition of EMNA, would be required to measure its exposures from covered swaps on a gross basis for purposes of the CFTC Margin Rule. In addition, this Final Rule allows legacy swaps to maintain their legacy status, notwithstanding that they are amended to comply with the QFC Rules. Otherwise, such swaps would become covered swaps subject to initial and variation margin requirements under the CFTC Margin Rule. This Final Rule provides certainty to CSEs and their counterparties about the treatment of legacy swaps and any applicable netting arrangements in light of the QFC Rules.

2. Costs

Because this Final Rule (i) will solely expand the definition of EMNA to potentially include those master netting agreements that meet the requirements of the QFC Rules and allow the amendment of legacy swaps solely to conform to the QFC Rules without causing such swaps to become covered swaps and (ii) does not require market participants to take any action to benefit from these changes, the Commission believes that this Final Rule will not impose any additional costs on market participants.

3. Section 15(a) Considerations

In light of the foregoing, the CFTC has evaluated the costs and benefits of this Final Rule pursuant to the five considerations identified in section 15(a) of the CEA as follows:

(a) Protection of Market Participants and the Public

As noted above, this Final Rule will protect market participants by allowing them to comply with the QFC Rules without being disadvantaged under the CFTC Margin Rule. This Final Rule will facilitate market participants' use of swaps that would be affected by this Final Rule to hedge. Without this Final Rule, posting gross margin instead of net margin for those swaps would be required, which would raise transaction costs and thus likely reduce the use of such swaps for hedging.

(b) Efficiency, Competitiveness, and Financial Integrity of Markets

This Final Rule will make the uncleared swap markets more efficient by allowing net margining of swap portfolios under master netting agreements that comply with the QFC Rules and, thus, do not satisfy the current EMNA definition instead of requiring the payment of gross margin under such agreements. Also, absent this Final Rule, market participants that are required to amend their EMNAs to comply with the QFC Rules and, thereafter, required to measure their

[40] *See supra,* n.12.

[41] *See* Registration of Swap Dealers and Major Swap Participants, 77 FR 2613, 2620 (Jan. 19, 2012) (SDs and MSPs) and Opting Out of Segregation, 66 FR 20740, 20743 (April 25, 2001) (ECPs).

[42] 44 U.S.C. 3501 *et seq.*

[43] 7 U.S.C. 2(i).

[44] Although, as described above, the QFC Rules will be gradually phased in, for purposes of the cost benefit considerations, we assume that the affected CSEs are in compliance with the QFC Rules.

exposure on a gross basis and to post margin on their legacy swaps, would be placed at a competitive disadvantage as compared to those market participants that are not so required to amend their EMNAs. Therefore, this Final Rule may increase the competitiveness of the uncleared swaps markets. In addition, this Final Rule furthers the Commission's efforts to harmonize its margin regime with the Prudential Regulators' margin regime, and therefore may improve the efficiency, competitiveness, and financial integrity of markets.

(c) Price Discovery

This Final Rule permits the payment of net margin instead of gross margin on portfolios of swaps affected by this Final Rule, which would reduce margining costs to those swaps transactions. Reducing the cost to transact these swaps, might lead to more trading, which could potentially improve liquidity and benefit price discovery.

(d) Sound Risk Management

This Final Rule prevents the payment of gross margin on swaps affected by this Final Rule, which does not reflect true economic counterparty credit risk for swap portfolios transacted with counterparties. Therefore, this Final Rule supports sound risk management.

(e) Other Public Interest Considerations

The Commission has not identified an impact on other public interest considerations as a result of this Final Rule.

D. Antitrust Laws

Section 15(b) of the CEA requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the purposes of the CEA, in issuing any order or adopting any Commission rule or regulation.[45] The Commission believes that the public interest to be protected by the antitrust laws is generally to protect competition. The Commission requested and did not receive any comments on whether the Proposal implicated any other specific public interest to be protected by the antitrust laws.

The Commission has considered this Final Rule to determine whether it is anticompetitive and has preliminarily identified no anticompetitive effects. The Commission requested and did not receive any comments on whether the Proposal was anticompetitive and, if it is, what the anticompetitive effects are.

[45] 7 U.S.C. 19(b).

Because the Commission has preliminarily determined that this Final Rule is not anticompetitive and has no anticompetitive effects and received no comments on its determination, the Commission has not identified any less anticompetitive means of achieving the purposes of the CEA.

List of Subjects in 17 CFR Part 23

Capital and margin requirements, Major swap participants, Swap dealers, Swaps.

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 17 CFR part 23 as follows:

PART 23—SWAP DEALERS AND MAJOR SWAP PARTICIPANTS

■ 1. The authority citation for part 23 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6, 6a, 6b, 6b–1,6c, 6p, 6r, 6s, 6t, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21.

Section 23.160 also issued under 7 U.S.C. 2(i); Sec. 721(b), Pub. L. 111–203, 124 Stat. 1641 (2010).

■ 2. In § 23.151, revise paragraph (2) in the definition of *Eligible master netting agreement* to read as follows:

§ 23.151 Definitions applicable to margin requirements.

* * * * *

Eligible master netting agreement

* * *

(2) The agreement provides the covered swap entity the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, conservatorship, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case,

(i) Any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(A) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*), Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5381 *et seq.*), the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended (12 U.S.C. 4617), or the Farm Credit Act of 1971, as amended (12 U.S.C. 2183 and 2279cc), or laws of foreign jurisdictions that are substantially similar to the U.S. laws referenced in this paragraph in order to facilitate the orderly resolution of the defaulting counterparty; or

(B) Where the agreement is subject by its terms to, or incorporates, any of the laws referenced in paragraph (2)(i)(A) of this definition; and

(ii) The agreement may limit the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of the counterparty to the extent necessary for the counterparty to comply with the requirements of 12 CFR part 47; 12 CFR part 252, subpart I; or 12 CFR part 382, as applicable;

* * * * *

■ 3. In § 23.161, add paragraph (d) to read as follows:

§ 23.161 Compliance dates.

* * * * *

(d) For purposes of determining whether an uncleared swap was entered into prior to the applicable compliance date under this section, a covered swap entity may disregard amendments to the uncleared swap that were entered into solely to comply with the requirements of 12 CFR part 47; 12 CFR part 252, subpart I; or 12 CFR part 382, as applicable.

Issued in Washington, DC, on November 19, 2018, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix to Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants—Commission Voting Summary and Chairman's Statement

Appendix 1—Commission Voting Summary

On this matter, Chairman Giancarlo, and Commissioners Quintenz, Behnam, Stump, and Berkovitz voted in the affirmative. No Commissioner voted in the negative.

Appendix 2—Statement of Chairman J. Christopher Giancarlo

Through the Commission's Project KISS initiative, the Commission received suggestions to harmonize its uncleared swap margin rule with that of the Prudential Regulators. In response, this final rule does so and provides market certainty, specifically with respect to amending the CFTC's definition of ''eligible master netting agreement'' (EMNA) and amending the CFTC Margin Rule such that any legacy swap will not become subject to the CFTC Margin Rule if it is amended solely to comply with changes adopted by the Prudential Regulators in 2017. The Commission recognizes that the CFTC Margin Rule does not provide relief for legacy swaps that might need to be amended to meet regulatory changes or requirements,

and is committed to considering other meritorious requests for relief.

[FR Doc. 2018–25602 Filed 11–23–18; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket Nos. RM16–5–000; RM16–5–001; RM16–23–000; AD16–20–000]

Non-Discriminatory Open Access Transmission Tariff; Corrections

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Correcting amendment.

SUMMARY: This document corrects one section of the regulations of the Federal Energy Regulatory Commission, as published in the **Federal Register** on March 6, 2018. This correction restores regulatory text that was inadvertently replaced with other regulatory text adopted in another, later final rule.

DATES: Effective November 26, 2018.

FOR FURTHER INFORMATION CONTACT: Anne Marie Hirschberger, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8387, *annemarie.hirschberger@ferc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

1. On November 17, 2016, the Federal Energy Regulatory Commission (Commission) issued Order No. 831 concerning offer caps in Regional Transmission Organization (RTO) and Independent System Operator (ISO) markets,[1] which was published in the **Federal Register** on December 5, 2016. Order No. 831 amended 18 CFR 35.28 by adding new paragraph (g)(9).

2. On November 9, 2017, the Commission issued Order No. 831–A,[2] which was published in the **Federal Register** on November 16, 2017. Order No. 831–A further revised 18 CFR 35.28(g)(9) regarding offer caps.

3. On February 15, 2018, the Commission issued Order No. 841 concerning electric storage participation in RTO/ISO markets,[3] which was published in the **Federal Register** on March 6, 2018. Order No. 841 amended 18 CFR 35.28(g) by adding a further new paragraph, which was also numbered (g)(9).[4] As a result, the regulatory text adopted in Order No. 841 incorrectly replaced—rather than added to—the regulatory text adopted in Order Nos. 831 and 831–A.

4. In this Correcting Amendment, 18 CFR 35.28(g) is corrected by restoring the regulatory text from Order Nos. 831 and 831–A as new paragraph 18 CFR 35.28(g)(11). Nothing in this Correcting Amendment is intended to alter any previous compliance requirements or effective dates established under Order Nos. 831, 831–A, or 841, nor does this Correcting Amendment affect any tariff changes previously accepted by the Commission in compliance with these orders.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Non-discriminatory open access transmission tariffs.

By the Commission. Commissioner McIntyre is not voting on this order.

Issued: November 16, 2018.

Kimberly D. Bose,

Secretary.

In consideration of the foregoing, 18 CFR part 35 is corrected by making the following correcting amendments:

PART 35—FILING OF RATE SCHEDULES AND TARIFFS

■ 1. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 2. Amend § 35.28 by adding a new paragraph (g)(11) to read as follows:

§ 35.28 Non-discriminatory open access transmission tariff.

* * * * *

(g) * * *

(11) A resource's incremental energy offer must be capped at the higher of $1,000/MWh or that resource's cost-based incremental energy offer. For the purpose of calculating Locational Marginal Prices, Regional Transmission Organizations and Independent System Operators must cap cost-based incremental energy offers at $2,000/MWh. The actual or expected costs underlying a resource's cost-based incremental energy offer above $1,000/MWh must be verified before that offer can be used for purposes of calculating Locational Marginal Prices. If a resource submits an incremental energy offer above $1,000/MWh and the actual or expected costs underlying that offer cannot be verified before the market clearing process begins, that offer may not be used to calculate Locational Marginal Prices and the resource would be eligible for a make-whole payment if that resource is dispatched and the resource's actual costs are verified after-the-fact. A resource would also be eligible for a make-whole payment if it is dispatched and its verified cost-based incremental energy offer exceeds $2,000/MWh. All resources, regardless of type, are eligible to submit cost-based incremental energy offers in excess of $1,000/MWh.

[FR Doc. 2018–25584 Filed 11–23–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket Nos. RM18–8–000 and RM15–11–003; Order No. 851]

Geomagnetic Disturbance Reliability Standard; Reliability Standard for Transmission System Planned Performance for Geomagnetic Disturbance Events

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) approves Reliability Standard TPL–007–2 (Transmission System Planned Performance for Geomagnetic Disturbance Events). The North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization, submitted Reliability Standard TPL–007–2 for Commission approval. The Commission also directs NERC to develop and submit modifications to Reliability Standard TPL–007–2: To require the development and implementation of corrective action plans to mitigate assessed supplemental GMD event vulnerabilities; and to authorize extensions of time to implement corrective action plans on a

[1] *Offer Caps in Markets Operated by Regional Transmission Organizations and Independent System Operators,* Order No. 831, FERC Stats. & Regs. ¶ 31,387 (2016) (cross-referenced at 157 FERC ¶ 61,115), *order on reh'g and clarification,* Order No. 831–A, 82 FR 53403 (Nov. 16, 2017), FERC Stats. & Regs. ¶ 31,394 (2017).

[2] Order No. 831–A, FERC Stats. & Regs. ¶ 31,394.

[3] *Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators,* Order No. 841, 83 FR 9580 (Mar. 6, 2018), FERC Stats. & Regs. ¶ 31,398 (2018) (cross-referenced at 162 FERC ¶ 61,127).

[4] On February 28, 2018, the Commission issued an Errata Notice for Order No. 841. *Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators,* Errata Notice, Docket Nos. RM16–23–000, AD16–20–000 (Feb. 28, 2018). Among other things, the Errata Notice revised 18 CFR 35.28(g)(9).

case-by-case basis. In addition, the Commission accepts the revised GMD research work plan submitted by NERC.

DATES: This rule will become effective January 25, 2019.

FOR FURTHER INFORMATION CONTACT:.
Michael Gandolfo (Technical Information), Office of Electric Reliability, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6817, *Michael.Gandolfo@ferc.gov*.
Matthew Vlissides (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8408, *Matthew.Vlissides@ferc.gov*.

SUPPLEMENTARY INFORMATION:

1. Pursuant to section 215 of the Federal Power Act (FPA), the Commission approves Reliability Standard TPL–007–2 (Transmission System Planned Performance for Geomagnetic Disturbance Events).[1] The North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO), submitted Reliability Standard TPL–007–2 for Commission approval in response to directives in Order No. 830.[2] As discussed in this final rule, we determine that Reliability Standard TPL–007–2 better addresses the risks posed by geomagnetic disturbances (GMDs) to the Bulk-Power System, particularly with respect to the potential impacts of locally-enhanced GMD events, than currently-effective Reliability Standard TPL–007–1 and complies with the Commission's directives in Order No. 830.

2. GMD events occur when the sun ejects charged particles that interact with and cause changes in the earth's magnetic fields. GMD events have the potential to cause severe, wide-spread impacts on the Bulk-Power System.[3] Currently-effective Reliability Standard TPL–007–1 requires applicable entities to assess the vulnerability of their transmission systems to a ''benchmark GMD event.'' An applicable entity that does not meet certain performance requirements, based on the results of the benchmark GMD vulnerability assessment, must develop and implement a corrective action plan to achieve the performance requirements.

3. The improvements in Reliability Standard TPL–007–2 are responsive to the directives in Order No. 830: (1) To revise the benchmark GMD event definition, as it pertains to the required GMD vulnerability assessments and transformer thermal impact assessments, so that the definition is not based solely on spatially-averaged data; (2) to require the collection of necessary geomagnetically induced current (GIC) monitoring and magnetometer data; and (3) to include a one-year deadline for the completion of corrective action plans and two- and four-year deadlines to complete mitigation actions involving non-hardware and hardware mitigation.[4] As discussed below, Reliability Standard TPL–007–2 complies with these directives and improves upon the currently-effective version of the Reliability Standard by requiring applicable entities to: (1) In addition to the benchmark GMD event requirements, conduct supplemental GMD vulnerability assessments and thermal impact assessments, which apply a new supplemental GMD event definition that does not rely solely on spatially-averaged data; (2) obtain GIC and magnetometer data; and (3) meet the Commission-directed deadlines for the development and completion of tasks in corrective action plans. Accordingly, pursuant to section 215(d)(2) of the FPA, we approve Reliability Standard TPL–007–2.[5]

4. In addition, as discussed in the Notice of Proposed Rulemaking, we determine that it is appropriate, pursuant to section 215(d)(5) of the FPA,[6] to direct NERC to develop and submit modifications to Reliability Standard TPL–007–2 to require the development and completion of corrective action plans to mitigate assessed supplemental GMD event vulnerabilities.[7] As discussed below, requiring corrective action plans for supplemental GMD event vulnerabilities is appropriate to ensure the reliability of the Bulk-Power System when confronted with locally-enhanced GMD events, just as corrective action plans are necessary to mitigate the effects of benchmark GMD events. Based on the record in this proceeding, we discern no technical barriers to either developing or complying with such a requirement. Moreover, the record supports issuance of a directive at this time notwithstanding comments in response to the NOPR advocating postponement of any directive until after the completion of additional GMD research. As discussed below, the relevant GMD research tasks are scheduled to be completed before the modified Reliability Standard must be submitted. The Commission directs NERC to submit the modified Reliability Standard for approval within 12 months from the effective date of Reliability Standard TPL–007–2.

5. We also determine that it is appropriate, pursuant to section 215(d)(5) of the FPA, to direct that NERC modify the provision in Reliability Standard TPL–007–2, Requirement R7.4 that allows applicable entities to exceed deadlines for completing corrective action plan tasks when ''situations beyond the control of the responsible entity [arise].'' The NOPR raised concerns regarding the appropriateness of a self-executing deadline extension and observed that it was inconsistent with guidance in Order No. 830 that extension requests be considered on a case-by-case basis.[8] We recognize the point made in NERC's comments in response to the NOPR that, under NERC's proposal, ''NERC and Regional Entity staff would exercise their authority to review the reasonableness of any Corrective Action Plan delay, including reviewing the 'situations beyond the control of the responsible entity' that are cited as causing the delay'' and that Requirement R7.4 is ''not so flexible . . . as to allow entities to extend Corrective Action Plan deadlines indefinitely or for any reason whatsoever.''[9] While we generally agree with the standard of review that NERC states it will use to assess the merits of extension requests, we conclude that such assessments should be made before any time extensions are permitted. By requiring prior approval of extension requests, the modified Reliability Standard will limit the potential for unwarranted delays in implementing corrective action plans while also providing NERC with an advance and more holistic understanding of where, to whom, and for how long, extensions are granted. We expect that the extension process developed by NERC in response to our directive will be timely and efficient such that applicable

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

[2] *Reliability Standard for Transmission System Planned Performance for Geomagnetic Disturbance Events,* Order No. 830, 156 FERC ¶ 61,215, (2016) *reh'g denied,* Order No. 830–A, 158 FERC ¶ 61,041 (2017).

[3] *Reliability Standards for Geomagnetic Disturbances,* Order No. 779, 143 FERC ¶ 61,147, at P 3, *reh'g denied,* 144 FERC ¶ 61,113 (2013); *see also* Reliability Standard TPL–007–2, Background.

[4] ''Spatial averaging'' refers to the averaging of magnetometer readings over a geographic area. In developing the benchmark GMD event definition, the standard drafting team averaged several (but not all) geomagnetic field readings taken by magnetometers located within square geographical areas of 500 km per side.

[5] 16 U.S.C. 824o(d)(2).

[6] *Id.* 824o(d)(5).

[7] *Geomagnetic Disturbance Reliability Standard,* Notice of Proposed Rulemaking, 83 FR 23854 (May 23, 2018), 163 FERC ¶ 61,126 (2018) (NOPR).

[8] Order No. 830, 156 FERC ¶ 61,215 at P 102.

[9] NERC Comments at 20–21.

entities will receive prompt responses after submitting to NERC or a Regional Entity, as appropriate, the extension request and associated information described in Requirement R7.4.[10] We also direct NERC, as proposed in the NOPR, to prepare and submit a report addressing how often and why applicable entities are exceeding corrective action plan deadlines as well as the disposition of extension requests, which is due within 12 months from the date on which applicable entities must comply with the last requirement of Reliability Standard TPL–007–2. Following receipt of the report, the Commission will determine whether further action is necessary.

6. The Commission, as discussed below, also accepts the revised GMD research work plan submitted by NERC on April 19, 2018.[11]

I. Background

A. Section 215 and Mandatory Reliability Standards

7. Section 215 of the FPA requires the Commission to certify an ERO to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval. Once approved, the Reliability Standards may be enforced in the United States by the ERO, subject to Commission oversight, or by the Commission independently.[12]

B. GMD Primer

8. GMD events occur when the sun ejects charged particles that interact and cause changes in the earth's magnetic fields.[13] Once a solar particle is ejected, it can take between 17 to 96 hours (depending on its energy level) to reach earth.[14] A geoelectric field is the electric potential (measured in volts per kilometer (V/km)) on the earth's surface and is directly related to the rate of change of the magnetic fields.[15] The geoelectric field has an amplitude and direction and acts as a voltage source that can cause GICs to flow on long conductors, such as transmission lines.[16] The magnitude of the geoelectric field amplitude is impacted by local factors such as geomagnetic latitude and local earth conductivity.[17] Geomagnetic latitude is the proximity to earth's magnetic north and south poles, as opposed to earth's geographic poles.[18] Local earth conductivity is the ability of the earth's crust to conduct electricity at a certain location to depths of hundreds of kilometers down to the earth's mantle. Local earth conductivity impacts the magnitude (*i.e.,* severity) of the geoelectric fields that are formed during a GMD event by, all else being equal, a lower earth conductivity resulting in higher geoelectric fields.[19]

9. GICs can flow in an electric power system with varying intensity depending on the various factors discussed above. As explained in the Background section of Reliability Standard TPL–007–2, ''[d]uring a GMD event, geomagnetically-induced currents (GIC) may cause transformer hot-spot heating or damage, loss of Reactive Power sources, increased Reactive Power demand, and Misoperation(s), the combination of which may result in voltage collapse and blackout.''

C. Currently-Effective Reliability Standard TPL–007–1 and Order No. 830

1. Currently-Effective Reliability Standard TPL–007–1

10. Reliability Standard TPL–007–1 consists of seven requirements and applies to planning coordinators, transmission planners, transmission owners and generation owners who own or whose planning coordinator area or transmission planning area includes a power transformer with a high side, wye-grounded winding connected at 200 kV or higher.

11. Requirement R1 requires planning coordinators and transmission planners (*i.e.,* ''responsible entities'') to determine the individual and joint responsibilities in the planning coordinator's planning area for maintaining models and performing studies needed to complete the GMD vulnerability assessment required in Requirement R4. Requirement R2 requires responsible entities to maintain system models and GIC system models needed to complete the GMD vulnerability assessment required in Requirement R4. Requirement R3 requires each responsible entity to have criteria for acceptable system steady state voltage performance for its system during the GMD conditions described in Attachment 1 of Reliability Standard TPL–007–1. Requirement R4 requires responsible entities to conduct a GMD vulnerability assessment every 60 months using the benchmark GMD event described in Attachment 1. Requirement R5 requires responsible entities to provide GIC flow information, based on the benchmark GMD event definition, to be used in the transformer thermal impact assessments required in Requirement R6, to each transmission owner and generator owner that owns an applicable transformer within the applicable planning area. Requirement R6 requires transmission owners and generator owners to conduct thermal impact assessments on solely and jointly owned applicable transformers where the maximum effective GIC value provided in Requirement R5 is 75 Amperes per phase (A/phase) or greater. Requirement R7 requires responsible entities to develop corrective action plans if the GMD vulnerability assessment concludes that the system does not meet the performance requirements in Table 1 of Reliability Standard TPL–007–1.

12. Calculation of the benchmark GMD event, against which applicable entities must assess their facilities, is fundamental to compliance with Reliability Standard TPL–007–1. Reliability Standard TPL–007–1, Requirement R3 states that ''[e]ach responsible entity, as determined in Requirement R1, shall have criteria for acceptable System steady state voltage performance for its System during the benchmark GMD event described in Attachment 1.''

13. Reliability Standard TPL–007–1, Attachment 1 states that the benchmark GMD event is composed of four elements: (1) A reference peak geoelectric field amplitude of 8 V/km derived from statistical analysis of historical magnetometer data; (2) a scaling factor to account for local geomagnetic latitude; (3) a scaling factor to account for local earth conductivity; and (4) a reference geomagnetic field time series or wave shape to facilitate time-domain analysis of GMD impact on equipment. The product of the first three elements is referred to as the regional peak geoelectric field amplitude. The benchmark GMD event defines the geoelectric field values used to compute GIC flows for a GMD vulnerability assessment, which is required in Reliability Standard TPL–007–1.[20]

[10] NOPR, 163 FERC ¶ 61,126 at P 50.

[11] North American Electric Reliability Corporation, Filing, Docket No. RM15–11–003 (filed Apr. 19, 2018) (Revised GMD Research Work Plan).

[12] 16 U.S.C. 824o(e).

[13] *See* NERC, 2012 Special Reliability Assessment Interim Report: Effects of Geomagnetic Disturbances on the Bulk Power System at i–ii (February 2012).

[14] *Id.* at ii.

[15] *Id.*

[16] *Id.*

[17] NERC, Benchmark Geomagnetic Disturbance Event Description, Docket No. 15–11–000, at 4 (filed June 28, 2016) (2016 NERC White Paper).

[18] *Id.*

[19] *Id.*

[20] *See* Reliability Standard TPL–007–1, Requirements R4 and R5. Reliability Standard TPL–007–1 does not set a threshold amount of GIC flow that would constitute a vulnerable transformer. However, if a transformer is calculated to experience a maximum effective GIC flow during a

Continued

14. For the purpose of determining a benchmark event that specifies what severity GMD events a responsible entity must assess for potential impacts on the Bulk-Power System, NERC determined that a 1-in-100 year GMD event would cause an 8 V/km reference peak geoelectric field amplitude at 60 degree north geomagnetic latitude using Québec's earth conductivity.[21] Scaling factors (*i.e.,* multiplying values) are applied to this reference peak geoelectric field amplitude to adjust the 8 V/km value for different geomagnetic latitudes (scaling factors between 0.1 and 1.0) and earth conductivities (scaling factors between 0.21 and 1.17). NERC identified a reference geomagnetic field time series from an Ottawa, Ontario magnetic observatory during a 1989 GMD storm affecting Québec. NERC used this to estimate a time series (*i.e.,* 10-second values over a period of days) of the geoelectric field that is representative of what is expected to occur at 60 degree geomagnetic latitude during a 1-in-100 year GMD event. Such a time series is used in some methods of calculating the vulnerability of a transformer to damage from heating caused by GIC.

15. NERC used field measurements taken from the International Monitor for Auroral Geomagnetic Effects (IMAGE) magnetometer chain, which consists of 39 magnetometer stations in Northern Europe, for the period 1993–2013 to calculate the reference peak geoelectric field amplitude. As described in the 2016 NERC White Paper, to arrive at a reference peak geoelectric field amplitude of 8 V/km, NERC ''spatially averaged'' four different station groups each spanning a square area of approximately 500 km (roughly 310 miles) in width.

2. Order No. 830

16. On January 21, 2015, NERC submitted for Commission approval Reliability Standard TPL–007–1 in response to the directive in Order No. 779 that NERC develop one or more Reliability Standards to address the effects of GMD events on the electric grid.[22] In Order No. 830, the Commission approved Reliability Standard TPL–007–1, concluding that Reliability Standard TPL–007–1 addressed the Commission's directive by requiring applicable Bulk-Power System owners and operators to conduct, on a recurring five-year cycle, initial and ongoing vulnerability assessments regarding the potential impact of a benchmark GMD event on the Bulk-Power System as a whole and on Bulk-Power System components. In addition, the Commission determined that Reliability Standard TPL–007–1 requires applicable entities to develop and implement corrective action plans to mitigate vulnerabilities identified through those recurring vulnerability assessments and that potential mitigation strategies identified in Reliability Standard TPL–007–1 include, but are not limited to, the installation, modification or removal of transmission and generation facilities and associated equipment.

17. In Order No. 830, the Commission also determined that Reliability Standard TPL–007–1 should be modified. Specifically, Order No. 830 directed NERC to develop and submit modifications to Reliability Standard TPL–007–1 concerning: (1) The calculation of the reference peak geoelectric field amplitude component of the benchmark GMD event definition; (2) the collection and public availability of necessary GIC monitoring and magnetometer data; and (3) deadlines for completing corrective action plans and the mitigation measures called for in corrective action plans. Order No. 830 directed NERC to develop and submit these revisions for Commission approval within 18 months of the effective date of Order No. 830.

18. With respect to the calculation of the reference peak geoelectric field amplitude component of the benchmark GMD event definition, Order No. 830 expressed concern with relying solely on spatial averaging in Reliability Standard TPL–007–1 because ''the use of spatial averaging in this context is new, and thus there is a dearth of information or research regarding its application or appropriate scale.'' [23] While Order No. 830 directed that the peak geoelectric field amplitude should not be based solely on spatially-averaged data, the Commission indicated that this ''directive should not be construed to prohibit the use of spatial averaging in some capacity, particularly if more research results in a better understanding of how spatial averaging can be used to reflect actual GMD events.'' [24]

D. NERC Petition and Reliability Standard TPL–007–2

19. NERC states that Reliability Standard TPL–007–2 enhances currently-effective Reliability Standard TPL–007–1 by addressing reliability risks posed by GMDs more effectively and implementing the directives in Order No. 830.[25] NERC asserts that Reliability Standard TPL–007–2 reflects the latest in GMD understanding and provides a technically sound and flexible approach to addressing the concerns discussed in Order No. 830. NERC contends that the proposed modifications enhance reliability by expanding GMD vulnerability assessments to include severe, localized impacts and by implementing deadlines and processes to maintain accountability in the development, completion, and revision of corrective action plans developed to address identified vulnerabilities. Further, NERC states that the proposed modifications improve the availability of GMD monitoring data that may be used to inform GMD vulnerability assessments.

20. Reliability Standard TPL–007–2 modifies currently-effective Reliability Standard TPL–007–1 by requiring applicable entities to: (1) Conduct supplemental GMD vulnerability and transformer thermal impact assessments in addition to the existing benchmark GMD vulnerability and transformer thermal impact assessments required in Reliability Standard TPL–007–1; (2) collect data from GIC monitors and magnetometers as necessary to enable model validation and situational awareness; and (3) develop necessary corrective action plans within one year from the completion of the benchmark GMD vulnerability assessment, include a two-year deadline for the implementation of non-hardware mitigation, and include a four-year deadline to complete hardware mitigation.[26]

21. In particular, Reliability Standard TPL–007–2 modifies Requirements R1 (identification of responsibilities), R2 (system and GIC system models) and R3 (criteria for acceptable System steady state) to extend the existing requirements pertaining to benchmark GMD assessments to the new supplemental GMD assessments.

benchmark GMD event of a least 75 A/phase, a thermal impact assessment of that transformer is required. *See* Reliability Standard TPL–007–1, Requirement R6.

[21] NERC used Québec as the location for the reference peak 1-in-100 year GMD event because of its proximity to 60 degree geomagnetic latitude and its well understood earth model. By creating scaling factors, each entity can scale this reference peak geoelectric field and geoelectric field time series values to match its own expected field conditions.

[22] Order No. 779, 144 FERC ¶ 61,113 at P 54.

[23] Order No. 830, 156 FERC ¶ 61,215 at P 45.

[24] *Id.* P 46.

[25] Reliability Standard TPL–007–2 is not attached to this final rule. Reliability Standard TPL–007–2 is available on the Commission's eLibrary document retrieval system in Docket No. RM18–8–000 and on the NERC website, *www.nerc.com.*

[26] Unless otherwise indicated, the requirements of Reliability Standard TPL–007–2 are substantively the same as the requirements in currently-effective Reliability Standard TPL–007–1.

Reliability Standard TPL–007–2 adds the newly mandated supplemental GMD vulnerability and transformer thermal impact assessments in new Requirements R8 (supplemental GMD vulnerability assessment), R9 (GIC flow information needed for supplemental GMD thermal impact assessments) and R10 (supplemental GMD thermal impact assessments). The supplemental GMD event definition contains a higher, non-spatially-averaged reference peak geoelectric field amplitude component than the benchmark GMD event definition (12 V/km versus 8 V/km). These three new requirements largely mirror existing Requirements R4, R5, and R6 that currently apply, and continue to apply, only to benchmark GMD vulnerability and transformer thermal impact assessments.[27]

22. In addition, Reliability Standard TPL–007–2 includes two other new requirements, Requirements R11 and R12, that require applicable entities to gather GIC monitoring data (Requirement R11) and magnetometer data (Requirement R12).

23. Reliability Standard TPL–007–2 modifies existing Requirement R7 (corrective action plans) to create a one-year deadline for the development of corrective action plans and two and four-year deadlines to complete actions involving non-hardware and hardware mitigation, respectively, for vulnerabilities identified in the benchmark GMD assessment. The modifications to Requirement R7 include a provision allowing for extension of deadlines if ''situations beyond the control of the responsible entity determined in Requirement R1 prevent implementation of the [corrective action plan] within the timetable for implementation.''

E. NOPR

24. On May 17, 2018, the Commission issued a NOPR that proposed to approve Reliability Standard TPL–007–2 as the Reliability Standard largely addresses the directives in Order No. 830. However, the NOPR identified two aspects of Reliability Standard TPL–007–2 that are inconsistent with Order No. 830: (1) The lack of any requirement to develop and implement corrective action plans in response to assessed supplemental GMD event vulnerabilities; and (2) a general allowance, per proposed Requirement R7.4, of extensions of time to complete corrective action plans as opposed to permitting extensions of time on a case-by-case basis.

25. Having identified these issues, the NOPR proposed to direct NERC, pursuant to section 215(d)(5) of the FPA, to develop and submit modifications to Reliability Standard TPL–007–2 to require applicable entities to develop and implement corrective action plans to mitigate vulnerabilities discovered through supplemental GMD vulnerability assessments. The NOPR proposed to direct NERC to submit the modified Reliability Standard for approval within 12 months from the effective date of Reliability Standard TPL–007–2. The NOPR also sought comment on two options for addressing the Commission's concerns regarding the potential for undue delay of mitigation because of the proposed time-extension process in Requirement R7.4: (1) Direct NERC to bring Reliability Standard TPL–007–2 into alignment with Order No. 830 through a process whereby NERC or Regional Entities consider extensions on a case-by-case basis using the information that must be submitted under Requirement R7.4; or (2) approve the proposed provision without directing modifications. Under either option, NERC would prepare and submit a report regarding how often and why applicable entities are exceeding corrective action plan deadlines following implementation of Reliability Standard TPL–007–2.[28]

26. The Commission received NOPR comments from nine entities. We address below the issues raised in the NOPR and comments as well as NERC's revised GMD research work plan and the comments submitted in response. The Appendix to this final rule lists the entities that filed comments in both matters.

II. Discussion

27. Pursuant to section 215(d)(2) of the FPA, the Commission approves Reliability Standard TPL–007–2 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. We conclude that Reliability Standard TPL–007–2 is an improvement over currently-effective Reliability Standard TPL–007–1 and responds to the directives in Order No. 830: (1) To revise the benchmark GMD event definition, as it pertains to the required GMD Vulnerability Assessments and transformer thermal impact assessments, so that the definition is not based solely on spatially-averaged data; (2) to require the collection of necessary GIC monitoring and magnetometer data; and (3) to include a one-year deadline for the completion of corrective action plans and two and four-year deadlines to complete mitigation actions involving non-hardware and hardware mitigation, respectively.[29]

28. Reliability Standard TPL–007–2 complies with the directives in Order No. 830 by requiring, in addition to the benchmark GMD event vulnerability and thermal impact assessments, supplemental GMD vulnerability and thermal impact assessments. The supplemental GMD event definition in Reliability Standard TPL–007–2 contains a non-spatially-averaged reference peak geoelectric field amplitude component of 12 V/km, in contrast to the 8 V/km figure in the spatially-averaged benchmark GMD event definition. As NERC explains in its petition, the supplemental GMD event will be used to ''represent conditions associated with localized enhancement of the geomagnetic field during a severe GMD event for use in assessing GMD impacts.'' [30] Reliability Standard TPL–007–2 therefore addresses the Commission's directive to modify currently-effective Reliability Standard TPL–007–1 so that the benchmark GMD event does not rely solely on spatially-averaged data to calculate the reference peak geoelectric field amplitude.

29. As proposed in the NOPR, pursuant to section 215(d)(5) of the FPA, we also determine that it is appropriate to direct NERC to develop and submit modifications to Reliability Standard TPL–007–2 to require the development and completion of corrective action plans to mitigate assessed supplemental GMD event vulnerabilities. Given that NERC has acknowledged the potential for ''severe, localized impacts'' associated with supplemental GMD event vulnerabilities, we see no basis for requiring corrective action plans for benchmark GMD events but not for

[27] An exception is the qualifying threshold for transformers required to undergo thermal impact assessments: For the supplemental GMD assessment the qualifying threshold for transformers is a maximum effective GIC value of 85 A/phase while the threshold for benchmark GMD event assessments is 75 A/phase.

[28] The NOPR proposed that the report, under the first option, would also include statistics describing how often extension requests were granted.

[29] In its petition, NERC stated that it would address the directive in Order No. 830 on the collection of GIC monitoring and magnetometer data through a forthcoming NERC data request to applicable entities pursuant to Section 1600 of the NERC Rules of Procedure rather than through a Reliability Standard requirement. NERC Petition at 27. On February 7, 2018, NERC released a draft data request for a 45-day comment period. The NERC Board of Trustees (BOT) subsequently approved the GMD data request at the August 2018 BOT meeting.

[30] NERC Petition at 12.

supplemental GMD events.[31] Based on the record in this proceeding, there appear to be no technical barriers to developing or complying with such a requirement. Moreover, as discussed below, the record supports issuance of a directive at this time, notwithstanding NOPR comments advocating postponement of any directive until after the completion of additional GMD research, because relevant GMD research is scheduled to be completed before the due date for submitting a modified Reliability Standard. The Commission therefore adopts the NOPR proposal and directs NERC to submit the modified Reliability Standard for approval within 12 months from the effective date of Reliability Standard TPL–007–2.

30. We also determine, pursuant to section 215(d)(5) of the FPA, that it is appropriate to direct that NERC develop further modifications to Reliability Standard TPL–007–2, Requirement R7.4. Under NERC's proposal, applicable entities are allowed, without prior approval, to exceed deadlines for completing corrective action plan tasks when ''situations beyond the control of the responsible entity [arise].'' [32] Instead, as discussed below, we direct NERC to develop a timely and efficient process, consistent with the Commission's guidance in Order No. 830, to consider time extension requests on a case-by-case basis. Our directive balances the availability of time extensions when applicable entities are presented with the types of uncontrollable delays identified in NERC's petition and NOPR comments with the need to ensure that the mitigation of known GMD vulnerabilities is not being improperly delayed through such requests. Further, as proposed in the NOPR, we direct NERC to prepare and submit a report addressing how often and why applicable entities are exceeding corrective action plan deadlines as well as the disposition of time extension requests. The report is due within 12 months from the date on which applicable entities must comply with the last requirement of Reliability Standard TPL–007–2. Following receipt of the report, the Commission will determine whether further action is necessary.

31. The Commission, as discussed below, also accepts the revised GMD research work plan submitted by NERC on April 19, 2018.

A. Corrective Action Plan for Supplemental GMD Event Vulnerabilities NOPR

32. The NOPR proposed to determine that the absence of a requirement to mitigate assessed supplemental GMD event vulnerabilities is inconsistent with Order No. 830, and Order No. 779, because the proposal does not require ''owners and operators [to] develop and implement a plan to protect against instability, uncontrolled separation, or cascading failures of the Bulk-Power System.'' [33]

33. The NOPR explained that the Commission was not persuaded by NERC's justification that technical limitations—specifically the small number of observations used to define the supplemental GMD event and the availability of modeling tools to assist entities in assessing vulnerabilities—make requiring mitigation premature at this time.[34] The NOPR, instead, accepted NERC's statement that the supplemental GMD event definition ''provides a technically justified method of assessing vulnerabilities to the localized peak effects of severe GMD events.'' [35] The NOPR also observed that mitigation of supplemental GMD event vulnerabilities is appropriate because Reliability Standard TPL–007–2: (1) Does not prescribe how applicable entities must perform such studies, and thus may incorporate any uncertainties regarding the geographic size of such events into their studies; (2) there are commercially-available tools that could allow for modeling of supplemental GMD events; and (3) other methods could be used within the framework of the Reliability Standard to study planning areas (*e.g.,* superposition or sensitivity studies) in conjunction with other power system modeling tools. The NOPR further recognized that research tasks under way pursuant to the GMD research work plan that are relevant to the supplemental GMD event definition are scheduled to be completed in 2019 and the results of such research should inform the work of the standard drafting team.

Comments

34. NERC does not support the proposed directive. NERC maintains that the provision in Requirement R8.3 that requires applicable entities to evaluate possible actions designed to reduce the likelihood or mitigate the adverse impacts of a supplemental GMD event ''is not merely advisory, but rather supports a range of potential mitigating actions, such as additional hardware mitigation, operating procedures, or other resilience actions to enhance recovery and restoration.'' [36] NERC expounds on this by noting that the requirement to consider mitigation in Reliability Standard TPL–007–2 ''would directly support mitigation that is required by [Reliability Standard EOP–010–1].'' [37] NERC also contends that it ''anticipates that the Corrective Action Plans, when needed to address performance requirements for the benchmark GMD event, will also provide a large degree of protection to the Bulk-Power System for events with locally-enhanced geomagnetic fields.'' [38]

35. NERC's comments reiterate the rationale in its petition that requiring mitigation ''would result in the de facto replacement of the benchmark GMD event with the proposed supplemental GMD event.'' [39] NERC maintains that ''while the supplemental GMD event is strongly supported by data and analysis in ways that mirror the benchmark GMD event, there are aspects of it that are less definitive than the benchmark GMD event and less appropriate as the basis of requiring Corrective Action Plans.'' [40] NERC also claims that the uncertainty of geographic size of the supplemental GMD event could not be addressed adequately by sensitivity analysis or through other methods because there are ''inherent sources of modeling uncertainty (*e.g.,* earth conductivity model, substation grounding grid resistance values, transformer thermal and magnetic response models) . . . [and] introducing additional variables

[31] NERC Petition at 4 (''these revisions would enhance reliability by expanding GMD Vulnerability Assessments to include severe, localized impacts and by implementing new deadlines and processes to maintain accountability in the development, completion, and revision of entity Corrective Action Plans developed to address identified vulnerabilities'').

[32] In the Supplemental Material section of Reliability Standard TPL–007–2, examples of situations beyond the control of the of the responsible entity include, but are not limited to, delays resulting from regulatory/legal processes, such as permitting; delays resulting from stakeholder processes required by tariff; delays resulting from equipment lead times; or delays resulting from the inability to acquire necessary Right-of-Way.

[33] NOPR, 163 FERC ¶ 61,126 at P 32.

[34] The Commission also rejected the assertion in NERC's petition that an evaluation of possible actions for supplemental GMD events that result in Cascading is similar to the treatment of extreme events in Reliability Standard TPL–001–4 (Transmission System Planning Performance Requirements).

[35] NOPR, 163 FERC ¶ 61,126 at P 35 (quoting NERC Petition at 13).

[36] NERC Comments at 9.

[37] *Id.* at 10.

[38] *Id.* at 11.

[39] *Id.* at 11–12; *see also id.* at 14 (''many entities would likely employ the most conservative approach for conducting supplemental GMD Vulnerability Assessments, which would be to apply extreme peak values uniformly over an entire planning area'').

[40] *Id.* at 13.

for sensitivity analysis, such as the size of the localized enhancement, may not improve the accuracy of GMD Vulnerability Assessments.'' [41] NERC further states that ''commercially-available modeling tools now advertise capabilities that could be used to model localized GMD enhancements, [but] to NERC's knowledge these capabilities have not been used extensively by planners, nor have the different software tools been benchmarked for consistency in results.'' [42]

36. NERC contends that completing the GMD work plan is a better alternative to the NOPR directive. Moreover, NERC states that it ''commits to initiate a review of TPL–007–2 following the completion of the GMD Research Work Plan to evaluate whether the standard continues to be supported by the available knowledge or whether additional refinements are necessary . . . [which] could result in modifications to, or additional support for, the proposed supplemental GMD event, and thereby inform what the TPL–007 standard should require in terms of mitigation based on supplemental GMD Vulnerability Assessments.'' [43] In response to the NOPR's statement that the results of the GMD research work plan may inform the work of the standard drafting team tasked with carrying out the Commission's proposed directive, NERC comments state that ''it expects that the last of the project's deliverables will be ready by early 2020 . . . [but] [a]ny scientific research project schedule, however, must account for the possibility that additional time may be needed to explore potential findings or amend project approaches to provide more useful results.'' [44] NERC states that while the technical report for Task 1 is scheduled to be completed by the fourth quarter of 2019 according to the revised GMD research work plan, NERC estimates that it will file a report with the Commission, after allowing a period of public comment, six months later (*i.e.,* mid-2020).[45]

37. Trade Associations, Idaho Power, NE ISO, TVA and BPA do not support the proposed directive. They contend that requiring corrective action plans for supplemental GMD event vulnerabilities: (1) May be premature given the limited data regarding localized GMD events; (2) would address low-probability events that are unlikely to affect a wide area; and (3) could impose costs on applicable entities that outweigh the potential benefits of such a directive. Like NERC, these commenters support completing the GMD research work plan before considering mandating corrective action plans for supplemental GMD event vulnerabilities. Idaho Power, moreover, contends that it would be better for registered entities to gain experience with corrective action plans for benchmark GMD events before mandating corrective action plans for supplemental GMD events. Trade Associations state that instead of the NOPR directive, any Commission directive should be limited to requiring NERC to develop ''a study of the mitigation measures deployed and the effectiveness of these measures to mitigate benchmark GMD events before mandating mitigation measures on more localized events.'' [46] Similarly, BPA maintains that instead of the NOPR directive, in order to assess the costs and benefits of requiring corrective action plans for supplemental GMD events, the Commission should require NERC to file periodic reports on supplemental GMD events and the possible actions to mitigate them.

38. Resilient Societies and Reclamation support the NOPR directive. Reclamation states, and Resilient Societies concurs, that ''[a]n exercise to only identify vulnerabilities arising from localized GMD events is not a cost-effective use of resources unless accompanied by activities to mitigate the identified vulnerabilities.'' [47]

Commission Determination

39. Pursuant to section 215(d)(5) of the FPA, the Commission adopts the NOPR proposal and directs NERC to develop and submit modifications to Reliability Standard TPL–007–2 to require corrective action plans for assessed supplemental GMD event vulnerabilities. While Reliability Standard TPL–007–2 requires applicable entities to assess supplemental GMD event vulnerabilities, it does not require corrective action plans to address assessed vulnerabilities. Instead, Reliability Standard TPL–007–2, Requirement R8.3 only requires applicable entities to make ''an evaluation of possible actions to reduce the likelihood or mitigate the consequences and adverse impacts of the events if a supplemental GMD event is assessed to result in Cascading.'' As the Commission observed in the NOPR, NERC's proposal differs significantly from Order No. 830 because the intent of the directive was not only to identify vulnerabilities arising from localized GMD events but also to mitigate such vulnerabilities.

40. The comments opposing the NOPR directive offer two rationales for approving Reliability Standard TPL–007–2 without directing modifications at this time: (1) Reliability Standard TPL–007–2 provides sufficient protection against supplemental GMD event vulnerabilities; and (2) requiring mitigation of supplemental GMD events is premature at this time.

41. With respect to the first rationale, NERC observes that the provision requiring applicable entities to consider supplemental GMD event mitigation is not ''merely advisory.'' However, there is no dispute that an applicable entity must ''consider'' mitigation under Reliability Standard TPL–007–2. What is significant is that after having done so, an applicable entity has no obligation under Reliability Standard TPL–007–2 to implement mitigation even if the applicable entity ''considered'' mitigation necessary to address an assessed supplemental GMD event vulnerability.

42. NERC also maintains that Reliability Standard EOP–010–1 requires transmission operators to ''develop, maintain, and implement a GMD Operating Procedure or Operating Process to mitigate the effects of GMD events on the reliable operation of its respective system.'' And in Order No. 779, the Commission determined that ''while the development of the required mitigation plan [for benchmark GMD event vulnerabilities] cannot be limited to considering operational procedures or enhanced training alone, operational procedures and enhanced training may be sufficient if that is verified by the vulnerability assessments.'' [48] Again, NERC's point does not resolve the Commission's concern because Reliability Standard EOP–010–1 does not ensure mitigation of all supplemental GMD event vulnerabilities assessed under Reliability Standard TPL–007–2. That is because: (1) Reliability Standard EOP–010–1 applies, in relevant part, only to

[41] *Id.* at 15.

[42] *Id.*

[43] *Id.* at 18.

[44] *Id.* at 17.

[45] Revised GMD Research Work Plan at 5 (''NERC expects to submit [informational filings with the Commission] approximately six months following EPRI's completion of the associated technical report(s)''); *id.,* Attachment 1 (Order No. 830 GMD Research Work Plan (April 2018)) at 7 (identifying ''Q4 2019'' as the estimated completion date of ''Final technical report to provide additional technical support for the existing supplementary (localized) benchmark; or, propose update to the benchmark, as appropriate'').

[46] Trade Associations Comments at 12.

[47] Reclamation Comments at 1; Resilient Societies Comments at 3.

[48] Order No. 779, 143 FERC ¶ 61,147 at P 83.

transmission operators (viz., it does not apply to other applicable entity types, such as planning coordinators, transmission planners and generator owners, subject to Reliability Standard TPL–007–2); and (2) Reliability Standard EOP–010–1 does not require mitigation if the supplemental GMD event vulnerability cannot be addressed through operational procedures or enhanced training alone. Thus, Reliability Standard EOP–010–1 does not ensure satisfactory mitigation or provide an adequate substitute for mitigation as contemplated in Order No. 830.

43. In addition, NERC asserts that the required mitigation of benchmark GMD event vulnerabilities could also address supplemental GMD event vulnerabilities. Of course that may occur in some circumstances, but that is not a substitute for requiring mitigation to the extent that benchmark GMD event mitigation does not completely address a supplemental GMD event vulnerability. Under Reliability Standard TPL–007–2 there is currently no requirement to mitigate the remaining vulnerability to the Bulk-Power System.

44. Regarding the second rationale in the NOPR comments, NERC and other commenters reiterate the assertion in NERC's petition that it would be premature, from a technical standpoint, to require corrective action plans to address supplemental GMD event vulnerabilities. As reflected in the comment summary, these commenters instead request that NERC complete the GMD research work plan and then produce a report that assesses the possible need for modifications to Reliability Standard TPL–007–2.

45. The NOPR discussed how a standard drafting team could use new information gathered through the GMD research work plan to develop a modified Reliability Standard. The Commission noted that Task 1 of the GMD research work plan (Further Analyze Spatial Averaging Used in the Benchmark GMD Event), which encompasses localized GMD event research, would be delivered in 2019 according to the most recent version of the GMD research work plan (*i.e.,* the revised GMD research work plan). The NOPR stated that ''[s]uch GMD research on localized events should inform the standard development process and aid applicable entities when implementing a modified Reliability Standard.'' [49] While we appreciate that the informational filing for Task 1 may not be submitted to the Commission prior to the deadline for submitting a modified Reliability Standard, the underlying research in Task 1 is scheduled to be completed before then. As such, the standard drafting team and personnel working on the GMD research work plan could operate in parallel and share information to ensure that research relevant to the Commission's directive is incorporated into the modified Reliability Standard. Thus we are not persuaded by the comments seeking a delay of our directive.

46. We are not persuaded by the other points raised by commenters to support their assertion that requiring corrective action plans is premature. First, NERC assumes that under such a requirement ''many'' applicable entities will adopt a ''conservative approach'' and use the supplemental GMD event definition in all GMD vulnerability assessments, thus effectively supplanting the benchmark GMD event definition. NERC bases this assumption on the standard drafting team's ''extensive experience in system planning and the relative immaturity of tools and methods for modeling localized enhancements.'' [50] NERC acknowledges the discussion in the NOPR on how uncertainties regarding the supplemental GMD event definition—in particular the geographic size of localized events—are ameliorated by the flexibility afforded by Reliability Standard TPL–007–2. Specifically, Reliability Standard TPL–007–2 permits applicable entities to apply the supplemental GMD event definition to an entire planning area or any subset of a planning area. However, NERC asserts that even with this flexibility, at least some applicable entities would default to using the supplemental GMD event definition in an overly-broad manner. Notwithstanding NERC's assertion, nothing in Reliability Standard TPL–007–2 requires applicable entities to apply the supplemental GMD event definition to an entire planning area or otherwise supplant the benchmark GMD event definition.

47. With respect to the statement in the NOPR that modeling tools are currently available to support corrective action plans, NERC admits that ''some commercially-available modeling tools now advertise capabilities that could be used to model localized GMD enhancements.'' [51] However, NERC contends that to its ''knowledge these capabilities have not been used extensively by planners, nor have the different software tools been benchmarked for consistency in result.'' [52] Given that GMDs have only recently been addressed in the Reliability Standards and there is currently no requirement to model and assess, let alone mitigate, localized GMD events, it is not unexpected that these modeling tools have not been used extensively for that purpose. Moreover, NERC does not assert that existing tools are incapable of performing the desired modeling function.[53] Thus, NERC's objections on this point are not persuasive.

48. NERC does not offer support for its comment in response to the NOPR's observation that sensitivity analysis can serve, among other methods, as a method to refine the geographic scope of localized GMD impacts on planning areas. NERC responds that it ''does not believe that concerns regarding the uncertainty of the geographic size of the supplemental GMD event could be addressed adequately by sensitivity analysis or though other methods in planning studies.'' [54] NERC claims there are already inherent sources of modeling uncertainty and that introducing another variable, such as the size of the localized enhancement, ''may not improve the accuracy of the GMD Vulnerability Analysis.'' [55] And yet NERC's concern implies that the benchmark GMD event contains a geographic domain that does not itself inject uncertainties. However, as the Commission stated in Order No. 830, the geographic area for spatial averaging in the benchmark GMD event definition is itself a ''subjective'' figure.[56] Indeed, in Order No. 830, as part of the GMD research work plan directive, to address the uncertainties surrounding the geographic scale of spatial averaging, the Commission directed that NERC should ''further analyze the area over which spatial averaging should be calculated for stability studies, including performing sensitivity analyses on squares less than 500 km per side (*e.g.,* 100 km, 200 km),'' which NERC is addressing in Task 1.[57] As

[49] NOPR, 163 FERC ¶ 61,126 at P 39.

[50] NERC Comments at 14.

[51] *Id.* at 15.

[52] *Id.* at 15–16.

[53] *See also* Trade Associations Comments at 8 (''Although current tools are available to model localized events, we understand that such modeling will require significant time as the processes involved are still largely manual, making it difficult to develop accurate, system-wide models that appropriately consider the localized impacts of the supplemental GMD event.'').

[54] NERC Comments at 15.

[55] *Id.*

[56] Order No. 830, 156 FERC ¶ 61,215 at P 45 (quoting Pulkkinen, A., Bernabeu, E., Eichner, J., Viljanen, A., Ngwira, C., ''Regional-Scale High-Latitude Extreme Geoelectric Fields Pertaining to Geomagnetically Induced Currents,'' Earth, Planets and Space at 2 (June 19, 2015)).

[57] *Id.* P 26; *see also* revised GMD Research Work Plan (Task 1) at 6 (''further analyze the area over

such, we see no basis, technical or otherwise, for not requiring corrective action plans for assessed supplemental GMD event vulnerabilities while requiring corrective action plans for assessed benchmark GMD event vulnerabilities consistent with the Commission's directions in Order Nos. 779 and 830. Accordingly, the Commission is not persuaded by the arguments of NERC and other commenters for the reasons discussed above, and directs that NERC develop modifications to Reliability Standard TPL–007–2 to require corrective action plans for assessed supplemental GMD event vulnerabilities.

B. Corrective Action Plan Deadline Extensions

NOPR

49. The NOPR stated that Requirement R7.4 of Reliability Standard TPL–007–2 differs from Order No. 830 by allowing applicable entities to ''revise'' or ''update'' corrective action plans to extend deadlines. This provision contrasts with the guidance in Order No. 830 that ''NERC should consider extensions of time on a case-by-case basis.'' While agreeing that there should be a mechanism for allowing extensions of corrective action plan implementation deadlines, the NOPR expressed concern with unnecessary delays in implementing protection against GMD threats.

50. The NOPR identified two options for addressing Requirement R7.4. Under the first option, the Commission would, pursuant to section 215(d)(5) of the FPA, direct NERC to modify Reliability Standard TPL–007–2 to comport with Order No. 830, by requiring that NERC and the Regional Entities, as appropriate, consider requests for extension of time on a case-by-case basis. Under this option, responsible entities seeking an extension would submit the information required by Requirement R7.4 to NERC and the Regional Entities for their consideration of the request. The Commission would also direct NERC to prepare and submit a report addressing the disposition of any such requests, as well as information regarding how often and why applicable entities are exceeding corrective action plan deadlines following implementation of Reliability Standard TPL–007–2. Under such a directive, NERC would submit the report within 12 months from the date on which applicable entities must comply with the last requirement of Reliability Standard TPL–007–2. Following receipt of the report, the Commission would determine whether further action is necessary. Under the second option, the Commission would approve proposed Requirement R7.4 but also direct NERC to prepare and submit the report described in the first option (without the statistics on disposition). Following receipt of the report, the Commission would determine whether further action is necessary.

Comments

51. NERC supports the second option in the NOPR. NERC contends that Reliability Standard TPL–007–2 ''provides clarity and certainty regarding when an entity may extend a Corrective Action Plan mitigation deadline and what steps must be followed to maintain accountability and thus compliance with the standard.'' [58] NERC also maintains that the proposal ''avoids the administrative burden, uncertainty, and further delay that could be associated with implementing a new ERO adjudication process, such as one that would be dedicated to evaluating GMD Corrective Action Plan deadline extensions on a case-by-case basis.'' [59] To address concerns regarding the possible abuse of deadline extensions, NERC states that as ''part of the compliance monitoring and enforcement activities for the proposed standard, NERC and Regional Entity staff would exercise their authority to review the reasonableness of any Corrective Action Plan delay, including reviewing the 'situations beyond the control of the responsible entity' that are cited as causing the delay.'' [60] As noted in the Supplemental Material section of Reliability Standard TPL–007–2, NERC explains that examples of such situations include ''lengthy legal or regulatory processes, stakeholder processes required by tariff, or long equipment lead times.'' [61] NERC, moreover, ''agrees that a report describing the results of NERC's monitoring of this provision could provide useful information . . . [and] therefore commits to prepare and submit to the Commission a report that describes how often and the reasons why entities in the United States are exceeding Corrective Action Plan deadlines.'' [62]

52. Trade Associations, BPA, ISO NE, Idaho Power, and TVA support the second option and echo the rationale for adopting the second option in NERC's comments. Trade Associations explain that while they previously supported a case-by-case exception process, they now believe NERC's proposal to be more efficient and effective. Trade Associations contend that a case-by-case approach would ''only increase administrative tasks for NERC and applicable entities . . . [and] would further delay any actions to mitigate rather than expedite the approval process.'' [63] Trade Associations also maintain that Reliability Standard TPL–007–2 ''will not delay mitigation because this requirement is only applicable if circumstances are beyond the entity's control.'' [64]

53. Reclamation does not appear to support modifying Requirement R7 to institute a case-by-case time extension process. However, Reclamation comments that the sub-requirement in Requirement R7.4.1 requiring documentation of reasons for delaying corrective action plans should be eliminated because it ''is merely a compliance exercise and does not improve Bulk Electric System reliability.'' Reclamation makes the same contention regarding the sub-requirement in Requirement R7.4.2 that a revised corrective action plan describe the original corrective action plan.

Commission Determination

54. Reliability Standard TPL–007–2, Requirement R7.4 differs from Order No. 830 by allowing applicable entities, under certain conditions, to extend corrective action plan implementation deadlines without prior approval. This conflicts with the Commission's guidance in Order No. 830 that, using its compliance discretion, ''NERC should consider extensions of time on a case-by-case basis.'' [65] Based on our consideration of the record, we believe that the case-by-case review process contemplated by Order No. 830 is the appropriate means for considering extension requests. Accordingly, pursuant to section 215(d)(5) of the FPA, we direct that NERC develop modifications to Reliability Standard TPL–007–2 to replace the time-extension provision in Requirement R7.4 with a process through which extensions of time are considered on a case-by-case basis.

55. At the outset, we note that the extension process in Requirement R7.4

which spatial averaging should be used in stability studies and transformer thermal assessments by performing GIC analysis on squares less than 500 km per side (*e.g.,* 100 km, 200 km) and using the results to perform power flow and transformer thermal assessments'').

[58] NERC Comments at 20.

[59] *Id.*

[60] *Id.* at 20–21.

[61] *Id.* at 20.

[62] *Id.* at 22.

[63] Trade Associations Comments at 13.

[64] *Id.*

[65] Order No. 830, 156 FERC ¶ 61,215 at P 102.

applies only to the implementation of corrective action plans and not to the development of corrective action plans.[66] NERC and other commenters supportive of the second option in the NOPR urge approval of Requirement R7.4 without modification largely because of the perceived uncertainty and burden associated with treating extension requests on a case-by-case basis. While it is true that granting extensions on a case-by-case basis involves more uncertainty and potential burdens versus the automatic extension of time afforded by Requirement R7.4, we must weigh this against the potential for abuse of Requirement R7.4 to unduly delay mitigation, as well as the delayed visibility that NERC would have into the deployment of needed GMD protections. Presented with these competing concerns, we conclude that the imperative to address known GMD vulnerabilities in a timely manner, and without unwarranted delays, is more compelling. We recognize that applicable entities that have a legitimate need for extensions require timely responses from NERC and Regional Entities, as appropriate. Accordingly, we expect that the extension process developed by NERC in response to our directive will be timely and efficient such that applicable entities will receive prompt responses after submitting to NERC or a Regional Entity, as appropriate, the extension request and associated information described in Requirement R7.4.[67]

56. In reaching our determination on this issue, we considered NERC's NOPR comments, which attempted to address the concerns with Requirement R7.4 expressed in the NOPR, stating that NERC and Regional Entity compliance and enforcement staff will review the reasonableness of any delay in implementing corrective action plans, including reviewing the asserted ''situations beyond the control of the responsible entity'' cited by the applicable entity, and by citing specific examples of the types of delays that might justify the invocation of Requirement R7.4. NERC's comments also characterized Requirement R7.4 as being ''not so flexible . . . as to allow entities to extend Corrective Action Plan deadlines indefinitely or for any reason whatsoever.'' [68] We generally agree with the standard of review that NERC indicates it will use to determine whether an extension of time to implement a corrective action plan is appropriate. However, the assessment of whether an extension of time is warranted is more appropriately made before an applicable entity is permitted to delay mitigation of a known GMD vulnerability. While NERC indicates that under proposed Requirement R7.4 there are compliance consequences for improperly delaying mitigation, mitigation of a known GMD vulnerability will nonetheless have been delayed, and we conclude it is important that any proposed delay be reviewed ahead of time. Therefore, we direct NERC to modify Reliability Standard TPL–007–2, Requirement R7.4 to develop a timely and efficient process, consistent with the Commission's guidance in Order No. 830, to consider time extension requests on a case-by-case basis.

57. We disagree with Reclamation's comment regarding Requirement R7.4.1, which requires a description of the circumstances necessitating mitigation delays, because it is at odds with NERC's NOPR comments, discussed above, in which NERC states that NERC and Regional Entities will review the reasons for delaying mitigation. Contrary to Reclamation's assertion that this requirement is ''merely a documentation exercise and does not improve [bulk electric system] reliability,'' unreasonable delays of mitigation could harm bulk electric system reliability by leaving it vulnerable to GMDs. Moreover, Requirement R7.4.2, also opposed by Reclamation, requiring that revised corrective action plans describe the original and previous revisions, provides compliance enforcement authorities with a revision history of the corrective action plan in a single document, thus facilitating compliance review.

C. Other Issues Raised in NOPR Comments

58. Resilient Societies' comments raise three issues not addressed in the NOPR. First, Resilient Societies maintains that transformers that experience an estimated GIC above 15 A/phase should be subject to mandatory corrective action plans and the Commission should ''encourage owner-operators and their research partners to develop 'Corrective Action Plans' for both [extra high voltage] transformers and for associated generation stations, even if these long replacement-time systems experience overstress at levels significantly below 75 amps per phase.'' Second, Resilient Societies states that the Commission should encourage best practices by industry beyond the mandatory requirements of the Reliability Standards, including allowing cost recovery for such practices. Third, Resilient Societies states that the Commission should address combined GMD and electromagnetic pulse (EMP) protection.

59. In Order No. 830, the Commission approved the 75 A/phase threshold in Reliability Standard TPL–007–1 based on the record and despite objections from certain commenters. The Commission, however, directed further study of this issue as part of the GMD research work plan. Resilient Societies' comments provide no new basis for revisiting this issue at this time. Moreover, as reflected in the NOPR proposal, NERC has adequately supported the 85 A/phase threshold proposed in Reliability Standard TPL–007–2 for the supplemental GMD event analysis. However, new information resulting from the GMD research work plan will also be relevant to this higher threshold. We will consider such research at the appropriate time.

60. In Order No. 830, the Commission stated that ''cost recovery for prudent costs associated with or incurred to comply with Reliability Standard TPL–007–1 and future revisions to the Reliability Standard will be available to registered entities.'' [69] It is therefore beyond the scope of this proceeding to determine, as a general matter, whether voluntary measures beyond those required to comply with the governing Reliability Standards are eligible for cost recovery. That said, jurisdictional entities may of course pursue such voluntary measures, and the Commission would consider appropriate cost recovery for those investments through a formula rate or other rate proceeding.

61. The Commission in previous orders has indicated that the Commission's GMD proceedings are not directed to EMPs and thus Resilient Societies' comments on EMP are out-of-scope.[70]

D. Revised GMD Research Work Plan

62. On April 19, 2018, NERC submitted a revised GMD research work plan in response to a Commission order issued on October 19, 2017.[71] In the October 19 Order, the Commission accepted the initial GMD research work

[66] Reliability Standard TPL–007–2, Requirement R7.4 (''[t]he [corrective action plan] shall . . . [b]e revised if situations beyond the control of the responsible entity . . . prevent implementation of the [corrective action plan] within the timetable for implementation'').

[67] NOPR, 163 FERC ¶ 61,126 at P 50.

[68] NERC Comments at 20.

[69] Order No. 830, 156 FERC ¶ 61,215 at P 24.

[70] *See, e.g.,* Order No. 830, 156 FERC ¶ 61,215 at P 119.

[71] *Reliability Standard for Transmission System Planned Performance for Geomagnetic Disturbance Events,* 161 FERC ¶ 61,048 (2017) (October 19 Order).

plan filed by NERC on May 30, 2017. The Commission also directed NERC to file a final GMD research work plan within six months and ensure that the final GMD research work plan included a reevaluation of reliance on single station readings when adjusting for latitude as part of the benchmark GMD event definition. At NERC's request, the October 19 Order also provided guidance on how NERC should prioritize the tasks in the GMD research work plan.

63. Bardin and Resilient Societies submitted comments in response to the revised GMD research work plan, which largely focused on a request for combined research on GMDs and EMPs. As discussed above, however, EMPs are outside the scope of the Commission's directive regarding GMD research. Resilient Societies also submitted comments criticizing aspects of five tasks in the revised GMD research work plan. With respect to Tasks 1, 2, 8 and 9, Resilient Societies' criticism is based on the contention that the ''real-world data'' will not be used to verify models. For example, Resilient Societies contends that NERC will not use ''real-world'' GIC data to validate spatial averaging (Task 1) or latitude scaling (Task 2). These assertions, however, are refuted by the revised GMD research work plan. The revised GMD research work plan indicates that the research on spatial averaging includes an analysis of ''a large number (10–20) of localized extreme events and collection of both ground-based and space-based data around the times of these events.'' [72] For latitude scaling, the revised GMD research work plan states that NERC will evaluate the scaling factor ''using existing models and developing new models to extrapolate, from historical data, the potential scaling of a 1-in-100 year GMD event on lower geomagnetic latitudes.'' [73] In addition, NERC indicates that the data gathered through the Section 1600 data request ''will help validate various models used in calculating GIC's and assessing their impacts in data systems.'' [74]

64. Resilient Societies other comments are directed to an alleged lack of specificity, granularity or ''scientific assurance'' in the testing described in Tasks 5, 8 and 9 of the revised GMD research work plan. These criticisms are misplaced as they demand an unreasonable degree of detail in the revised GMD research work plan. For example, regarding Task 5, NERC states that it will ''validate[e] existing transformer tools with all data that is presently available and with upcoming field/laboratory test results.'' [75] Resilient Societies, however, contends unpersuasively that ''NERC neglects to specify 'all data that is presently available' . . . and the number of transformers to be employed in 'upcoming field laboratory test results' and also neglects to disclose details of the test protocols to be used.'' [76] Regarding harmonics (Tasks 8 and 9), Task 9 specifically includes ''tank vibration measurements,'' not just simulations.[77] Moreover, Task 8 (Improving Harmonic Analysis Capabilities) is intended to develop more basic information than some of the other tasks in the revised GMD research work plan where industry has more knowledge. As with all of the revised GMD research work plan tasks (with the exception of Task 6, which deals with the Section 1600 data request), NERC will submit a report to the Commission on its findings.

65. As the revised GMD research work plan complies with Order No. 830 and the Commission's October 19 Order, we accept the revised GMD research work plan.

III. Information Collection Statement

66. The collection of information contained in this final rule is subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995.[78] OMB's regulations require review and approval of certain information collection requirements imposed by agency rules.[79] Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the information collection requirements of a rule will not be penalized for failing to respond to the collection of information unless the collection of information displays a valid OMB control number.

67. In the NOPR, the Commission solicited comments on the need for this information, whether the information will have practical utility, the accuracy of the burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected or retained, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. Specifically, the Commission asked that any revised burden or cost estimates submitted by commenters be supported by sufficient detail to understand how the estimates were generated. The Commission did not receive any comments regarding the Commission's burden estimates.

68. The Commission approves Reliability Standard TPL–007–2, which replaces currently-effective Reliability Standard TPL–007–1. When compared to Reliability Standard TPL–007–1, Reliability Standard TPL–007–2 maintains the current information collection requirements, modifies existing Requirements R1 through R7 and adds new requirements in Requirements R8 through R12.

69. Reliability Standard TPL–007–2 includes new corrective action plan development and implementation deadlines in Requirement R7, new supplemental GMD vulnerability and transformer thermal impact assessments in Requirements R8 through R10, and requirements for applicable entities to gather magnetometer and GIC monitored data in Requirements R11 and R12. Deadlines in Requirement R7 for the development and implementation of corrective action plans would only change the timeline of such documentation and are not expected to revise the burden to applicable entities. The burden estimates for new Requirements R8 through R10 are expected to be similar to the burden estimates for Requirements R4 through R6 in currently-effective Reliability Standard TPL–007–1 due to the closely-mirrored requirements.[80] The Commission expects that only 25 percent or fewer of transmission owners and generator owners would have to complete a supplemental transformer thermal impact assessment per Requirement R10. Requirements R11 and R12 require applicable entities to have a process to collect GIC and magnetometer data from meters in planning coordinator planning areas.

Public Reporting Burden: The burden and cost estimates below are based on the changes to the reporting and recordkeeping burden imposed by Reliability Standard TPL–007–2. Our estimates for the number of respondents are based on the NERC Compliance Registry as of March 3, 2018, which indicates there are 183 entities registered as transmission planner (TP), 65 planning coordinators (PC), 330 transmission owners (TO), 944 generator owners (GO) within the United States. However, due to significant overlap, the

[72] Revised GMD Research Work Plan, Attachment 1 (Order No. 830 GMD Research Work Plan (April 2018)) at 2.

[73] *Id.* at 8.

[74] *Id.* at 19.

[75] *Id.* at 17.

[76] Resilient Societies Comments on Revised GMD Research Work Plan at 11.

[77] *Id.* at 25.

[78] 44 U.S.C. 3507(d).

[79] 5 CFR part 1320 (2018).

[80] NERC Petition at 14–17.

total number of unique affected entities (*i.e.,* entities registered as a transmission planner, planning coordinator, transmission owner or generator owner, or some combination of these functional entities) is 1,130 entities. This includes 188 entities that are registered as a transmission planner or planning coordinator (applicability for Requirements R7 to R9 and R11 to R12), and 1,119 entities registered as a transmission or generation owner (applicability for Requirement R10). Given the assumption above, there is an expectation that at most only 25 percent of the 1,119 entities (or 280 entities) will have to complete compliance activities for Requirement R10. The estimated burden and cost are as follow.[81]

FERC–725N, CHANGES DUE TO FINAL RULE IN DOCKET NO. RM18–8 [82] [83]

Requirement (R)	Number and type of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) × (2) = (3)	Average burden hrs. & cost per response (4)	Total annual burden hrs. & total annual cost (rounded) (3) × (4) = (5)	Cost per respondent ($) (5) ÷ (1)
R1 through R6 [84]	No change	No change	No change	No change	No change	No change
R7	188 (PC and TP)	1/5 (once for every five year study).	37.6	Rep. 5 hrs., $334.50; RK 5 hrs., $160.20.	Rep. 188 hrs., $12,577; RK 188 hrs., $6,023.	Rep. 1 hr., $66.90; RK 1 hr., $32.04
R8	188 (PC and TP)	1/5 (once for every five year study).	37.6	Rep., 27 hrs., $1,806.30; RK, 21 hrs., $672.84.	Rep. 1,015 hrs., $67,917; RK 790 hrs., $25,299.	Rep., 5.4 hrs., $361.26; RK 4.2 hrs., $134.57
R9	188 (PC and TP)	1/5 (once for every five year study).	37.6	Rep. 9 hrs., $602.10; RK 7 hrs., $224.28.	Rep. 338 hrs., $22,639; RK 263 hrs., $8,432.	Rep. 1.8 hrs., $120.42; RK 1.4 hrs., $44.85
R10	280 (25% of 1,119) (GO and TO).	1/5 (once for every five year study).	56	Rep. 22 hrs., $1,471.80; RK 18 hrs., $576.72.	Rep. 1,232 hrs., $82,421; RK 1,008 hrs., $32,296.	Rep. 4.4 hrs., $294.36; RK 3.6 hrs., $115.34
R11	188 (PC and TP)	1 (on-going reporting).	188	Rep. 10 hrs., $669; RK. 10 hrs., $320.40.	Rep. 1,880 hrs., $125,772; RK 1,880 hrs., $60,235.	Rep. 10 hrs., $669; RK 10 hrs., $320.40
R12	188 (PC and TP)	1 (on-going reporting).	188	Rep. 10 hrs., $669; RK. 10 hrs., 320.40.	Rep. 1,880 hrs. $125,772; RK 1,880 hrs., $60,235.	Rep. 10 hrs., $669; RK 10 hrs., $320.40
Total Additional Hrs. and Cost (rounded), due to Final Rule in RM18–8.					Rep., 6,533 hrs., $437,057; RK 6,009 hrs., $192,528.	

Title: FERC–725N, Mandatory Reliability Standards: TPL Reliability Standards

Action: Revisions to an existing collection of information

OMB Control No: 1902–0264

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

Frequency of Responses: [85] Every five years (for Requirement R7–R10), annually (for Requirement R11 and R12), and ongoing.

Necessity of the Information: Reliability Standard TPL–007–2 implements the Congressional mandate of the Energy Policy Act of 2005 to develop mandatory and enforceable Reliability Standards to better ensure the reliability of the nation's Bulk-Power System. Specifically, these requirements address the threat posed by GMD events to the Bulk-Power System and conform to the Commission's directives to modify Reliability Standard TPL–007–1 as directed in Order No. 830.

Internal review: The Commission has reviewed Reliability Standard TPL–007–2, and made a determination that its action is necessary to implement section 215 of the FPA. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

70. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, Office of the Executive Director, 888 First Street NE, Washington, DC 20426

[81] Hourly costs are based on the Bureau of Labor Statistics (BLS) figures for May 2017 (Sector 22, Utilities) for wages (*https://www.bls.gov/oes/current/naics2_22.htm*) and benefits for December 2017 (*https://www.bls.gov/news.release/ecec.nr0.htm*). We estimate that an Electrical Engineer (NAICS code 17–2071) would perform the functions associated with reporting requirements, at an average hourly cost (for wages and benefits) of $66.90 The functions associated with recordkeeping requirements, we estimate, would be performed by a File Clerk (NAICS code 43–4071) at an average hourly cost of $32.04 for wages and benefits.

The estimated burden and cost are in addition to the burden and cost that are associated with the existing requirements in Reliability Standard TPL–007–1 (and in the current OMB-approved inventory), which would continue under Reliability Standard TPL–007–2.

The requirements for NERC to provide reports to the Commission and to develop and submit modifications to Reliability Standard TPL–007–2 are already covered under FERC–725 (OMB Control No. 1902–0225).

[82] Rep.=reporting requirements; RK-recordkeeping requirements (Evidence Retention).

[83] For each Reliability Standard, the Measure shows the acceptable evidence (Reporting Requirement) for the associated Requirement (R numbers), and the Compliance section details the related Recordkeeping Requirement.

[84] While Reliability Standard TPL–007–2 extends the requirements in existing Reliability Standard TPL–007–1, Requirements R1 through R3 to the newly required supplemental GMD event analyses, the obligation to conduct the supplemental GMD event analyses is found in Reliability Standard TPL–007–2, Requirements R8 through R10.

[85] The frequency of Requirements R1 through R6 in Reliability Standard TPL–007–2 is unchanged from the existing requirements in Reliability Standard TPL–007–1.

[Attention: Ellen Brown, email: *DataClearance@ferc.gov,* phone: (202) 502–8663, fax: (202) 273–0873].

71. Comments concerning the collection of information and the associated burden estimate should be sent to the Commission in this docket and may also be sent 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 Federal Energy Regulatory Commission]. Due to security concerns, comments should be sent electronically to the following email address: *oira_submission@omb.eop.gov*. Comments submitted to OMB should refer to FERC–725N and OMB Control No. 1902–0264.

IV. Environmental Analysis

72. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[86] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[87] The actions here fall within this categorical exclusion in the Commission's regulations.

V. Regulatory Flexibility Act

73. The Regulatory Flexibility Act of 1980 (RFA) [88] generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. The definition of small business is provided by the Small Business Administration (SBA) at 13 CFR 121.201. The threshold for a small utility (using SBA's sub-sector 221) is based on the number of employees for a concern and its affiliates. As discussed above, Reliability Standard TPL–007–2 applies to a total of 1,130 unique planning coordinators, transmission planners, transmission owners, and generation owners.[89] A small utility (and its affiliates) is defined as having no more than the following number of employees:

- For planning coordinators, transmission planners, and transmission owners (NAICS code 221121, Electric Bulk Power Transmission and Control), a maximum of 500 employees
- for generator owners, a maximum of 750 employees.[90]

74. As estimated in the NOPR, the total cost to all entities (large and small) is $629,585 annually (or an average of $1,345.27 for each of the estimated 468 entities affected annually). For the estimated 280 generator owners and transmission owners affected annually, the average cost would be $409.70 per year. For the estimated 188 planning coordinators and transmission planners, the estimated average annual cost would be $2,738.84. The estimated annual cost to each affected entity varies from $409.70 to $2,738.84 and is not considered significant. The Commission did not receive any comments regarding these burden and cost estimates.

75. Accordingly, the Commission certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

VI. Document Availability

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

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

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

VII. Effective Date and Congressional Notification

These regulations are effective January 25, 2019. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996. The rule will be provided to the Senate, House, Government Accountability Office, and the SBA.

By the Commission. Commissioner McIntyre is not voting on this order.

Issued: November 15, 2018.

Kimberly D. Bose,

Secretary.

Note: The following appendix will not appear in the Code of Federal Regulations.

APPENDIX—List of Commenters

Abbreviation	Commenter
Bardin	David Bardin.
BPA	Bonneville Power Administration.
Idaho Power	Idaho Power Company.
ISO NE	ISO New England Inc.
NERC	North American Electric Reliability Corporation.
Reclamation	Bureau of Reclamation.
Resilient Societies	Foundation for Resilient Societies.
Trade Associations	American Public Power Association, Edison Electric Institute, Electricity Consumers Resource Council, Large Public Power Council, National Rural Electric Cooperative Association.
TVA	Tennessee Valley Authority.

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

[87] 18 CFR 380.4(a)(2)(ii) (2018).

[88] 5 U.S.C. 601–12.

[89] In the NERC Registry, there are approximately 65 PCs, 188 TPs, 944 GOs, and 330 TOs (in the United States), which will be affected by this final rule. Because some entities serve in more than one role, these figures involve some double counting.

[90] The maximum number of employees for a generator owner (and its affiliates) to be ''small'' varies from 250 to 750 employees, depending on the type of generation (*e.g.,* hydroelectric, nuclear, fossil fuel, wind). For this analysis, we use the most conservative threshold of 750 employees.

[FR Doc. 2018–25678 Filed 11–23–18; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0913]

RIN 1625–AA00

Safety Zone; Delaware River, Dredging Operation Equipment Recovery, Marcus Hook Range, Chester, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 250-yard radius of Great Lakes Dredge & Dock Company vessels and machinery conducting emergency diving and equipment removal operations in the Delaware River within Marcus Hook Range near Chester, Pennsylvania. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by broken equipment removal operations. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Delaware Bay or a designated representative.

DATES: This rule is effective without actual notice from November 19, 2018 through November 26, 2018. For the purposes of enforcement, actual notice will be used from November 26, 2018 through November 30, 2018. This rule may be withdrawn if the project is completed before the stated end date. This rule will be enforced continuously each day the rule is in effect.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0913 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

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

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to the public interest to do so. The rule must be established by November 18, 2018, to serve its purpose of providing safety during the recovery of a broken hydro-hammer associated with dredging operations. The Coast Guard was notified of the recovery operation schedule on November 18, 2018, and a safety zone must be established by November 18, 2018 to address the hazards associated with diving and equipment removal operations.

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

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Delaware Bay (COTP) has determined that potential hazards associated with emergency diving and equipment recovery operations beginning November 19, 2018, will be a safety concern for anyone within a 250-yard radius of diving and equipment recovery vessels and machinery. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the operations to recover the broken hydro-hammer are being conducted.

IV. Discussion of the Rule

This rule establishes a temporary safety zone on November 19, 2018 through November 30, 2018, within 250 yards of vessels and machinery being used by personnel to conduct diving and equipment recovery operations, at approximately 39°49.3002′ N Latitude, −75°22.8966′ W Longitude, in the Marcus Hook Range of the Delaware River. During diving and equipment recovery operations, persons or vessels will not be permitted to enter the safety zone without obtaining permission from the COTP or the COTP's designated representative. Vessels wishing to transit the safety zone in the clear side of the main navigational channel may do so if they can make satisfactory passing arrangements with dredge NEW YORK or tug INDIAN DAWN in accordance with the Navigational Rules in 33 CFR subchapter E via VHF–FM 88 at least 1 hour prior to arrival and at 30 minutes prior to arrival to arrange safe passage. If vessels are unable to make satisfactory passing arrangements with the dredge NEW YORK or tug INDIAN DAWN, they may request permission from the COTP, or his designated representative, to enter and transit the safety zone on VHF–FM channel 16. All vessels must operate at the minimum safe speed necessary to maintain steerage and reduce wake while transiting the safety zone. The Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 and Marine Safety Information Bulletin further defining specific work locations and traffic patterns.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic will be able to safely transit around this safety zone, which will impact a small designated area of the Delaware River. Although persons and vessels may not enter the safety zone without authorization from the COTP or a designated representative of the COTP, they may operate in the surrounding area during the enforcement period. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 and Marine Safety Information Bulletin about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please 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 an emergency safety zone that will prohibit persons and vessels from entering a limited area on the navigable water in the Delaware Bay, during an emergency diving and equipment recovery operation. It is categorically excluded from further review under paragraph L60(c) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–0913 to read as follows:

§ 165.T05–0913 Safety Zone; Delaware River, Dredging Operation Equipment Recovery, Mantua Creek Anchorage.

(a) *Location.* The following area is a safety zone: All navigable waters within 250 yards of vessels and machinery associated with diving and pipeline removal operating on the Delaware River, at approximately 39°49.3002′ N Latitude, 075°22.8966′ W Longitude, in the Marcus Hook Range near Chester, Pennsylvania. All coordinates are based on Datum NAD 1983.

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

of the Port Delaware Bay (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Entry into or transiting within the safety zone is prohibited unless vessels obtain permission from the Captain of the Port via VHF–FM channel 16, or make satisfactory passing arrangements via VHF–FM channel 88, with the dredge NEW YORK or tug INDIAN DAWN per this section and the Rules of the Road (33 CFR chapter I, subchapter E). Vessels requesting to transit shall contact the dredge NEW YORK or tug INDIAN DAWN on channel 88 at least 1 hour prior to arrival and at 30 minutes prior to arrival.

(2) Vessels granted permission to enter and transit the safety zone must do so in accordance with any directions or orders of the Captain of the Port, his designated representative, dredge NEW YORK, or tug INDIAN DAWN. No person or vessel may enter or remain in a safety zone without permission from the Captain of the Port, dredge NEW YORK, or tug INDIAN DAWN.

(3) All vessels must operate at the minimum safe speed necessary to maintain steerage and reduce wake.

(4) This section applies to all vessels that intend to transit through the safety zone except vessels that are engaged in the following operations: Enforcement of laws, service of aids to navigation, and emergency response.

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

(e) *Enforcement periods.* This section will be enforced continuously from November 19, 2018 through November 30, 2018, or completion of the equipment removal, whichever is sooner.

Dated: November 19, 2018.

S.E. Anderson,

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

[FR Doc. 2018–25668 Filed 11–23–18; 8:45 am]

BILLING CODE 9110–04–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 384

[Docket No. 17–CRB–0001–BER (2019–2023)]

Determination of Royalty Rates and Terms for Making Ephemeral Copies of Sound Recordings for Transmission to Business Establishments (Business Establishments III)

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Royalty Judges (Judges) publish final regulations setting rates and terms for the making of an ephemeral recording of a sound recording by a business establishment service for the period January 1, 2019, through December 31, 2023.

DATES: *Effective date:* January 1, 2019.

ADDRESSES: For access to the docket to read submitted background documents go to eCRB, the Copyright Royalty Board's electronic filing and case management system, at *https://app.crb.gov/* and search for docket number 17–CRB–0001–BER (2019–2023).

FOR FURTHER INFORMATION CONTACT: Anita Blaine, CRB Program Specialist, by telephone at (202) 707–7658 or email at *crb@loc.gov*.

SUPPLEMENTARY INFORMATION: In 1995, Congress enacted the Digital Performance Right in Sound Recordings Act, Public Law 104–39, which created an exclusive right, subject to certain limitations, for copyright owners of sound recordings to perform publicly those sound recordings by means of certain digital audio transmissions. Among the limitations on the performance right was the creation of a statutory license for nonexempt, noninteractive digital subscription transmissions. 17 U.S.C. 114(d).

The scope of the section 114 statutory license was expanded in 1998 upon the passage of the Digital Millennium Copyright Act of 1998 (DMCA), Public Law 105–34. The DMCA created, *inter alia,* a statutory license for the making of an ''ephemeral recording'' of a sound recording by certain transmitting organizations. 17 U.S.C. 112(e). This license, among other things, allows entities that transmit performances of sound recordings to business establishments to make an ephemeral recording of a sound recording for later transmission, pursuant to the limitations set forth in section 114(d)(1)(C)(iv).

Chapter 8 of the Copyright Act requires the Judges to conduct proceedings every five years to determine the royalty rates and terms for ''the activities described in section 112(e)(1) relating to the limitation on exclusive rights specified by section 114(d)(1)(C)(iv).'' 17 U.S.C. 801(b)(1), 804(b)(2). Accordingly, the Judges published a notice commencing the current proceeding and requesting that interested parties submit petitions to participate. 82 FR 143 (Jan. 3, 2017).

The Judges received Petitions to Participate from Mood Media Corporation, Music Choice, David Powell, David Rahn,[1] Rockbot, Inc.,[2] Sirius XM Radio Inc., and SoundExchange, Inc. The Judges initiated the three-month negotiation period and directed the participants to submit written direct statements no later than May 14, 2018.

On May 4, 2018, the Judges received a joint *Motion to Adopt Settlement* from Mr. Rahn, Mood Media Corp., Music Choice, Sirius XM Radio Inc., and SoundExchange, Inc., (Moving Parties) stating that they had reached a settlement obviating the need for written evidentiary statements or a hearing.[3]

Section 801(b)(7)(A) of the Copyright Act authorizes the Judges to adopt royalty rates and terms negotiated by ''some or all of the participants in a proceeding at any time during the proceeding'' provided they are submitted to the Judges for approval. The Judges must provide ''an opportunity to comment on the agreement'' to participants and non-participants in the rate proceeding who ''would be bound by the terms, rates, or other determination set by any

[1] In his Petition to Participate, Mr. Rahn identified himself as a shareholder in SBR Creative Media, Inc. and its subsidiary CustomerChannels.net, LLC.

[2] Rockbot withdrew its Petition to Participate on January 11, 2018.

[3] According to the Motion, David Powell, although having filed a Petition to Participate, did not otherwise participate in the proceeding. *Motion* at 2. The Moving Parties represent that counsel for Mood Media attempted unsuccessfully to contact Mr. Powell to discuss the filing of the Motion. *Id.* at 2–3. Mr. Powell also did not respond to the request for comments on the proposed regulations. On May 14, 2018, shortly before the proposed regulations were published, however, Mr. Powell filed a ''*Verified Motion for Enlargement of Time, and Agreed with Settlement Parties to Adopt Settlement Ex-Parte,*'' which the Judges accept as a notice that Mr. Powell does not object to the settlement. The Judges make no finding with regard to Mr. Powell's eligibility to participate in this proceeding. To the extent Mr. Powell has an interest in the business establishment services license, he will be bound by the royalty rates and terms the Judges adopt.

agreement. . . .'' 17 U.S.C. 801(b)(7)(A)(i). Participants in the proceeding may also ''object to [the agreement's] adoption as a basis for statutory terms and rates.'' *Id.*

The Judges ''may decline to adopt the agreement as a basis for statutory terms and rates for participants that are not parties to the agreement,'' only ''if any participant [in the proceeding] objects to the agreement and the [Judges] conclude, based on the record before them if one exists, that the agreement does not provide a reasonable basis for setting statutory terms or rates.'' 17 U.S.C. 801(b)(7)(A)(ii). Accordingly, on May 17, 2018, the Judges published a document requesting comment on the proposed rates and terms. 83 FR 22907. The Judges received no timely comments or objections in response to the May 17 document.

Having received no opposition to the proposal and finding that the agreement among the moving parties provides a reasonable basis for setting statutory terms and rates, the Judges, by this notice, adopt as final regulations the rates and terms for the making of an ephemeral recording by a business establishment service for the period January 1, 2019, through December 31, 2023.

List of Subjects in 37 CFR Part 384

Copyright, Digital audio transmissions, Ephemeral recordings, Performance right, Sound recordings.

Final Regulations

For the reasons set forth in the preamble, the Judges amend part 384 of chapter III of title 37 of the Code of Federal Regulations as follows:

PART 384—RATES AND TERMS FOR THE MAKING OF EPHEMERAL RECORDINGS BY BUSINESS ESTABLISHMENT SERVICES

■ 1. The authority citation for part 384 continues to read as follows:

Authority: 17 U.S.C. 112(e), 801(b)(1).

§ 384.1 [Amended]

■ 2. In § 384.1, amend paragraph (a) by removing ''January 1, 2014, through December 31, 2018'' and adding ''January 1, 2019, through December 31, 2023'' in its place.

■ 3. Amend § 384.3 by:

■ a. Revising paragraph (a); and

■ b. In paragraph (b), removing ''$10,000'' and adding ''$20,000'' in its place.

The revision reads as follows:

§ 384.3 Royalty fees for ephemeral recordings.

(a) *Basic royalty rate.* (1) For the making of any number of Ephemeral Recordings in the operation of a Business Establishment Service, a Licensee shall pay a royalty equal to the following percentages of such Licensee's ''Gross Proceeds'' derived from the use in such service of musical programs that are attributable to copyrighted recordings:

Year	Rate %
2019	12.5
2020	12.75
2021	13.0
2022	13.25
2023	13.5

(2) ''Gross Proceeds'' as used in this section means all fees and payments, including those made in kind, received from any source before, during or after the License Period that are derived from the use of copyrighted sound recordings during the License Period pursuant to 17 U.S.C. 112(e) for the sole purpose of facilitating a transmission to the public of a performance of a sound recording under the limitation on exclusive rights specified in 17 U.S.C. 114(d)(1)(C)(iv). The attribution of Gross Proceeds to copyrighted recordings may be made on the basis of:

(i) For classical programs, the proportion that the playing time of copyrighted classical recordings bears to the total playing time of all classical recordings in the program; and

(ii) For all other programs, the proportion that the number of copyrighted recordings bears to the total number of all recordings in the program.

* * * * *

§ 384.5 [Amended]

■ 4. In § 384.5, amend paragraph (d)(4) by removing the second comma before the word ''subject''.

Dated: September 17, 2018.

David R. Strickler,
Copyright Royalty Judge.

Jesse M. Feder,
Copyright Royalty Judge.

Suzanne M. Barnett,
Chief Copyright Royalty Judge.

Carla D. Hayden,

Librarian of Congress.

[FR Doc. 2018–25458 Filed 11–23–18; 8:45 am]

BILLING CODE 1410–72–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2017–0598; FRL–9986–76–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Regional Haze Five-Year Progress Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving Maryland's regional haze progress report, submitted on August 9, 2017, as a revision to its State Implementation Plan (SIP). Maryland's SIP revision addresses Clean Air Act (CAA) provisions and EPA regulations that require each state to submit periodic reports describing the State's progress towards reasonable progress goals (RPGs) established for regional haze and to make a determination of the adequacy of the State's existing regional haze SIP. The EPA is approving Maryland's determination that the State's regional haze SIP is adequate to meet the RPGs for the first implementation period.

DATES: This final rule is effective on December 26, 2018.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2017–0598. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Erin Trouba, (215) 814–2023, or by email at *trouba.erin@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Regional Haze Rule, each state was required to submit to EPA an implementation plan addressing regional haze visibility impairment for the first implementation period through 2018, and then was required to submit

a progress report in the form of a SIP revision that evaluates progress towards the RPGs set for each mandatory Class I Federal area within the state and for each mandatory Class I Federal area outside the state which may be affected by emissions from within the state. 40 CFR 51.308(g). Each state is also required to submit, at the same time as the progress report, a determination of the adequacy of its existing regional haze SIP. 40 CFR 51.308(h). The first progress report SIP is due five years after submittal of the initial regional haze SIP.

On February 13, 2012, Maryland submitted the State's first regional haze SIP in accordance with the requirements of 40 CFR 51.308. The progress report SIP was submitted by Maryland, through the Maryland Department of the Environment (MDE), on August 9, 2017. On August 27, 2018 (83 FR 43571), EPA published a notice of proposed rulemaking (NPRM) in which EPA proposed approval of Maryland's regional haze 5-year progress report SIP, a report on progress made in the first implementation period towards RPGs for Class I areas outside the State that are affected by emissions from Maryland's sources. Because there are no Class I areas in Maryland, the State did not need to address progress towards RPGs for Class I areas ''inside'' the State. This progress report SIP also included the State's determination that its existing regional haze SIP requires no substantive revision to achieve the established regional haze visibility improvement and emissions reduction goals for 2018.

II. Summary of SIP Revision and EPA Analysis

Maryland's regional haze 5-year progress report SIP submittal (2017 Progress Report) addresses the required elements for progress reports under the provisions of 40 CFR 51.308(g) and includes a determination that the State's existing regional haze SIP requires no substantive revision to achieve the established regional haze visibility improvement and emissions reduction goals for 2018 as required by 40 CFR 51.308(h).

In the NPRM, EPA proposed to approve the 2017 Progress Report because EPA found that the 2017 Progress Report addressed the elements of 40 CFR 51.308(g) regarding progress implementing the approved regional haze SIP and discussed visibility improvement in Class I areas impacted by Maryland's emissions. The detailed rationale for EPA's action is explained in the NPRM and will not be restated here. In addition, pursuant to 40 CFR 51.308(h), states are required to submit, at the same time as the progress report submission, a determination of the adequacy of their existing regional haze SIP. In the 2017 Progress Report, Maryland declared that its existing regional haze SIP required no substantive revision to achieve the RPGs for Class I areas. As explained in detail in the NPRM, EPA concluded Maryland adequately addressed 40 CFR 51.308(h) because decreasing emissions of visibility impairing pollutants and progress of regional Class I areas towards RPGs for 2018 indicate that no further revisions to Maryland's SIP are necessary for this first regional haze implementation period. Therefore, EPA concluded the 2017 Progress Report met the requirements of 40 CFR 51.308(h).

III. Summary of Public Comments and EPA's Response

One public comment was received on the NPRM. A summary of the comment and EPA's response are provided in this section. The comment is provided in the docket for this final rulemaking action.

Comment: The commenter stated Maryland's plan does not adequately address regional haze progress, alleged that the State's electric generating units (EGUs) did not reduce sulfur dioxide (SO_2) emissions by ninety percent (90%), and alleged a pulp mill and EGU in Maryland continue to emit large amounts of SO_2. The commenter stated Maryland's BART (Best Available Retrofit Technology) determinations were and continue to be inadequate. The commenter stated Maryland's sulfur fuel oil limits are not low and asked EPA to compare Maryland's limits to other states.

Response: EPA reviewed Maryland's 2017 Progress Report against the requirements for progress reports in 40 CFR 51.308(g) and (h). EPA found the 2017 Progress Report evaluated progress towards the RPGs and determined that the existing Maryland regional haze SIP is adequate to meet those RPGs because the 2017 Progress Report showed decreasing emissions of visibility impairing pollutants and significant progress of regional Class I areas to meeting or exceeding RPGs for 2018. Maryland's 2017 Progress Report documented emission reductions from point source, non-road, on-road, and area source sectors. Thus, EPA agreed with Maryland's determination that no further revisions to Maryland's SIP are necessary for this first regional haze implementation period.

40 CFR 51.308(g)(1) requires progress reports to contain a description of the status of implementation of all measures included in the implementation plan for achieving RPGs for Class I areas. One implementation measure that is required to be described in the progress report is the implementation of BART. As stated in the NPRM and in the 2017 Progress Report, Maryland discussed the implementation of BART at EGUs and at Holcim Cement and Luke Pulp and Paper Mill. The adequacy of these measures as BART was determined by EPA when EPA approved the Maryland regional haze SIP in 2012. 77 FR 39938 (July 6, 2012). Nothing in the CAA or in 40 CFR 51.308(g) or (h) requires Maryland or EPA to reexamine the BART determinations when reviewing a progress report.

In addition, in the 2017 Progress Report, Maryland addressed the implementation of the Healthy Air Act (HAA) which was a measure employed by Maryland for its regional haze SIP to achieve a 90% reduction of SO_2 from coal-fired EGUs within the State to address RPGs for Class I areas impacted by Maryland and to address BART for those eligible EGUs. For a discussion of the HAA as the approved BART-alternative for EGUs in Maryland, see EPA's approval of the Maryland regional haze SIP at 77 FR 39938. In the 2017 Progress Report, Maryland included SO_2 emissions data for EGUs demonstrating reductions from the HAA as well as from other SO_2 reducing regulations. Therefore, as a factual matter, EPA disagrees with the commenter that Maryland did not reduce SO_2 emissions by 90% from EGUs to meet the regional haze SIP measures. Maryland also discussed the implementation of BART within the State and thus met requirements for progress reports in 40 CFR 51.308. The commenter provided no information that Maryland had not implemented BART as approved by EPA.[1]

Regarding the commenter's concern about fuel sulfur limits, EPA addressed Maryland's fuel sulfur requirements in the approval of Maryland's regional haze SIP. As EPA stated when proposing to approve Maryland's regional haze SIP, since Maryland has not adopted a low sulfur fuel oil strategy, the State has a deficiency of 7,473.4 tons per year (tpy) of SO_2 emissions. However, Maryland has a

[1] In June 2012, EPA approved BART emission limits for power boiler 25, a BART subject source, at the Verso Luke Paper Mill. 77 FR 39938 (June 13, 2012). In July 2017, EPA removed the previously approved BART requirements for SO_2 and nitrogen oxides (NOx) from power boiler 25 (No. 25) and replaced them with new, alternative emission requirements as BART. EPA established an annual SO_2 cap for power boiler 25 and approved alternative BART emission limits for SO_2 and NOx for power boiler 24 (No. 24). 82 FR 35451 (July 31, 2017).

surplus of SO_2 emission reductions of 57,552 tpy resulting from the HAA. This surplus accounts for the SO_2 emission reductions needed to meet the requirements of the low sulfur fuel strategy. 77 FR 11827, 11835 (Feb. 28, 2012). As EPA approved Maryland's regional haze SIP without Maryland having a low sulfur fuel strategy as a measure for its SIP, whether or not Maryland has such a strategy now implemented, and whether any sulfur fuel requirements Maryland has are less stringent than other states, are not relevant or appropriate considerations before EPA in evaluating the 2017 Progress Report. 40 CFR 51.308(g) relates to discussion of the implementation of measures approved into a state's regional haze SIP. Thus, the 2017 Progress Report did not need to address any sulfur fuel requirements as those are not part of the Maryland regional haze SIP. As EPA found Maryland addressed its progress towards meeting RPGs in Class I areas impacted by Maryland emissions and addressed visibility improvement from measures in the Maryland SIP, EPA is approving the 2017 Progress Report as addressing 40 CFR 51.308(g).

IV. Final Action

EPA is approving Maryland's 2017 Progress Report submitted on August 9, 2017, as meeting the applicable regional haze requirements set forth in 40 CFR 51.308(g) and (h) as well as CAA section 110 requirements for SIPs.

V. Statutory and Executive Order Reviews

A. General Requirements

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

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

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 25, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve Maryland's regional haze 5-year progress report SIP revision may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2))

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 13, 2018.

Cosmo Servidio,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart V—Maryland

■ 2. In § 52.1070, the table in paragraph (e) is amended by adding the entry for ''Regional Haze Five-Year Progress Report'' at the end of the table to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	* * *	*	*	* *
Regional Haze Five-Year Progress Report.	Statewide	8/09/2017	11/26/2018, [Insert **Federal Register** citation].	

[FR Doc. 2018–25556 Filed 11–23–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0971; FRL–9977–14]

Pyrifluquinazon; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of pyrifluquinazon in or on multiple commodities that are identified and discussed later in this document. Nichino America, Inc. requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective November 26, 2018. Objections and requests for hearings must be received on or before January 25, 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–2011–0971, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets*.

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2011–0971 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 25, 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–2011–0971, by one of the following methods:

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

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

II. Summary of Petitioned-For Tolerances

In the **Federal Register** of December 9, 2016 (81 FR 89036) (FRL–9953–69) and September 15, 2017 (82 FR 43352) (FRL–9965–43), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of pesticide petitions (PP 6F8502 and PP 7E8578, respectively) by Nichino America, Inc., 4550 New Linden Hill Road, Suite 501, Wilmington, DE 19808. The petitions requested that 40 CFR part 180 be amended by establishing tolerances for residues of the insecticide pyrifluquinazon, (1-acetyl-3,4-dihydro-3-[(3-pyridinylmethyl)amino]-6-[1,2,2,2-tetrafluoro-1-(trifluoromethyl)ethyl]-2(1*H*)-quinazolinone), as follows: PP 6F8502 requested tolerances for residues in or on Almond, hulls at 0.4 parts per million (ppm); *Brassica* head and stem vegetables (crop group 5–16) at 0.4 ppm; Cattle, fat at 0.01 ppm; Cattle, meat at 0.01 ppm; Cattle, meat byproducts at 0.01 ppm; Citrus fruits (crop group 10–10) at 0.5 ppm; Citrus, oil at 14 ppm; Cotton, gin byproducts at 4.0 ppm; Cotton, undelinted seed at 0.2 ppm; Cucurbit vegetables (crop group 9)

at 0.06 ppm; Fruiting vegetables, tomato subgroup 8–10A at 0.20 ppm; Fruiting vegetables, pepper/eggplant subgroup 8–10B at 0.15 ppm; Goat, fat at 0.01 ppm; Goat, meat at 0.01 ppm; Goat, meat byproducts at 0.01 ppm; Horse, fat at 0.01 ppm; Horse, meat at 0.01 ppm; Horse, meat byproducts at 0.01 ppm; Leafy vegetables (crop group 4–16) at 5 ppm; Leaf petiole vegetables (crop subgroup 22B) at 1.5 ppm; Milk at 0.01 ppm; Pome fruits (crop group 11–10) at 0.04 ppm; Sheep, fat at 0.01 ppm; Sheep, meat at 0.01 ppm; Sheep, meat byproducts at 0.01 ppm; Small fruit vine climbing subgroup (crop subgroup 13–07F) except fuzzy kiwifruit at 0.6 ppm; Stone fruits, cherry subgroup 12–12A at 0.2 ppm; Stone fruits, peach subgroup 12–12B at 0.03 ppm; Stone fruits, plum subgroup 12–12C at 0.015 ppm; Tree nuts (crop group 14–12) at 0.01 ppm; and Tuberous and corm vegetables (crop subgroup 1C) at 0.01 ppm and PP 7E8578 requested a tolerance for residues in or on imported tea at 20 ppm. Those documents referenced summaries of the petitions prepared by Nichino America, Inc., the registrant, which are available in the docket, *http://www.regulations.gov*. Comments were received in response to the first notice of filing, and EPA's response can be found in Unit IV.C.

Consistent with the authority in section 408(d)(4)(A)(i), EPA is establishing tolerances that vary from what the petitioner sought. The reasons for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

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

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

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The effects observed following dietary exposure to pyrifluquinazon, primarily targeted the liver, thyroid, kidney, hematopoietic system, and the male and female reproductive organs. Nasal toxicity was observed following chronic oral exposures to rats, mice, and dogs, but was not observed following inhalation exposure to rats. Inhalation exposure for 28 days in rats resulted in portal-of-entry effects in the form of terminal airway inflammation in the lungs of males at an equivalent oral dose that was higher than those causing nasal effects in dogs (the most sensitive species for nasal toxicity). Systemic effects following inhalation exposure to pyrifluquinazon consisted of clinical signs including palpebral closure, splayed gait, hunched posture, ataxia, piloerection, lethargy, and ocular effects. No adverse effects were seen in rats following dermal exposure. Pyrifluquinazon showed no signs of immunotoxicity.

Pyrifluquinazon showed signs of increased pre- and postnatal quantitative susceptibility in rats. In the rat developmental toxicity study, maternal effects (decreased body weights, and mean gravid uterine weights) were seen at a higher dose than fetal effects (decreased anogenital distances (AGD) in males, increased incidences of skeletal variations, and increased incidences of supernumerary ribs). In the two-generation reproduction study in rats, systemic parental effects were consistent with the general systemic toxic effects in rats and occurred at doses higher than those eliciting offspring and reproductive effects. Offspring effects included decreased body weights and decreased AGD in the male pups, which is also considered a reproductive effect. In the rabbit developmental toxicity study, a decreased number of live fetuses per doe was observed, which is considered a maternal and developmental adverse effect since it is unknown whether the effect occurred from toxicity to maternal animals or the fetuses. In addition, effects were observed in reproductive organs (epididymides, testes, uterus).

Signs of neurotoxicity were observed in the acute neurotoxicity (ACN) study, and consisted of: Decreased motor activity, prostrate, ataxia, hyporeactivity, hunched posture, loss of the righting reflex, coldness to touch, lacrimation, bradyapnea, piloerection, and ptosis. Signs of neurotoxicity were also observed in the subchronic oral study and the inhalation study in rats at doses that caused portal-of-entry effects.

Exposure to pyrifluquinazon resulted in increased incidences of testicular interstitial cell tumors (Leydig tumors) in both male rats and mice. Based on its review of the available data, EPA has concluded that pyrifluquinazon is ''not likely to be carcinogenic to humans at levels that do not alter rodent hormone homeostasis.'' This conclusion is based on the following: (1) The Agency was only able to conclude that one type of Leydig cell tumor (in the male mice) is treatment-related because the type of rat tested has a high background rate for this tumor type; (2) the suggested mode of action is supported by the available data and indicates that the tumors are not likely to occur below doses that trigger androgen receptor degradation in sex-specific tissues leading to changes in circulating androgen related hormones; and (3) neither the parent molecule nor its metabolites showed evidence of genotoxicity or mutagenicity. For these reasons and because the level that triggers tumor development is higher than 70.1 mg/kg/day and the chronic reference dose is 0.06 mg/kg/day, EPA has determined that quantification of cancer risk using a non-linear approach (*i.e.,* chronic reference dose) will adequately account for all chronic toxicity, including carcinogenicity that could result from exposure to pyrifluquinazon.

Specific information on the studies received and the nature of the adverse effects caused by pyrifluquinazon as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document ''Pyrifluquinazon: Human Health Risk Assessment for the Proposed Use on Tuberous and Corm Vegetables, Leafy

Vegetables (including greenhouse-grown lettuce), *Brassica* Head and Stem Vegetables, Fruiting Vegetables (including greenhouse-grown pepper and tomato), Cucurbit Vegetables (including greenhouse-grown cucumber), Citrus Fruits, Pome Fruits, Stone Fruits, Small Vine Climbing Fruit (excluding fuzzy kiwifruit), Tree Nuts, Leaf Petiole Vegetables, and Cotton, and for the Establishment of a Tolerance without a U.S. Registration for Residues in/on Imported Tea'' on pages 16–24 in docket ID number EPA–HQ–OPP–2011–0971.

B. Toxicological Points of Departure/ Levels of Concern

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

A summary of the toxicological endpoints for pyrifluquinazon used for human risk assessment is shown in Table 1 of this unit.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR PYRIFLUQUINAZON FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (Females 13–49 years of age).	NOAEL = 5 mg/kg/day. UF_A = 10X UF_H = 10X FQPA SF = 1X	Acute RfD = 0.05 mg/kg/day. aPAD = 0.05 mg/kg/day	Developmental Toxicity Study (rat) LOAEL = 10 mg/kg/day based on decreased AGD in males, increased incidences of skeletal variations (total), and increased incidences of supernumerary ribs.
Acute dietary (General population including infants and children).	NOAEL = 100 mg/kg/day. UF_A = 10X UF_H = 10X FQPA SF = 1X	Acute RfD = 1 mg/kg/day. aPAD = 1 mg/kg/day	Acute Neurotoxicity Screening Battery LOAEL = 300 mg/kg/day based on increased incidences of clinical signs and effects on functional observational parameters, dehydration, decreased motor activity, prostrate, ataxia, hyporeactivity, scant or no feces, hunched posture, lost righting reflex, decreased body temperatures, lacrimation, bradyapnea, piloerection, ptosis, and decreased grip strength), decreased body weights and body-weight gains, decreased food consumption, and decreased brain weights.
Chronic dietary (All populations)	NOAEL= 6.25 mg/kg/day. UF_A = 10X UF_H = 10X FQPA SF = 1X	Chronic RfD = 0.06 mg/kg/day. cPAD = 0.06 mg/kg/day	Carcinogenicity (mouse) LOAEL = 27.1/25.0 mg/kg/day (M/F) based on decreased mean body weight in males; and increased incidences of tactile hair loss in males, endometrial hyperplasia of the uterine horn in females, follicular cell hypertrophy of the thyroid in males, and subcapsular cell hyperplasia of the adrenal in males.
Cancer (Oral, dermal, inhalation).	Classification: ''Not likely to be carcinogenic to humans at levels that do not alter rodent hormone homeostasis.''		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population-adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_{DB} = to account for the absence of data or other data deficiency. UF_H = potential variation in sensitivity among members of the human population (intraspecies).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to pyrifluquinazon, EPA considered exposure under the petitioned-for tolerances. EPA assessed dietary exposures from pyrifluquinazon in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Such effects were identified for pyrifluquinazon. In estimating acute dietary exposure, EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM–FCID) Version 3.16. This software uses 2003–2008 food consumption data from the U.S. Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). As to residue levels in food, EPA assumed tolerance level residues, default processing factors, and 100 percent crop treated (PCT) for all proposed uses.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment

EPA used DEEM–FCID, Version 3.16 software with 2003–2008 food consumption data from the USDA's NHANES/WWEIA. As to residue levels in food, EPA assumed tolerance level residues, default processing factors, and 100 PCT for all proposed and registered uses.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that pyrifluquinazon would not pose a cancer risk to humans at dose levels below the chronic reference dose. Therefore, a separate dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for pyrifluquinazon. Tolerance-level residues and/or 100% CT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening-level water exposure models in the dietary exposure analysis and risk assessment for pyrifluquinazon in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of pyrifluquinazon. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide*.

Based on the Pesticides in Water Calculator (PWC) and Pesticide Root Zone Model Ground Water (PRZM GW), the estimated drinking water concentrations (EDWCs) of pyrifluquinazon for acute exposures are estimated to be 7.52 parts per billion (ppb) for surface water and 10.3 ppb for ground water; for chronic exposures for non-cancer assessments are estimated to be 3.99 ppb for surface water and 9.02 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 10.3 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 9.02 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Pyrifluquinazon is not registered for any specific use patterns that would result in residential exposure.

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

EPA has not found pyrifluquinazon to share a common mechanism of toxicity with any other substances, and pyrifluquinazon does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that pyrifluquinazon does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides*.

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* Pyrifluquinazon showed signs of increased pre- and postnatal quantitative susceptibility in the developmental toxicity study and in the two-generation reproduction study in rats. In the rabbit developmental toxicity study, observed maternal and developmental effects were considered adverse since it is unknown whether the effects occurred from toxicity to maternal animals or the fetuses.

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

i. The toxicity database for pyrifluquinazon is complete.

ii. Evidence of potential neurotoxicity was observed for pyrifluquinazon; however, the concern is low since there were no neuropathological changes in any tissue, clear NOAELs were established for the observed effects, and the endpoints selected are protective. No additional UFs were required to account for neurotoxicity.

iii. Although there is evidence of increased quantitative fetal susceptibility following in utero exposure to pyrifluquinazon in rats and quantitative postnatal susceptibility in the two-generation reproduction study, the concern for all observed effects is low because: (1) The effects are well characterized, (2) clear NOAELs were established, and (3) risk assessment endpoints used were from the developmental rat and 2-generation reproduction studies.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100% CT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to pyrifluquinazon in drinking water. These assessments will not underestimate the exposure and risks posed by pyrifluquinazon.

E. Aggregate Risks and Determination of Safety

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

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary (food plus water) risk for the U.S. population utilizes 1.2% of the acute population-adjusted dose (aPAD) and 2.5% for children 1–2 years old, who had the highest exposure estimate. For females 13 to 49 years old, for which the Agency used a different endpoint, the acute risk utilized 23% of the aPAD.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded

that chronic risk from pyrifluquinazon in food and water will utilize 13% of the cPAD for children 1–2 years old, the population subgroup receiving the greatest exposure. There are no residential uses for pyrifluquinazon.

3. *Short- and intermediate-term risk.* The Agency's assessment of short- and intermediate-term risk aggregates short- and intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Short- and intermediate-term adverse effects were identified; however, pyrifluquinazon is not registered for any use patterns that would result in short- or intermediate-term residential exposure. Because there is no residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short-term risk), no further assessment of short- and intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short- and intermediate-term risk for pyrifluquinazon.

4. *Aggregate cancer risk for U.S. population.* Based on the information referenced in Unit III.A., EPA has concluded that exposure to pyrifluquinazon is unlikely to cause cancer effects at doses that do not alter rodent hormone homeostasis. Because the chronic reference doses is protective of those alterations and the Agency's assessment concludes that aggregate exposure to pyrifluquinazon does not pose a chronic risk, EPA has determined that aggregate exposure to pyrifluquinazon is unlikely to pose a cancer risk to the U.S. population.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to pyrifluquinazon residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology, high-performance liquid chromatography with tandem mass-spectrometry detection (HPLC–MS/MS) is available to enforce the tolerance expression for crop commodities. For livestock commodities, the method used is a modified QuEChERS LC/MS/MS method. These methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov*.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. Section 408(b)(4) of the FFDCA specifically requires that EPA determine whether the Codex Alimentarius Commission (Codex) has established a maximum residue level (MRL) for the commodity and to explain the reasons for departing from the Codex level when establishing tolerances at a different level. The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may also take into account MRLs established by other countries when determining what tolerance levels to set domestically.

The Codex has not established a MRL for residues of pyrifluquinazon. EPA is establishing the tolerance for residues of pyrifluquinazon in or on tea to harmonize with Japan.

C. Response to Comments

EPA received two comments, only one of which was specific to the petition for pyrifluquinazon tolerances. The specific comment opposed ''allowing such high residues'' but did not provide any information relevant to the safety of the pesticide. The Agency recognizes that some individuals believe that pesticides should be banned on agricultural crops; however, the existing legal framework provided by section 408 of the FFDCA states that tolerances may be set when persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by that statute. The comment appears to be directed at the underlying statute and not EPA's implementation of it; the citizen has made no contention that EPA has acted in violation of the statutory framework.

D. Revisions to Petitioned-For Tolerances

Almost all the tolerances being established in this rule differ from the petitioner requested in minor ways. For crop subgroups ''vegetable, tuberous and corm, subgroup 1C,'' ''stone fruits, plum subgroup 12–12C,'' and crop group ''nut, tree, group 14–12,'' the appropriate tolerance level (0.02 ppm) is based on the sum of the LOQs for pyrifluquinazon and metabolite IV–01, rather than on the LOQ for one analyte (0.01 ppm), as requested. In addition, EPA determined that a tolerance is needed for residues in or on the processed commodity citrus dried pulp, so EPA is establishing that tolerance in accordance with 40 CFR 180.40(f)(1)(i)(A). Based on the dietary burden calculations and the residue profile in the cattle feeding study, EPA concluded that tolerances are not needed for pyrifluquinazon residues of concern in milk, livestock meat, fat, or meat byproducts as expected secondary residues are less than 1/10th the combined LOQs. However, a tolerance for livestock liver is needed at the LOQ (pyrifluquinazon, metabolite IV–01, and metabolite IV–203) corresponding to a tolerance of 0.04 ppm. The combined LOQs for pyrifluquinazon, metabolite IV–01, and metabolite IV–203 in parent equivalents corresponded to 0.035 ppm; therefore, a tolerance of 0.04 ppm is required for the liver of cattle, goat, horse, and sheep. For the remainder of tolerances being established, EPA used corrected commodity names, and adjusted tolerances levels based on available residue data, proportionality adjustments to the crop field trial data. and correcting for potential decline during frozen storage, which resulted in increased recommended tolerances. Finally, EPA notes that although the notice of filing indicated that the petition requested a tolerance for almond, hulls at 0.01 ppm, the petition itself requested a tolerance at 0.4 ppm. Nevertheless, based on available residue data, the Agency has determined that a tolerance of 0.60 ppm is necessary to cover residues from this use.

V. Conclusion

Therefore, tolerances are established for residues of pyrifluquinazon, (1-acetyl-3,4-dihydro-3-[(3-pyridinylmethyl)amino]-6-[1,2,2,2-tetrafluoro-1-(trifluoromethyl)ethyl]-2(1*H*)-quinazolinone), and its metabolites in or on Almond, hulls at 0.60 ppm; Cherry subgroup 12–12A at 0.30 ppm; Citrus, dried pulp at 2.0 ppm; Citrus, oil at 30 ppm; Cotton, gin byproducts at 6.0 ppm; Cotton, undelinted seed at 0.30 ppm; Fruit, citrus, group 10–10 at 0.70 ppm; Fruit, pome, group 11–10 at 0.07 ppm; Fruit small vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 0.30 ppm; Leaf petiole vegetable, subgroup 22B at 1.5 ppm; Peach subgroup 12–12B at 0.04 ppm; Plum subgroup 12–12C at 0.02 ppm; Nut, tree, group 14–12 at 0.02 ppm; Tea, dried at 20 ppm; Vegetable,

brassica, head and stem, group 5–16 at 0.60 ppm; Vegetable, cucurbit, group 9 at 0.07 ppm; Vegetable, fruiting, group 8–10 at 0.30 ppm; Vegetable, leafy, group 4–16 at 5.0 ppm; Vegetable, tuberous and corm, subgroup 1C at 0.02 ppm; Cattle, liver at 0.04 ppm; Goat, liver at 0.04 ppm; Horse, liver at 0.04 ppm; and Sheep, liver at 0.04 ppm. For the plant commodities, compliance with the tolerance is determined by measuring residues of the parent compound and the IV–01 metabolite; for the livestock commodities, compliance is determined by measuring residues of the parent compound and the free and conjugated forms of IV–01 and IV–203 metabolites.

VI. Statutory and Executive Order Reviews

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

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

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: November 9, 2018.

Michael Goodis,

Director, Registration Division, 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 § 180.701 to subpart C to read as follows:

§ 180.701 Pyrifluquinazon; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the insecticide pyrifluquinazon, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only the sum of pyrifluquinazon (1-acetyl-3,4-dihydro-3-[(3-pyridinylmethyl)amino]-6-[1,2,2,2-tetrafluoro-1-(trifluoromethyl)ethyl]-2(1*H*)-quinazolinone) and its metabolite IV–01 (3-[(pyridin-3-ylmethyl)amino]-6-[1,2,2,2-tetrafluoro-1-(trifluoromethyl)ethyl]-3,4-dihydro-1*H*-quinazolin-2-one), calculated as the stoichiometric equivalent of pyrifluquinazon.

Commodity	Parts per million
Almond, hulls	0.60
Cherry subgroup 12–12A	0.30
Citrus, dried pulp	2.0
Citrus, oil	30
Cotton, gin byproducts	6.0
Cotton, undelinted seed	0.30
Fruit, citrus, group 10–10	0.70
Fruit, pome, group 11–10	0.07
Fruit, small vine climbing, except fuzzy kiwifruit, subgroup 13–07F	0.30
Leaf petiole vegetable, subgroup 22B	1.5
Peach subgroup 12–12B	0.04
Plum subgroup 12–12C	0.02
Nut, tree, group 14–12	0.02
Tea, dried[1]	20
Vegetable, *brassica,* head and stem, group 5–16	0.60
Vegetable, cucurbit, group 9	0.07
Vegetable, fruiting, group 8–10	0.30
Vegetable, leafy, group 4–16	5.0
Vegetable, tuberous and corm, subgroup 1C	0.02

[1] There are no U.S. registrations as of November 26, 2018 for use on tea.

(2) Tolerances are established for residues of the insecticide pyrifluquinazon, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only the sum of pyrifluquinazon (1-acetyl-3,4-dihydro-3-[(3-pyridinylmethyl)amino]-6-[1,2,2,2-tetrafluoro-1-(trifluoromethyl)ethyl]-2(1*H*)-quinazolinone) and the free and conjugated forms of its metabolites IV–01 (3-[(pyridin-3-ylmethyl)amino]-6-[1,2,2,2-tetrafluoro-1-(trifluoromethyl)ethyl]-3,4-dihydro-1*H*-quinazolin-2-one) and IV–203 (6-[1,2,2,2-tetrafluoro-1-trifluoromethyl)ethyl]-1*H*-quinazolin-2,4-dione), calculated as the stoichiometric equivalent of pyrifluquinazon.

Commodity	Parts per million
Cattle, liver	0.04
Goat, liver	0.04
Horse, liver	0.04
Sheep, liver	0.04

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 2018–25690 Filed 11–23–18; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 170828822–70999–04]

RIN 0648–XG633

Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer

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

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS announces that the State of Maryland is transferring a portion of its 2018 commercial summer flounder quota to the Commonwealth of Massachusetts. This quota adjustment is necessary to comply with the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan quota transfer provisions. This announcement informs the public of the revised commercial quotas for Maryland and Massachusetts.

DATES: Effective November 23, 2018, through December 31, 2018.

FOR FURTHER INFORMATION CONTACT: Cynthia Ferrio, Fishery Management Specialist, (978) 281–9180.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found in 50 CFR 648.100 through 648.110. These regulations require annual specification of a commercial quota that is apportioned among the coastal states from Maine through North Carolina. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.102, and the initial 2018 allocations were published on December 22, 2017 (82 FR 60682), and corrected January 30, 2018 (83 FR 4165).

The final rule implementing Amendment 5 to the Summer Flounder Fishery Management Plan, as published in the **Federal Register** on December 17, 1993 (58 FR 65936), provided a mechanism for transferring summer flounder commercial quota from one state to another. Two or more states, under mutual agreement and with the concurrence of the NMFS Greater Atlantic Regional Administrator, can transfer or combine summer flounder commercial quota under § 648.102(c)(2). The Regional Administrator is required to consider the criteria in § 648.102(c)(2)(i)(A) through (C) in the evaluation of requests for quota transfers or combinations.

Maryland is transferring 3,169 lb (1,437 kg) of summer flounder commercial quota to Massachusetts through mutual agreement of the states. This transfer was requested to repay landings by a Maryland-permitted vessel that landed in Massachusetts under a safe harbor agreement. Based on the initial quotas published in the 2018 Summer Flounder, Scup, and Black Sea Bass Specifications and subsequent adjustments, the revised summer flounder quotas for calendar year 2018 are now: Maryland, 128,070 lb (58,092 kg); and Massachusetts, 413,361 lb (187,497 kg).

Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: November 19, 2018.

Karen H. Abrams,

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

[FR Doc. 2018–25566 Filed 11–23–18; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 83, No. 227
Monday, November 26, 2018

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Document Number AMS–NOP–18–0071–NOP–18–03]

Meeting of the National Organic Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the Agricultural Marketing Service (AMS), U.S. Department of Agriculture (USDA), is announcing a meeting of the National Organic Standards Board (NOSB). The NOSB assists the USDA in the development of standards for substances to be used in organic production and advises the Secretary of Agriculture on any other aspects of the implementation of the Organic Foods Production Act (OFPA).

DATES: An in-person meeting will be held April 24–26, 2019, from 8:30 a.m. to approximately 6:00 p.m. Eastern Time. The Board will hear oral public comments via webinars on Tuesday, April 16 and Thursday, April 18, 2019, from 1:00 p.m. to approximately 4:00 p.m. Eastern Time, and at the in-person meeting on Wednesday, April 24, and Thursday, April 25, 2019. The deadline to submit written comments and/or sign up for oral comment at either the webinar or in-person meeting is 11:59 p.m. ET, April 4, 2019.

ADDRESSES: The webinars are virtual and will be accessed via the internet and/or phone. Access information will be available on the AMS website prior to the webinars. The in-person meeting will take place at the Renaissance Seattle Hotel, 515 Madison Street, Seattle, Washington 98104–1119, United States. Detailed information pertaining to the webinars and in-person meeting can be found at *https://www.ams.usda.gov/event/national-organic-standards-board-nosb-meeting-seattle-wa*.

FOR FURTHER INFORMATION CONTACT: Ms. Michelle Arsenault, Advisory Committee Specialist, National Organic Standards Board, USDA–AMS–NOP, 1400 Independence Ave. SW, Room 2642–S, Mail Stop 0268, Washington, DC 20250–0268; Phone: (202) 720–3252; Email: *nosb@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: The NOSB makes recommendations to the USDA about whether substances should be allowed or prohibited in organic production and/or handling, assists in the development of standards for organic production, and advises the Secretary on other aspects of the implementation of the OFPA. The NOSB is holding a public meeting to discuss and vote on proposed recommendations to the USDA, to receive updates from the USDA National Organic Program (NOP) on issues pertaining to organic agriculture, and to receive comments from the organic community. The meeting and webinars are open to the public. No registration is required except to sign up for oral comments. All meeting documents and instructions for participating will be available on the AMS website at *https://www.ams.usda.gov/event/national-organic-standards-board-nosb-meeting-seattle-wa*. Please check the website periodically for updates. Meeting topics will encompass a wide range of issues, including substances petitioned for addition to or deletion from the National List of Allowed and Prohibited Substances (National List), substances on the National List that are under sunset review, and guidance on organic policies. Participants and attendees may take photos and video at the meeting, but not in a manner that disturbs the proceedings.

Public Comments: Comments should address specific topics noted on the meeting agenda.

Written comments: Written public comments will be accepted on or before 11:59 p.m. ET on April 4, 2019, via *http://www.regulations.gov*: Document #AMS–NOP–18–0071. Comments submitted after this date will be provided to the NOSB, but Board members may not have adequate time to consider those comments prior to making recommendations. The NOP strongly prefers comments to be submitted electronically. However, written comments may also be submitted (*i.e.* postmarked) via mail to the person listed under **FOR FURTHER INFORMATION CONTACT** by or before the deadline.

Oral Comments: The NOSB is providing the public multiple dates and opportunities to provide oral comments and will accommodate as many individuals and organizations as time permits. Persons or organizations wishing to make oral comments must pre-register by 11:59 p.m. ET, April 4, 2019, and can register for only one speaking slot: either during the webinars scheduled for April 16 and 18, or at the in-person meeting, scheduled for April 24–26, 2019. Due to the limited time allotted for in-person public comments during the in-person meeting, commenters are strongly encouraged to comment during the webinar(s). Instructions for registering and participating in the webinar can be found at *www.ams.usda.gov/NOSBMeetings*.

Meeting Accommodations: The meeting hotel is ADA Compliant, and the USDA provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in this public meeting, please notify the person listed under **FOR FURTHER INFORMATION CONTACT**. Determinations for reasonable accommodation will be made on a case-by-case basis.

Dated: November 19, 2018.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2018–25572 Filed 11–23–18; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0964; Product Identifier 2018–NM–127–AD]

RIN 2120–AA64

Airworthiness Directives; Saab AB, Saab Aeronautics (Formerly Known as Saab AB, Saab Aerosystems) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Saab AB, Saab Aeronautics Model SAAB 2000 airplanes. This proposed AD was prompted by reports that certain fuel probes indicated misleading fuel quantities on the engine indicating and crew alerting system (EICAS). This proposed AD would require a functional check of certain fuel probes, and replacement with a serviceable part if necessary. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by January 10, 2019.

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

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

For service information identified in this NPRM, contact Saab AB, Saab Aeronautics, SE–581 88, Linköping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; email *saab2000.techsupport@saabgroup.com;* internet *http://www.saabgroup.com*. You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0964; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3220.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2018–0964; Product Identifier 2018–NM–127–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2018–0187, dated August 29, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Saab AB, Saab Aeronautics Model SAAB 2000 airplanes. The MCAI states:

> Occurrences were reported that certain fuel probes, installed on SAAB 2000 aeroplanes, indicated misleading fuel quantities on the engine indicating and crew alerting system (EICAS). The investigation results suggest that this may be an ageing phenomenon, leading to deteriorated capacity of the fuel probes.
>
> This condition, if not detected and corrected, could lead to incorrect fuel reading, possibly resulting in fuel starvation and uncommanded engine in-flight shut-down, with consequent reduced control of the aeroplane.
>
> To address this potential unsafe condition, SAAB issued the SB [service bulletin] to provide instructions for a functional check.
>
> For the reason described above, this [EASA] AD requires a one-time functional check of the fuel quantity system and the fuel low level EICAS warnings to determine whether any affected parts are out of tolerance and, depending on findings, replacement of those affected parts.

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0964.

Related Service Information Under 1 CFR Part 51

Saab AB, Saab Aeronautics has issued Service Bulletin 2000–28–028, dated April 19, 2018. This service information describes procedures for a functional check of the fuel indicator gauging accuracy and the low level warning, and for replacing the affected part with a serviceable part if necessary. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Proposed Requirements of This NPRM

This proposed AD would require accomplishing the actions specified in the service information described previously.

Difference Between MCAI and Proposed AD

The MCAI requires corrective actions if a functional check reveals that any fuel indicator value is out of tolerance, according to the limits and conditions specified in the Master Minimum Equipment List (MMEL). This proposed AD does not refer to the MMEL because operators are required by 14 CFR part 91 to have a Minimum Equipment List (MEL) to operate with inoperable equipment, and the acceptable limits and conditions for the fuel indicator values cannot be in an MEL without

first being part of the MMEL. Paragraph (i) of this proposed AD therefore states that the corrective actions that would be required based on the results of the functional check would depend on the limits and conditions specified in the operator's MEL.

Costs of Compliance

We estimate that this proposed AD affects 8 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
8 work-hours × $85 per hour = $680	$0	$680	$5,440

We estimate the following costs to do any necessary on-condition action that would be required based on the results of any required actions. We have no way of determining the number of aircraft that might need this on-condition action:

ESTIMATED COSTS OF ON-CONDITION ACTION

Labor cost	Parts cost	Cost per product
2 work-hour × $85 per hour = $170	$6,295	$6,465

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Saab AB, Saab Aeronautics (Formerly Known as Saab AB, Saab Aerosystems): Docket No. FAA–2018–0964; Product Identifier 2018–NM–127–AD.

(a) Comments Due Date

We must receive comments by January 10, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Saab AB, Saab Aeronautics (formerly known as Saab AB, Saab Aerosystems) Model SAAB 2000 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Reason

This AD was prompted by reports that certain fuel probes indicated misleading fuel quantities on the engine indicating and crew alerting system (EICAS). We are issuing this AD to address deteriorated capacity of the fuel probes, which could lead to incorrect fuel reading, possibly resulting in fuel starvation and uncommanded engine in-flight shutdown, and consequent reduced control of the airplane.

(f) Compliance

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

(g) Definitions

(1) An affected part is a fuel probe having part number (P/N) 20136–0101, P/N 20136–0102, P/N 20136–0103, P/N 20136–0104, P/N 20136–0105, or P/N 20136–0106; with fuel low level sensors having P/N 20137–0101.

(2) A serviceable part is an affected part that has accumulated less than 1,500 total flight hours or has reached 12 months since first installation on an airplane.

(h) Functional Check

Within 1,500 flight hours or 12 months after the effective date of this AD, whichever occurs first, accomplish a functional check of the fuel indicator gauging accuracy and the low level warning, in accordance with the Accomplishment Instructions of Saab Service Bulletin 2000–28–028, dated April 19, 2018.

(i) Corrective Action

If the functional check required by paragraph (h) of this AD is found to be out of tolerance, within the limits and under the applicable conditions, as specified in the operator's Minimum Equipment List, replace the affected part with a serviceable part, in accordance with the Accomplishment Instructions of Saab Service Bulletin 2000–28–028, dated April 19, 2018.

(j) Parts Installation Limitation

As of the effective date of this AD, no person may install, on any airplane, an affected part, unless it is a serviceable part, as defined in paragraph (g)(2) of this AD.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

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

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or the European Aviation Safety Agency (EASA); or Saab AB, Saab Aeronautics's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2018–0187, dated August 29, 2018, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0964.

(2) For more information about this AD, contact Shahram Daneshmandi, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3220.

(3) For service information identified in this AD, contact Saab AB, Saab Aeronautics, SE–581 88, Linköping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; email *saab2000.techsupport@saabgroup.com;* internet *http://www.saabgroup.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on November 8, 2018.

Chris Spangenberg,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–25495 Filed 11–23–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0991; Product Identifier 2017–SW–050–AD]

RIN 2120–AA64

Airworthiness Directives; MD Helicopters Inc. (MDHI) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for MDHI Model 369A, 369D, 369E, 369FF, 369H, 369HE, 369HM, 369HS, 500N, and 600N helicopters. This proposed AD would require inspecting each main rotor blade (MRB) for a crack. This proposed AD is prompted by reports of cracked MRBs. The actions of this proposed AD are intended to address an unsafe condition on these helicopters.

DATES: We must receive comments on this proposed AD by January 25, 2019.

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

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

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0991; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the economic evaluation, any comments received, and other information. The street address for Docket Operations (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For Helicopter Technology Company, LLC service information identified in this proposed rule, contact Helicopter Technology Company, LLC, 12902 South Broadway, Los Angeles, CA 90061; telephone (310) 523–2750; or at *www.helicoptertech.com.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

For MD Helicopters service information identified in this proposed rule, contact MD Helicopters, Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615, Mesa, AZ 85215–9734; telephone 1–800–388–3378; fax 480–346–6813; or at *http://www.mdhelicopters.com.*

FOR FURTHER INFORMATION CONTACT: Galib Abumeri, Aviation Safety Engineer, Los Angeles ACO Branch, Compliance and Airworthiness Division, FAA, 3960 Paramount Blvd., Lakewood, California 90712; telephone (562) 627–5374; email *galib.abumeri@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or

before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

We propose to adopt a new AD for MDHI Model 369A, 369D, 369E, 369FF, 369H, 369HE, 369HM, 369HS, 500N, and 600N helicopters with a Helicopter Technology Company, LLC (HTC) MRB part number 369A1100, 369D21100, 369D21102, 369D21120, 369D21121, 369D21123, 500P2100, or 500P2300 installed. This proposed AD would require repetitively inspecting the MRB trim tab for gouges, nicks, scratches, and cracks.

This proposed AD is prompted by reports of two operators finding cracks on an HTC-manufactured MRB. In both cases, the cracking was located on the MRB skin adjacent to the trim tab, and they were discovered following flights in which an increase in vibration levels was noticed. HTC determined the root cause of the cracking to be fatigue. HTC also stated that there was evidence of impact damage, filing, and sanding under the paint of the cracked MRBs. If not detected and corrected, this condition could result in failure of an MRB and subsequent loss of control of the helicopter.

FAA's Determination

We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs.

Related Service Information

We reviewed HTC Mandatory Service Bulletin Notice No. 2100–9, dated May 25, 2017 (SB 2100–9), which contains procedures for inspecting each MRB for a crack in an area adjacent to the inboard edge of the MRB trim tab.

We also reviewed MD Helicopters Service Bulletin No. SB369D–221, SB369E–119, SB369F–106, SB369H–257, SB500N–057, and SB600N–069, each dated April 2, 2018. This service information specifies inspecting the MRBs for cracks near the trim tab by following the instructions in SB 2100–9.

Proposed AD Requirements

This proposed AD would require, within 25 hours time-in-service and thereafter at each 100-hour or annual inspection, inspecting each MRB trim tab end at the trailing edge corner where the trim tab and MRB meet for cracks, and inspecting the top and bottom surface of each MRB for a crack in the area adjacent to inboard trim tab the trim tab corner for a crack, from the trailing edge towards the leading edge. If there is a crack, this proposed AD would require replacing the MRB.

Differences Between This Proposed AD and the Service Information

The service information specifies procedures for inspecting each MRB for nicks, gouges, and scratches. This proposed AD does not, as the unsafe condition concerns a crack in the MRB. This proposed AD would require using a 10X magnifying glass for both inspections, while the service information only specifies this level of magnification for the inspection of the top and bottom surfaces of the MRB.

Costs of Compliance

We estimate that this proposed AD would affect 622 helicopters of U.S. Registry.

At an average labor rate of $85 per work-hour, we estimate that operators may incur the following costs in order to comply with this AD. Inspecting one MRB would require about 0.1 work-hour, for a cost per helicopter of $43 for MDHI Model 369-series and 500N helicopters and $51 for MDHI Model 600N helicopters, and a total cost of $25,320 to U.S. operators per inspection cycle.

If required, replacing one MRB would require 3 work-hours, and required parts would cost $13,000, for a cost per MRB of $13,255.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

MD Helicopters Inc.: Docket No. FAA–2018–0991; Product Identifier 2017–SW–050–AD.

(a) Applicability

This AD applies to MD Helicopters Inc. Model 369A, 369D, 369E, 369FF, 369H, 369HE, 369HM, 369HS, 500N, and 600N helicopters, certificated in any category, with a main rotor blade (MRB) part number 369A1100, 369D21100, 369D21102, 369D21120, 369D21121, 369D21123, 500P2100, or 500P2300, all dash numbers, installed.

(b) Unsafe Condition

This AD defines the unsafe condition as a crack in an MRB. This condition could result

in failure of the MRB and subsequent loss of control of the helicopter.

(c) Comments Due Date

We must receive comments by January 25, 2019.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

Within 25 hours time-in-service, and thereafter at each 100-hour inspection or annual inspection, whichever occurs first:

(1) Using a 10X or higher power magnifying glass and a light, inspect each MRB trim tab end at the trailing edge corner where the trim tab and MRB meet for a crack. If there is a crack, before further flight, replace the MRB.

(2) Using a 10X or higher power magnifying glass and a light, inspect the top and bottom surface of each MRB adjacent to the inboard trim tab corner for a crack, from the trailing edge towards the leading edge. If there is a crack, before further flight, replace the MRB.

(f) Alternative Methods of Compliance (AMOC)

(1) The Manager, Los Angeles ACO Branch, FAA, may approve AMOCs for this AD. Send your proposal to: Galib Abumeri, Aviation Safety Engineer, Los Angeles ACO Branch, Compliance and Airworthiness Division, FAA, 3960 Paramount Blvd., Lakewood, California 90712; telephone (562) 627–5374; email *9-ANM-LAACO-AMOC-REQUESTS@faa.gov*.

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

(g) Additional Information

(1) Helicopter Technology Company, LLC Mandatory Service Bulletin Notice No. 2100–9, dated May 25, 2017, which is not incorporated by reference, contains additional information about the subject of this AD. For Helicopter Technology Company, LLC service information identified in this AD, contact Helicopter Technology Company, LLC, 12902 South Broadway, Los Angeles, CA 90061; telephone (310) 523–2750; or at *www.helicoptertech.com*.

(2) MD Helicopters Service Bulletin No. SB369D–221, SB369E–119, SB369F–106, SB369H–257, SB500N–057, and SB600N–069, each dated April 2, 2018, which are not incorporated by reference, contain additional information about the subject of this AD. For MD Helicopters service information identified in this AD, contact MD Helicopters, Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615, Mesa, AZ 85215–9734; telephone 1–800–388–3378; fax 480–346–6813; or at *http://www.mdhelicopters.com*.

(3) You may review a copy of information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 6210 Main Rotor Blade.

Issued in Fort Worth, Texas, on November 14, 2018.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2018–25497 Filed 11–23–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0256; Airspace Docket No. 18–AEA–11]

RIN 2120–AA66

Proposed Amendment of Class D Airspace and Class E Airspace; Schenectady, NY, Ithaca, NY, and Albany, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class D airspace, Class E airspace designated as an extension to a Class D surface area, and Class E airspace extending upward from 700 feet or more above the surface at Schenectady County Airport, Schenectady, NY, and Albany, NY by updating the geographic coordinates of this airport, Saratoga County Airport, Hunter NDB, and Cambridge VORTAC. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at this airport. This action also would replace the outdated term Airport/Facility Directory with the term Chart Supplement in the legal descriptions of associated Class D and E airspace of Schenectady County Airport, Schenectady, NY, and Ithaca Tompkins Regional Airport, Ithaca, NY.

DATES: Comments must be received on or before January 10, 2019.

ADDRESSES: Send comments on this proposal to: U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; Telephone: (800) 647–5527, or (202) 366–9826. You must identify the Docket No. FAA–2018–0256; Airspace Docket No. 18–AEA–11, at the beginning of your comments. You may also submit comments through the internet at *http://www.regulations.gov*.

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

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

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Ave, College Park, GA 30337; telephone (404) 305–6364.

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 would amend Class D and Class E airspace at Schenectady County Airport, Schenectady, NY and Ithaca Tompkins Regional Airport, Ithaca, NY, to support IFR operations at these airports.

Comments Invited

Interested persons are invited to comment on this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory

decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (Docket No. FAA–2018–0256 and Airspace Docket No. 18–AEA–11) and be submitted in triplicate to DOT Docket Operations (see **ADDRESSES** section for the address and phone number.) You may also submit comments through the internet at *http://www.regulations.gov*.

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2018–0256; Airspace Docket No. 18–AEA–11.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this document may be changed in light of the comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, GA 30337.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend 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 Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 by:

Amending Class D airspace, Class E airspace designated as an extension to a Class D surface area, at Schenectady County Airport, Schenectady, NY and Class E airspace area extending upward from 700 feet or more above the surface at Albany, NY, by updating the geographic coordinates of Saratoga County Airport, Hunter NDB, and Cambridge VORTAC to be in concert with the FAA's aeronautical database.

Also, an editorial change would be made replacing the outdated term Airport/Facility Directory with the term Chart Supplement in the associated Class D and E airspace legal descriptions for Schenectady County Airport, Schenectady, NY, and Ithaca Tompkins Regional Airport, Ithaca, NY. These changes would enhance the safety and management of IFR operations at these airports.

Class D and Class 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.

Regulatory Notices and Analyses

The FAA has determined that this proposed 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 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 Federal Aviation Administration Order 7400.11C, Airspace Designations and Reporting Points, dated August 13, 2018, and effective September 15, 2018, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AEA NY D Schenectady, NY [Amended]

Schenectady County Airport, NY
(Lat. 42°51′9″ N, long. 73°55′44″ W)

That airspace extending upward from the surface to and including 2,900 feet MSL within a 4.3-mile radius of Schenectady County Airport, excluding the portion that coincides with the Albany, NY, Class C airspace area. This Class D airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The specific date and time will thereafter be continuously published in the Chart Supplement.

AEA NY D Ithaca, NY [Amended]

Ithaca Tompkins Regional Airport, Ithaca, NY
(Lat. 42°29′29″ N, long. 76°27′31″ W)

That airspace extending upward from the surface to and including 3,600 feet MSL within a 4-mile radius of Ithaca Tompkins

Regional Airport. This Class D airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The specific date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6002 Class E Surface Airspace.

* * * * *

AEA NY E2 Ithaca, NY [Amended]

Ithaca Tompkins Regional Airport, Ithaca, NY
(Lat. 42°29′29″ N, long. 76°27′31″ W)
Ithaca VOR/DME
(Lat. 42°29′42″ N, long. 76°27′35″ W)

That airspace extending upward from the surface within a 4-mile radius of Ithaca Tompkins Regional Airport and that airspace extending upward from the surface from the 4-mile radius of the airport to the 5.7-mile radius of the airport clockwise from the 329° bearing to the 081° bearing from the airport; that airspace from the 4-mile radius of the airport to the 8.7-mile radius of the airport extending clockwise from the 081° bearing to the 137° bearing from the airport; that airspace from the 4-mile radius of the airport to the 6.6-mile radius of the airport extending clockwise from the 137° bearing to the 170° bearing from the airport; that airspace from the 4-mile radius to the 5.7-mile radius of the airport extending clockwise from the 170° bearing to the 196° bearing from the airport, and that airspace within 2.7 miles each side of the Ithaca VOR/DME 305° radial extending from the 4-mile radius of the airport to 7.4 miles northwest of the Ithaca VOR/DME. 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 to a Class D Surface Area.

* * * * *

AEA NY E4 Schenectady, NY [Amended]

Schenectady County Airport, NY
(Lat. 42°51′9″ N, long. 73°55′44″ W)
Hunter NDB
(Lat. 42°51′15″ N, long. 73°56′01″ W)

That airspace extending upward from the surface within 2.5 miles each side of a 032° bearing from the Hunter NDB extending from the 4.3-mile radius of Schenectady County Airport to 7 miles northeast of the NDB. This Class E airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The specific date and time will thereafter be continuously published in the Chart Supplement.

AEA NY E4 Ithaca, NY [Amended]

Ithaca Tompkins Regional Airport, Ithaca, NY
(Lat. 42°29′29″ N, long. 76°27′31″ W)
Ithaca VOR/DME
(Lat. 42°29′42″ N, long. 76°27′35″ W)

That airspace extending upward from the surface from the 4-mile radius of the Ithaca Tompkins Regional Airport to the 5.7-mile radius of the airport; clockwise from the 329° bearing to the 081° bearing from the airport; that airspace from the 4-mile radius of Ithaca Tompkins Regional Airport to the 8.7-mile radius of the airport extending clockwise from the 081° bearing to the 137° from the airport; that airspace from the 4-mile radius of Ithaca Tompkins Regional Airport; to the 6.6-mile radius of the airport, extending clockwise from the 137° bearing to the 170° bearing from the airport; that airspace from the 4-mile radius to the 5.7-mile radius of the Ithaca Tompkins Regional Airport, extending clockwise from the 170° bearing to the 196° bearing from the airport; and that airspace within 2.7 miles each side of the Ithaca VOR/DME 305° radial extending from the 4-mile radius of Ithaca Tompkins Regional Airport to 7.4 miles northwest of the Ithaca VOR/DME.

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

* * * * *

AEA NY E5 Albany, NY [Amended]

Albany VORTAC
(Lat. 42°44′50″ N, long. 73°48′11″ W)
Hunter NDB
(Lat. 42°51′15″ N, long. 73°56′01″ W)
Schenectady County Airport, NY
(Lat. 42°51′9″ N, long. 73°55′44″ W)
Saratoga County Airport, NY
(Lat. 43°03′03″ N, long. 73°51′42″ W)
Cambridge VORTAC
(Lat. 42°59′39″ N, long. 73°20′38″ W)

That airspace extending upward from 700 feet above the surface within the area bounded by a point on the Albany VORTAC 007° radial 20 miles north of the VORTAC, thence clockwise along the arc of a 20-mile radius circle centered on the Albany VORTAC to its point of intersection with the Albany VORTAC 037° radial, thence southwest along the Albany VORTAC 037° radial to a point 10.5 miles northeast of the VORTAC, thence clockwise along the arc of a 10.5-mile radius circle centered on the Albany VORTAC, to its point of intersection with a line 3.5 miles southeast of the Hunter NDB 207° bearing and within 3.5 miles each side of the 206° bearing from the Hunter NDB extending from the Hunter NDB to 15.3 miles southwest of the NDB and thence clockwise along the arc of the 7.9-mile radius circle centered on the Hunter NDB to its point of intersection with a line 1.8 miles south and parallel to the extended centerline of the Schenectady County Airport Runway 28, thence west along this parallel line to its point of intersection with the arc of a 11.3-mile radius circle centered on the Hunter NDB, thence clockwise along the arc of this 11.3-mile radius circle to its point of intersection with the 342° bearing from the Hunter NDB, thence north along a line bearing 356° from this point to the point of intersection of this line and the arc of a 16.6-mile radius circle centered on the Hunter NDB and thence clockwise along the arc of the 16.6-mile radius circle centered on the NDB to its point of intersection with the arc of a 20-mile radius circle centered on the Albany VORTAC and within 4.4 miles each side of the Albany VORTAC 082° radial extending from the Albany VORTAC to 16.1 miles east of the VORTAC and within a 6.4-mile radius of Saratoga County Airport and within 3.5 miles each side of the Cambridge VORTAC 279° radial extending from 37.5 miles west of the Cambridge VORTAC to the 6.4-mile radius area.

Issued in College Park, Georgia, on November 14, 2018.

Matthew Cathcart,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2018–25564 Filed 11–23–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0940; Airspace Docket No. 18–ASW–15]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Carrizo Springs, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace extending upward from 700 feet above the surface at Dimmit County Airport, Carrizo Springs, TX. The FAA is proposing this action as a result of the decommissioning of the Dimmit non-directional beacon (NDB). The geographic coordinates of the airport would also be updated to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before January 10, 2019.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2018–0940; Airspace Docket No. 18–ASW–15, at the beginning of your comments. You may also submit comments through the internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

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 *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

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

FOR FURTHER INFORMATION CONTACT: Walter Tweedy, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5900.

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 would amend Class E airspace extending upward from 700 feet above the surface at Dimmit County Airport, Carrizo Springs, TX, to support instrument flight rule operations at this airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2018–0940/Airspace Docket No. 18–ASW–15.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend 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 Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by amending the Class E airspace extending upward from 700 feet above the surface within 6.5 mile radius (formerly 7.5 mile radius) of Dimmit County Airport, Carrizo Springs, TX. The geographic coordinates of the airport would also be updated to coincide with the FAA's aeronautical database.

This action is necessary due to the decommissioning of the Dimmit NDB.

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

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 will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 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 14 CFR 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.

* * * * *

ASW TX E5 Carrizo Springs, TX [Amended]

Carrizo Springs, Dimmit County Airport, TX (Lat. 28°31′20″ N, long. 99°49′25″ W)

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

Issued in Fort Worth, Texas, on November 14, 2018.

Anthony Schneider,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2018–25575 Filed 11–23–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2018–0984; Airspace Docket No. 18–ASW–8]

RIN 2120–AA66

Proposed Expansion of R–3803 Restricted Area Complex; Fort Polk, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to expand the R–3803 restricted area complex in central Louisiana by establishing four new restricted areas, R–3803C, R–3803D, R–3803E, and R–3803F, and make minor technical amendments to the existing R–3803A and R–3803B legal descriptions for improved operational efficiency and administrative standardization. The proposed restricted area establishments and amendments support U.S. Army Joint Readiness Training Center training requirements at Fort Polk for military units preparing for overseas deployment.

DATES: Comments must be received on or before January 10, 2019.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; telephone: (202) 366–9826. You must identify FAA Docket No. FAA–2018–0984; Airspace Docket No. 18–ASW–8, at the beginning of your comments. You may also submit comments through the internet at *www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

Comments on environmental and land use aspects to should be directed to: Allison M. Cedars, Chief, Environmental Branch, Department of Public Works, 1697 23rd Street, Fort Polk, LA 71459; email: *allison.m.cedars.civ@mail.mil;* phone: (337) 531–6725.

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish restricted area airspace at Fort Polk, LA, to enhance aviation safety and accommodate essential U.S. Army hazardous force-on-force and force-on-target training activities.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2018–0984; Airspace Docket No. 18–ASW–8) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *www.regulations.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2018–0984; Airspace Docket No. 18–ASW–8.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received and any final disposition in person at the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Central Service Center, Federal Aviation Administration, 10101 Hillwood Blvd., Fort Worth, TX 76177.

Background

As one of two U.S. Army Combat Training Centers, Fort Polk has submitted a proposal to the FAA to expand the R–3803 restricted area complex in central Louisiana by establishing four new restricted areas. Two of the proposed restricted areas

would be designated above the other two, similar to the way R–3803A and R–3803B exist, and the designated altitudes of the proposed restricted areas would extend upward from the surface to but not including Flight Level (FL) 350.

The Joint Readiness Training Center at Fort Polk has increasing and enduring requirements to conduct realistic force-on-force and force-on-target training for military units prior to overseas deployment. Additional airspace is now necessary to segregate non-participating aircraft from longer-range surface-to-surface and air-to-surface munitions currently being fielded and associated hazardous activities. Further, Fort Polk's ground infrastructure also includes laser-scoring systems that only function at non-eye safe wavelengths.

The proposed restricted areas are required to ensure safe live artillery fire training while protecting the public from both air and ground maneuvers using advanced weapon systems as well as manned flight, electronic jamming, combat lasers, flares, smoke, powerful simulators, and high explosive activities against progressive and spontaneous enemy tactics training scenarios. Because of advances in weapon systems, modern forces are required to cover more ground in dispersed areas of operation and operate over greater distances than ever before. The increased maneuver area is necessary to satisfy the training needs of the new air-to-ground combat teaming.

The Army recently completed acquisition of large tracks of land to the south and southeast of the existing R–3803 restricted area complex necessary to segregate the longer range munitions and non-eye safe lasers from non-participating aircraft. New firing points and impact areas located on the newly acquired land are planned to support large force multi-Service training events using weapons ranging upward to 155mm Howitzers and Hellfire missiles. However, the artillery firing points on the newly acquired land produce surface danger zones and vertical hazards that expand beyond the existing R–3803A boundary. Additionally, aircraft maneuvering within the current R–3803A boundaries is extremely limited. The proposed restricted area airspace expansion would contain the surface-to-surface fires and safety zones/areas, as well as provide participating aircraft more maneuver airspace to activate combat lasers earlier and conduct strafing and bombing runs alignment within the proposed boundaries.

The Proposal

The FAA is proposing an amendment to 14 CFR part 73 by establishing four new restricted areas, R–3803C, R–3803D, R–3803E, and R–3803F, located south-southeast of the R–3803 complex supporting the Joint Readiness Training Center at Fort Polk, LA. The new restricted areas would support the U.S. Army conducting realistic force-on-force and force-on-target training employing longer-range surface-to-surface and air-to-surface munitions currently being fielded. To effectively segregate non-participant air traffic from the hazardous activities associated with the longer-range munitions being used by the Joint Readiness Training Center, the proposed restricted areas would extend upward from the surface to but not including FL 350 and be activated by a Notice to Airman (NOTAM).

Of the proposed restricted areas, R–3803C and R–3803D would be established extending upward from the surface to but not including FL 180. Stacked above the proposed R–3803C, the proposed R–3803E would be established extending upward from FL 180 to but not including FL 350. Similarly, stacked above the proposed R–3803D, the proposed R–3803F would be established extending upward from FL 180 to but not including FL 350. The boundaries of the proposed R–3803C and R–3803E restricted areas would match, as would the boundaries of the proposed R–3803D and R–3803F restricted areas. However, there is an airspace cutout included in the proposed R–3803D boundary description, extending upward from the surface to 1,200 feet above ground level (AGL), to allow aerial access to the land the Army does not control. The Joint Readiness Training Center subject matter experts for artillery ballistics have determined that the proposed R–3803D restricted area floor over the airspace cutout with a ceiling of 1,200 feet AGL would be adequate to contain and segregate the hazardous activities occurring above.

The proposed restricted areas R–3803C and R–3803D would be activated by NOTAM, with an anticipated usage of 18 hours per day approximately 320 days per year. The higher strata proposed restricted areas, R–3803E and R–3803F, would be activated by NOTAM 24 hours in advance, with an anticipated usage of 8 hours per day approximately 20 days per year.

Lastly, the FAA also proposes to make a number of minor editorial and technical amendments to the existing restricted area R–3803A and R–3803B legal descriptions. They include:

- The designated altitudes for R–3803A would be changed from ''Surface to FL 180'' to ''Surface to but not including FL 180'' to match the designated altitudes of the lower proposed restricted areas, R–3803C and R–3803D, and correct the FL 180 designated altitude overlap with R–3803B.
- The designated altitudes for R–3803B would be changed from ''FL 180 up to but not including FL 350'' to ''FL 180 to but not including FL 350'' to match the designated altitudes of the upper proposed restricted areas, R–3803C and R–3803D, and correct the non-standard format.
- The time of designation for R–3803A would be changed from ''Continuous'' to ''by NOTAM'' to match the time of designation of the lower proposed restricted areas, R–3803C and R–3803D, and impose less of a burden on the flying public than the existing continuous activation.
- The time of designation for R–3803B would be changed from ''As activated by NOTAM issued at least 24 hours in advance'' to ''By NOTAM issued at least 24 hours in advance'' to match the time of designation of the upper proposed restricted areas, R–3803E and R–3803F, for clarity and standardization.
- The using agency designations for R–3803A and R–3803B would be changed from ''Commanding General, Fort Polk, LA'' to ''U.S. Army, Joint Readiness Training Center, Fort Polk, LA'' to match the using agency designation of the proposed restricted areas for standardization.

The FAA acknowledges that the proposed restricted areas R–3803C and R–3803D, if established, would be designated within the existing Warrior 1 Low and Warrior 1 High Military Operations Areas (MOAs). To overcome potential airspace issues and confusion created if all special use airspace (SUA) areas were active at the same time, the FAA would amend the legal descriptions of both MOAs to exclude that airspace within R–3803C and R–3803D when the restricted areas are activated.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory

Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subjected to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 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.

§ 73.38 [Amended]

■ 2. Section 73.38 is amended as follows:

R–3803A Fort Polk, LA [Amended]

Boundaries. Beginning at lat. 31°23′37″ N, long. 93°09′58″ W; to lat. 31°23′13″ N, long. 93°09′49″ W; to lat. 31°22′01″ N, long. 93°10′06″ W; to lat. 31°19′17″ N, long. 93°11′11″ W; to lat. 31°19′17″ N, long. 93°20′16″ W; to lat. 31°24′31″ N, long. 93°20′16″ W; to lat. 31°24′31″ N, long. 93°16′43″ W; to lat. 31°23′36″ N, long. 93°13′25″ W; to the point of beginning.

Designated altitudes. Surface to but not including FL 180.

Time of designation. By NOTAM.

Controlling agency. FAA, Houston ARTCC.

Using agency. U.S. Army, Joint Readiness Training Center, Fort Polk, LA.

R–3803B Fort Polk, LA [Amended]

Boundaries. Beginning at lat. 31°23′37″ N, long. 93°09′58″ W; to lat. 31°23′13″ N, long. 93°09′49″ W; to lat. 31°22′01″ N, long. 93°10′06″ W; to lat. 31°19′17″ N, long. 93°11′11″ W; to lat. 31°19′17″ N, long. 93°20′16″ W; to lat. 31°24′31″ N, long. 93°20′16″ W; to lat. 31°24′31″ N, long. 93°16′43″ W; to lat. 31°23′36″ N, long. 93°13′25″ W; to the point of beginning.

Designated altitudes. FL 180 to but not including FL 350.

Time of designation. By NOTAM issued at least 24 hours in advance.

Controlling agency. FAA, Houston ARTCC.

Using agency. U.S. Army, Joint Readiness Training Center, Fort Polk, LA.

R–3803C Fort Polk, LA [New]

Boundaries. Beginning at lat. 31°19′17″ N, long. 93°10′31″ W; to lat. 31°17′39″ N, long. 93°11′07″ W; to lat. 31°14′25″ N, long. 93°12′17″ W; to lat. 31°14′25″ N, long. 93°14′40″ W; to lat. 31°15′32″ N, long. 93°14′40″ W; to lat. 31°15′32″ N, long. 93°17′00″ W; to lat. 31°19′17″ N, long. 93°17′00″ W; to the point of beginning.

Designated altitudes. Surface to but not including FL 180.

Time of designation. By NOTAM.

Controlling agency. FAA, Houston ARTCC.

Using agency. U.S. Army, Joint Readiness Training Center, Fort Polk, LA.

R–3803D Fort Polk, LA [New]

Boundaries. Beginning at lat. 31°19′17″ N, long. 93°03′29″ W; to lat. 31°14′53″ N, long. 93°03′30″ W; to lat. 31°14′52″ N, long. 93°08′52″ W; to lat. 31°14′51″ N, long. 93°10′07″ W; to lat. 31°14′25″ N, long. 93°10′06″ W; to lat. 31°14′25″ N, long. 93°12′17″ W; to lat. 31°17′39″ N, long. 93°11′07″ W; to lat. 31°19′17″ N, long. 93°10′31″ W; to the point of beginning, excluding the airspace area from the surface to and including 1,200 feet AGL beginning at lat. 31°14′52″ N, long. 93°08′52″ W; at lat. 31°14′51″ N, long. 93°10′07″ W; at lat. 31°14′25″ N, long. 93°10′06″ W; at lat. 31°14′25″ N, long. 93°12′17″ W; at lat. 31°17′39″ N, long. 93°11′07″ W; at lat. 31°17′04″ N, long. 93°10′22″ W; at lat. 31°16′11″ N, long. 93°10′22″ W; to the point of beginning of the excluded area.

Designated altitudes. Surface to but not including FL 180.

Time of designation. By NOTAM.

Controlling agency. FAA, Houston ARTCC.

Using agency. U.S. Army, Joint Readiness Training Center, Fort Polk, LA.

R–3803E Fort Polk, LA [New]

Boundaries. Beginning at lat. 31°19′17″ N, long. 93°10′31″ W; to lat. 31°17′39″ N, long. 93°11′07″ W; to lat. 31°14′25″ N, long. 93°12′17″ W; to lat. 31°14′25″ N, long. 93°14′40″ W; to lat. 31°15′32″ N, long. 93°14′40″ W; to lat. 31°15′32″ N, long. 93°17′00″ W; to lat. 31°19′17″ N, long. 93°17′00″ W; to the point of beginning.

Designated altitudes. FL 180 to but not including FL 350.

Time of designation. By NOTAM issued at least 24 hours in advance.

Controlling agency. FAA, Houston ARTCC.

Using agency. U.S. Army, Joint Readiness Training Center, Fort Polk, LA.

R–3803F Fort Polk, LA [New]

Boundaries. Beginning at lat. 31°19′17″ N, long. 93°03′29″ W; to lat. 31°14′53″ N, long. 93° 03′30″ W; to lat. 31°14′52″ N, long. 93°08′52″ W; to lat. 31°14′51″ N, long. 93°10′07″ W; to lat. 31°14′25″ N, long. 93°10′06″ W; to lat. 31°14′25″ N, long. 93°12′17″ W; to lat. 31°17′39″ N, long. 93°11′07″ W; to lat. 31°19′17″ N, long. 93°10′31″ W; to the point of beginning.

Designated altitudes. FL 180 to but not including FL 350.

Time of designation. By NOTAM issued at least 24 hours in advance.

Controlling agency. FAA, Houston ARTCC.

Using agency. U.S. Army, Joint Readiness Training Center, Fort Polk, LA.

Issued in Washington, DC, on November 19, 2018.

Gemechu Gelgelu,

Acting Manager, Airspace Policy Group.

[FR Doc. 2018–25707 Filed 11–23–18; 8:45 am]

BILLING CODE 4910–13–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Chapter III

[Docket No. 18–CRB–0012–RM]

Modification and Amendment of Regulations To Conform to the MMA; Extension of Comment Period

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notification of inquiry; extension of comment period.

SUMMARY: On November 5, 2018, the Copyright Royalty Judges solicited comments and proposals regarding necessary and appropriate modifications and amendments to agency regulations following enactment of a new law regarding the music industry. The comment period, which was set to expire on November 26, 2018, has been extended to December 10, 2018.

DATES: The comment period for the notification of inquiry (83 FR 55334) is extended. Submit comments and proposals on or before December 10, 2018.

ADDRESSES: You may submit comments and proposals, identified by docket number 18–CRB–0012–RM, by any of the following methods:

CRB's electronic filing application: Submit comments and proposals online in eCRB at *https://app.crb.gov/*.

U.S. mail: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977; or

Overnight service (only USPS Express Mail is acceptable): Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977; or

Commercial courier: Address package to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue SE, Washington, DC 20559–6000. Deliver to: Congressional Courier Acceptance Site, 2nd Street NE and D Street NE, Washington, DC; or

Hand delivery: Library of Congress, James Madison Memorial Building, LM–401, 101 Independence Avenue SE, Washington, DC 20559–6000.

Instructions: Unless submitting online, commenters must submit an original, two paper copies, and an electronic version on a CD. All submissions must include a reference to the CRB and this docket number. All submissions will be posted without change to eCRB at *https://app.crb.gov/* including any personal information provided.

Docket: For access to the docket to read submitted background documents or comments, go to eCRB, the Copyright Royalty Board's electronic filing and case management system, at *https://app.crb.gov/* and search for docket number 18–CRB–0012–RM.

FOR FURTHER INFORMATION CONTACT: Anita Blaine, CRB Program Specialist, by telephone at (202) 707–7658 or email at *crb@loc.gov*.

SUPPLEMENTARY INFORMATION: On November, 14, 2018, The Copyright Royalty Judges (Judges) received a request asking that the comment period for the notification of inquiry (NOI) be extended to December 17, 2018, to ''provide the most meaningful and useful comments and proposals.'' Joint Motion for Extension of Time, Docket No. 18–CRB–0012–RM. The Judges balanced that concern against the time limits established by the Music Modernization Act and granted the request in part by extending the deadline for submission of comments and proposals in response to the NOI (83 FR 55334) to December 10, 2018.

Dated: November 15, 2018.

David R. Strickler,

Copyright Royalty Judge.

[FR Doc. 2018–25579 Filed 11–23–18; 8:45 am]

BILLING CODE 1410–72–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3010

[Docket No. RM2019–2; Order No. 4882]

Ratemaking Procedures for Inbound Letter Post and Related Services

AGENCY: Postal Regulatory Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission is acknowledging a recent filing requesting the Commission to consider the application of the market dominant price cap to rates for Inbound Letter Post and certain other inbound international market dominant products. This document informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 10, 2018.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

On November 16, 2018, the Postal Service filed a request for the Commission to consider the application of the market dominant price cap to rates for Inbound Letter Post and certain other inbound international market dominant products.[1] The Postal Service requests that the Commission replace the price cap treatment with an ''evaluation of whether price changes for these services promote the objectives in [39 U.S.C.] [s]ection 3622(b), taking into account the factors in [s]ection 3622(c).'' Petition at 2. The Commission initiates this rulemaking to seek comments and facilitate the Commission's examination into ratemaking procedures for Inbound Letter Post and related international services.

II. Background

At the same time it filed the instant Petition, the Postal Service filed a concurrent request seeking to transfer a portion of Inbound Letter Post (and inbound registered services associated with those items) to the competitive product list.[2] The Postal Service states that it intends for the instant Petition to cover only the related products remaining on the market dominant product list upon resolution of the Transfer Request. Petition at 2, n.4.

The Postal Service states that the recommendation to adopt self-declared rates for terminal dues,[3] made by the Department of State and endorsed by the President, creates uncertainty regarding the rates going forward. *See* Petition at 1, nn.1, 2; 2–3. The Postal Service further notes that the Department of State's negotiations could result in a decision to rescind withdrawal from the Universal Postal Union (UPU), but it is impossible to predict to what extent terminal dues would be self-declared or set by the UPU. Petition at 2–3. The Postal Service suggests that although the Commission's review of the market dominant ratemaking system is pending, to the extent that a market dominant price cap currently applies or is maintained in some form, there should be an exception for generally applicable rates set by the Postal Service that are paid by foreign postal operators. *Id.* at 4. The Postal Service states that its requested treatment of Inbound Letter Post rates should apply whether the rates are self-declared or not. *Id.* at 5.

III. Petition

The Postal Service requests that the Commission reconsider its decision in Order No. 43, in which it held that Inbound Letter Post must be classified as a market dominant product.[4] The Postal Service states that changes in circumstances, including ''a significant shift in U.S. Government policy toward Inbound Letter Post,'' warrant a reconsideration of the decision to apply the market dominant price cap to inbound international products. *See* Petition at 5–9. The Postal Service states that the Postal Accountability and Enhancement Act's intent was to protect individual domestic customers, rather than foreign postal operators.[5]

The Postal Service proposes a regulatory system for Inbound Letter Post wherein the Commission would apply the objectives and factors listed in 39 U.S.C. 3622(b) and 3622(c) as standards for review of inbound international rate adjustments. Petition at 2, 9. The Postal Service suggests that this review can occur after-the-fact,

[1] Petition of the United States Postal Service to Initiate a Rulemaking Concerning Ratemaking Procedures for Inbound Letter Post and Related Services, November 16, 2018 (Petition).

[2] Docket No. MC2019–17, United States Postal Service Request to Transfer Inbound Letter Post Small Packets and Bulky Letters, and Inbound Registered Service Associated with Such Items, to the Competitive Product List, November 16, 2018 (Transfer Request).

[3] Terminal dues refer to payments by foreign postal operators to the Postal Service for delivery of Inbound Letter Post in the United States.

[4] Docket No. RM2007–1, Order Establishing Ratemaking Regulations for Market Dominant and Competitive Products, October 29, 2007 (Order No. 43).

[5] *Id.* at 7, 8–9. Postal Accountability and Enhancement Act (PAEA), Public Law 109–435, 120 Stat. 3198 (2006).

through the annual compliance review proceedings, but also proposes an alternative before-the-fact review of rate adjustments. *Id.* at 10. The Postal Service submits these proposed rules and alternative proposed rules in Appendix I of the Petition.

IV. Invitation to Comment

The Commission establishes Docket No. RM2019–2 for consideration of matters raised in the Petition. More information on the Petition may be accessed via the Commission's website at *http://www.prc.gov*. Interested persons may submit comments on the Petition no later than December 10, 2018.

Pursuant to 39 U.S.C. 505, Kenneth E. Richardson is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in the above-captioned docket.

V. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. RM2019–2 for consideration of the matters raised by the Petition of the United States Postal Service to Initiate a Rulemaking Concerning Ratemaking Procedures for Inbound Letter Post and Related Services, filed November 16, 2018.

2. Comments are due no later than December 10, 2018.

3. Pursuant to 39 U.S.C. 505, the Commission appoints Kenneth E. Richardson to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

4. The Secretary shall arrange for publication of this Notice in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2018–25665 Filed 11–23–18; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2018–0596; FRL–9986–94–Region 10]

Air Plan Approval; OR: Lane County Outdoor Burning and Enforcement Procedure Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve and incorporate by reference (IBR) into the Oregon State Implementation Plan (SIP) the Lane Regional Air Protection Agency's (LRAPA) revised outdoor burning rule submitted by the Oregon Department of Environmental Quality (ODEQ) on July 19, 2018. The revised rule, as it applies in Lane County, Oregon, clarifies terminology and provides additional controls of outdoor burning activities, reducing particulate emissions and strengthening the Oregon SIP. In addition, the EPA proposes to approve but not IBR the enforcement procedures and civil penalties rule for LRAPA submitted by the ODEQ on September 25, 2018. The revised rule contains revisions that bring enforcement procedures and civil penalties rule into alignment with recent changes in Oregon State regulations.

DATES: Comments must be received on or before December 26, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2018–0596, at *https://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Christi Duboiski at (360) 753–9081, or *duboiski.christi@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we,'' ''us,'' or ''our'' is used, it is intended to refer to the EPA.

Table of Contents

I. Background

Each State has a Clean Air Act (CAA) State Implementation Plan (SIP), containing the control measures and strategies used to attain and maintain the national ambient air quality standards (NAAQS) established for the criteria pollutants (carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, sulfur dioxide). The SIP contains such elements as air pollution control regulations, emission inventories, attainment demonstrations, and enforcement mechanisms. The SIP is a compilation of these elements and is revised and updated by a State over time—to keep pace with Federal requirements and to address changing air quality issues in that State.

The Oregon Department of Environmental Quality (ODEQ) implements and enforces the Oregon SIP through rules set out in Chapter 340 of the Oregon Administrative Rules (OAR), Divisions 200 to 268, apply in all areas of the State, except where the Oregon Environmental Quality Commission (EQC) has designated Lane Regional Air Protection Agency (LRAPA) to administer rules within its area of jurisdiction.

LRAPA has been designated by the EQC to implement and enforce State rules in Lane County, and to adopt local rules that apply within Lane County. LRAPA may promulgate a local rule in lieu of a State rule provided: (1) it is as strict as the corresponding State rule; and (2) it has been submitted to and approved by the EQC. This delegation of authority to LRAPA in the Oregon SIP is consistent with CAA section 110(a)(2)(E) requirements for State and local air agencies.

On July 19, 2018 and September 25, 2018, the ODEQ and LRAPA submitted revisions to the Oregon SIP as it applies in Lane County. These changes update the LRAPA Title 47 outdoor burning rule providing clarification and additional controls of outdoor burning activities in Lane County and align the Title 15 enforcement procedure and civil penalties rule with recently approved State rules in OAR Chapter 340, Division12 (80 FR 64346, October 23, 2015).

II. Evaluation of Revisions

A. Title 47: Outdoor Burning

LRAPA regulates outdoor burning throughout Lane County, Oregon, except for agricultural burning, forest slash burning permitted by the Oregon Department of Forestry or U.S. Forest Service, and fire department training burns. The LRAPA Title 47 outdoor burning rule, most recently approved by the EPA on October 23, 2015, is an element of the SIP strategy outlining how Oregon will meet Federal air quality standards to protect public health and the environment (80 FR 64346). In general, the revised LRAPA outdoor burning rule provides for additional controls of outdoor burning activities in Lane County, Oregon. In addition, the submitted revisions make clarifications, incorporate housekeeping changes that eliminate duplicative text, change the ''open burning'' reference to ''outdoor burning'', separate the reference of Eugene-Springfield Urban Growth Boundary (ESUGB) to the Eugene Urban Growth Boundary (UGB) and the Springfield UGB (noting each as a separate and distinct UGB), clean up typographical errors, and format and renumber sections and paragraphs. The key substantive changes are discussed below.

General

LRAPA revised the general policy section of Title 47, Section 47–001 to clarify the outdoor burning rule applies in Lane County in accordance with OAR 340–264–0160(1). This State rule establishes the outdoor burning requirements in Lane County are not to be less stringent than Oregon's rule and prohibits LRAPA from regulating agricultural outdoor burning. In addition, LRAPA added ''bonfires'' and ''ecological conversion'' to the list of outdoor burning categories to provide clarification and a more complete list of what types of permits LRAPA issues for outdoor burning,

Exemptions

LRAPA revised the agricultural outdoor burning exemption language in Section 47–005 to align with OAR 340–264–0040 and ORS 468A.020 and made clear that this type of burning is still subject to the requirements and prohibitions of local jurisdictions and the State Fire Marshal. The exemption for recreational fires on private property or in designated recreational areas was tightened in two ways: the prohibition on recreational fires on yellow and red home wood heating advisory days now extends from at least October through May (as opposed to November through February in the current SIP) and now applies in the Oakridge Urban Growth Boundary (in addition to within the Eugene and Springfield Urban Growth Boundaries and the city limits of Oakridge). Although outdoor barbequing remains exempt, woody yard trimmings, leaves and grass clippings may no longer be burned as fuel. Religious ceremonial fires remain exempt; however, LRAPA clarified the allowable size, location, and fuel source. Larger fires are to be permitted under the ''Bonfire'' requirement under Section 47–020 *Outdoor Burning Letter Permit.* LRAPA expects religious ceremonial fires to occur infrequently and the definition requires that such fires be controlled, be ''integral to a religious ceremony or ritual,'' and that prohibited materials not be burned.

Definitions

In general, the revisions to LRAPA's definitions in Section 47–010 clarify the types of burn categories, and further define restrictions and burn boundaries. For example, the ''bonfire'' definition establishes the size of a controlled outdoor fire to be larger than 3 feet in diameter and 2 feet in height. This helps to distinguish between what is allowed as a bonfire, or what is considered ''recreational'' or ''religious ceremonial''. LRAPA also clarified that a bonfire cannot serve as a disposal for prohibited materials listed in Section 47–015(1)(e). LRAPA bounded the definition of ''religious ceremonial fire'', setting limits on pile size, defining materials that can and cannot be burned and defining where the burn can take place. Finally, LRAPA defined ''outdoor burning letter permit'', issued pursuant to Section 47–020, to authorize burning of select materials at a defined site and under certain conditions. These updates provide clarification designed to enhance the enforceability of the rule. We propose to approve the submitted revisions to Title 47 definitions because the changes strengthen the SIP and are consistent with the CAA.

Outdoor Burning Requirements

LRAPA Section 47–015 contains most of the general requirements for all outdoor burning and specific requirements for the following burn types: residential, construction and demolition, commercial, industrial, and forest slash. The general outdoor burning requirements have been made more stringent in many respects. First, subsection 47–015(1)(e) regarding prohibited materials has been expanded to broadly prohibit the burning of items which, when burned, normally emit dense smoke noxious odors, or hazardous air contaminants, and specifically adds cardboard, clothing and grass clippings to the list of such items. The prohibition on the outdoor burning of cardboard and clothing was included to be at least as stringent with OAR 340–264–0160. In addition, a new provision was added, Section 47–015(1)(i), which prohibits the outdoor burning in barrels throughout Lane County.

Residential outdoor burning is allowed only on approved burning days with the start and end times for burning set as part of the daily burning advisory issued by LRAPA. The previous start and end times, beginning at sunrise and extending until sunset, were eliminated to avoid misinterpretation of the hours set by the LRAPA outdoor burning advisory, which generally allows the burn to commence a minimum of several hours after sunrise and requires the burn to be extinguished at least several hours prior to sunset.

LRAPA also added and expanded several provisions defining outdoor burning limits for the cities of Eugene, Springfield, Oakridge and Lowell and their associated urban growth boundaries; and the cities of Coburg, Cottage Grove, Creswell, Dunes City, Junction City, Veneta and Westfir. For example, LRAPA expanded outdoor burning limits from the Eugene city limits to the Eugene UGB, except that outdoor burning of wood yard trimmings is allowed on lots of two acres or more. The outdoor burning prohibition for Springfield was expanded to include the UGB, except that outdoor burning of woody yard trimmings is allowed on lots of one half acre or more. The Oakridge outdoor burning boundary was also expanded to include the UGB. In addition, LRAPA added that outdoor burning within Florence city limits is prohibited per Florence city ordinance. These changes strengthen the previous rule, which only restricted the burning of woody yard trimmings within the Eugene and Springfield city limits and as otherwise prohibited by some city fire codes. LRAPA's approved burn days are still from March 1 through June 15 and October 1 through October 31. LRAPA also formalized the prohibition of the outdoor burning of grass clippings throughout Lane County; however, the outdoor burning of fallen leaves and woody yard trimmings is still allowed, subject to restrictions based on time and location.

In general, these revisions impose more stringent requirements on additional geographic areas, increasing the overall stringency of the restrictions on outdoor burning, and the EPA

proposes to approve them as consistent with CAA requirements.

Letter Permits

Section 47–020 authorizes certain types of outdoor burning under letter permits issued by LRAPA. Section 47–020(2) has been amended, increasing the fees for letter permits issued for outdoor burning of standing vegetation from $100 to $1,000. A new provision in Section 47–020(2) authorizes the Director to compromise on the permit fee, on a case by case basis, based on set factors. In addition, Subsection 47–020(4) was amended to increase the permit fee for outdoor burning from $4 per cubic year to $10 per cubic yard, with a minimum fee of $100. The fee applies to all outdoor burning except for prescribed burning of standing vegetation, which is addressed in Section 47–010(2).

The EPA proposes to find the revised LRAPA Title 47 outdoor burning rule provides for additional controls on outdoor burning which are designed to reduce particulate emissions in Lane County and strengthen Oregon's SIP. Based on the EPA's review and analysis of the revised rule, the EPA is proposing to approve the submitted Title 47 revisions to the Oregon SIP for Lane County as meeting the requirements of section 110 of the Clean Air Act.

Rules not Appropriate for SIP Approval

Title 47 contains several provisions that are not appropriate for SIP approval, including but not limited to nuisance, fire safety, and Title V. The EPA's authority to approve SIPs extends to provisions related to attainment and maintenance of the NAAQS and carrying out other specific requirements of section 110 of the CAA. In this action, the EPA is not approving into the SIP the following provisions of Title 47 because they are inappropriate for SIP approval: LRAPA 47–010—definition of ''nuisance''; LRAPA 47–015(1)(d); LRAPA 47–015(1)(h); LRAPA 47–020(3); LRAPA 47–020(9)(i); and LRAPA 47–020(10) (80 FR 64346, October 23, 2015).

B. Title 15: Enforcement Procedure and Civil Penalties

Title 15 outlines enforcement procedures and civil penalty provisions that apply to air quality regulations implemented by LRAPA and approved by the EPA into the SIP. Title 15 provides the authority and procedures under which LRAPA notifies regulated entities of violations, determines the appropriate penalties for violations, and assesses penalties for such violations.

LRAPA updated Title 15 to correspond to the State enforcement rule in OAR Chapter 340, Division 12, approved by the EPA on October 23, 2015 (80 FR 64346). LRAPA revisions implement legislative increases in statutory maximum penalties, align violation classifications and magnitudes with program priorities, and provide greater mitigating credit for correcting violations. In addition, the rules incorporate housekeeping changes that include eliminating duplicative text, changing references from ''the Agency'' to ''LRAPA'' and ''open burning'' to ''outdoor burning'', formatting and renumbering the sections and paragraphs, and cleaning up typographical errors. The key substantive changes are discussed below.

Overall, LRAPA aligned its definitions with those in the corresponding State rule recently reviewed and approved by the EPA on October 23, 2015 (80 FR 64346). Key definition changes include adding definitions for ''alleged violation'', ''conduct'', ''notice of civil penalty assessment'', ''residential owner-occupant'' and ''willful'' and removing the term ''risk of harm''. To mirror the State's definition, LRAPA revised the term ''magnitude of the violation'' by removing language that is procedural in nature. Detailed procedures are centralized in Section 15–030 *Civil Penalty Determination Procedure (Mitigating and Aggravating Factors)*. LRAPA also simplified the definition of ''violation'' to remove redundant language defining the three classes of violation (class I, II and III).

The submitted revisions also include several rule sections revised to be consistent with OAR Chapter 340, Division 12. LRAPA revised Section 15.018 *Notice of Permit Violations and Exceptions* to align with OAR 340–012–0038 by including language requiring no advance notice prior to assessment of a civil penalty if the permittee has an Air Contaminant Discharge Permit (ACDP) condition that implements the SIP under the CAA and the permit violation would disqualify a State program from Federal approval or delegation.

Section 15.025 *Civil Penalty Matrices* was revised to align with State civil penalties in OAR 340–012–0140. The LRAPA penalty matrices and applications were updated to directly reflect Oregon's SIP-approved penalty amounts. LRAPA also amended Section 15.030 *Civil Penalty Determination* to provide the director the discretion to increase the penalty amount to $25,000 per violation per day of violation to correspond with OAR 340–012–0160(4). In addition, the civil penalty formulation factors were updated to mirror language in OAR 340–012–0045 and OAR 340–012–0145. The submitted revisions increase the additional civil penalties for violations that pose an extreme hazard to public health or cause extensive environmental damage to mirror those in OAR 340–200–012–0155. As stated in Section 15–045, nothing in Title 15 is intended to preclude LRAPA from assessing a penalty of up to the maximum allowed for the violation by Oregon Revised Statutes 468 (ORS 468).

LRAPA also aligned Section 15.060 *Selected Magnitude Categories* with the State SIP-approved language in OAR 340–012–0135 by removing a duplicative table defining significant emission rate amounts for selected air pollutant magnitude determinations. This information can now be found in LRAPA's Title 12, Tables 2 and 3.

The EPA has reviewed the revisions to the LRAPA Title 15 enforcement procedures and civil penalties rule and finds the rule continues to provide LRAPA with adequate authority to enforce the SIP as required by section 110 of the Clean Air Act. The EPA therefore proposes to approve into the SIP the revisions to Title 15 to the extent the provisions relate to section 110 of the CAA and determining compliance with and for purposes of implementation of SIP-approved requirements. We note that we are not incorporating Title 15 by reference into the Code of Federal Regulations (CFR). These types of rules are generally not incorporated by reference into the CFR because they may conflict with the EPA's independent administrative and enforcement procedures under the CAA.

III. Proposed Action

We propose to approve and incorporate by reference into the Oregon SIP the submitted revisions to the LRAPA Title 47 outdoor burning rule, Sections 001, 005, 010 (except the definition of ''nuisance''), 015 (except (1)(d) and (1)(h)), and 020 (except (3), (9)(i), and (10)). These rules were State effective July 13, 2018 and submitted to the EPA by the ODEQ and LRAPA on July 19, 2018.

We also propose to approve, but not incorporate by reference, the submitted revisions to the LRAPA Title 15 enforcement procedures and civil penalty rule, Sections 001, 005, 015, 018, 020, 025, 030, 035, 040, 045, 055, 057, 060, and 065. These rules were State effective on September 14, 2018, and submitted by the ODEQ and LRAPA on September 25, 2018. They align LRAPA's Title 15 rule with the ODEQ's

Division 12 and provide LRAPA with authority needed for SIP approval.

IV. Incorporation by Reference

In this document, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, we are proposing to incorporate by reference the provisions described above in Section III. Proposed Action. The EPA has made, and will continue to make, these documents generally available electronically through *https://www.regulations.gov* and in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

V. Oregon Notice Provision

Oregon Revised Statute 468.126 prohibits the ODEQ from imposing a penalty for violation of an air, water or solid waste permit unless the source has been provided five days' advanced written notice of the violation and has not come into compliance or submitted a compliance schedule within that five-day period. By its terms, the statute does not apply to Oregon's title V program or to any program if application of the notice provision would disqualify the program from Federal delegation. Oregon has previously confirmed that, because application of the notice provision would preclude EPA approval of the Oregon SIP, no advance notice is required for violation of SIP requirements.

VI. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: November 9, 2018.

Chris Hladick,

Regional Administrator, Region 10.

[FR Doc. 2018–25679 Filed 11–23–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 158

[EPA–HQ–OPP–2018–0668; FRL–9984–47]

RIN 2070–AK41

Notification of Submission to the Secretaries of Agriculture and Health and Human Services; Pesticides; Technical Amendment to Data Requirements for Antimicrobial Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of submission to the Secretaries of Agriculture and Health and Human Services.

SUMMARY: This document notifies the public as required by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) that the EPA Administrator has forwarded to the Secretary of the United States Department of Agriculture (USDA) and the Secretary of the United States Department of Health and Human Services (HHS) a draft regulatory document concerning Pesticides; Technical Amendment to Data Requirements for Antimicrobial Pesticides. The draft regulatory document is not available to the public until after it has been signed and made available by EPA.

DATES: On October 29, 2018, the EPA Administrator forwarded to the Secretary of the United States Department of Agriculture (USDA) and the Secretary of the United States Department of Health and Human Services (HHS) a draft regulatory document concerning Pesticides; Technical Amendment to Data Requirements for Antimicrobial Pesticides.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2018–0668, 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: Cameo Smoot, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington DC 20460–0001; telephone number: (703) 305–5454; email address: *smoot.cameo@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. What action is EPA taking?

Section 25(a)(2)(B) of FIFRA requires the EPA Administrator to provide the Secretary of USDA with a copy of any draft final rule at least 30 days before signing it in final form for publication in the **Federal Register**. Similarly, FIFRA section 21(b) requires the EPA Administrator to provide the Secretary of HHS with a copy of any draft final rule pertaining to a public health pesticide at least 30 days before publishing it in the **Federal Register**. The draft final rule is not available to the public until after it has been signed by EPA. If either Secretary comments in writing regarding the draft final rule within 15 days after receiving it, the EPA Administrator shall include the comments of the Secretary, if requested by the Secretary, and the EPA Administrator's response to those comments with the final rule that publishes in the **Federal Register**. If either Secretary does not comment in writing within 15 days after receiving the draft final rule, the EPA Administrator may sign the final rule for publication in the **Federal Register** any time after the 15-day period.

II. Do any statutory and executive order reviews apply to this notification?

No. This document is merely a notification of submission to the Secretaries of USDA and HHS. As such, none of the regulatory assessment requirements apply to this document.

List of Subjects in Part 40 CFR 158

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

Dated: October 25, 2018.

Richard P. Keigwin, Jr.,

Director, Office of Pesticide Programs.

[FR Doc. 2018–25554 Filed 11–23–18; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 83, No. 227
Monday, November 26, 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 20, 2018.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by December 26, 2018 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street NW, Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Economic Research Service

Title: Food Security Supplement to the Current Population Survey.

OMB Control Number: 0536–0043.

Summary of Collection: The Food Security Supplement is sponsored by USDA as research and evaluation activity authorized under 7 U.S.C. 2204(a). This section outlines duties of the Secretary of Agriculture related to research and development including authorizing the collection of statistics. The Administrator of the Economic Research Service is authorized to conduct economic and social science research and analyses related to the U.S. food system and consumers under 7 CFR 2.67. The data to be collected will be used to address multiple programmatic and policy development needs of the Food and Nutrition Service (FNS) and other Federal agencies. The U.S. Census Bureau has the right to conduct the data collection on USDA's behalf under Title 13, Section 8(b).

Need and Use of the Information: The data collected by the food security supplement will be used to obtain reliable data from a large, representative national sample as a basis for monitoring the prevalence of food security, food insecurity, and very low food security within the U.S. population as a whole and in selected population subgroups; conducting research on causes of food insecurity and the role of Federal food and nutrition programs in ameliorating food insecurity; and continuing development and improvement of methods for measuring these conditions. Information will be collected on food spending, use of Federal and community food and nutrition assistance programs, difficulties in obtaining adequate food during the previous 12 months and 30 days due to constrained resources, and conditions that result from inadequate access to food.

Description of Respondents: Individuals or Households.

Number of Respondents: 53,802.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 6,465.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2018–25615 Filed 11–23–18; 8:45 am]

BILLING CODE 3410–18–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

November 20, 2018.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by December 26, 2018 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street NW, Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to

the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal & Plant Health Inspection Service

Title: Importation of Fresh Peppers from Peru Into the Continental United States and the Territories.

OMB Control Number: 0579–0434.

Summary of Collection: The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States. Regulations authorized by the PPA concerning the importation of fruits and vegetables into the United States from certain parts of the world are contained in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–83).

Need and Use of the Information: The regulations in § 319.56–73 allow the importation of fresh peppers into the continental United States and the Territories from Peru. As a condition of entry, the peppers must be produced in accordance with a systems approach that includes requirements for operational workplans, quality control programs, fruit fly trapping, pre-harvest production site inspections, production site and packinghouse registration, emergency action notifications, notices of arrival for imports, and packinghouse procedures designed to exclude quarantine pests. The peppers are also required to be imported in commercial consignments and accompanied by a phytosanitary certificate issued by the national plant protection organization (NPPO) of Peru with an additional declaration stating that the consignment was produced in accordance with the systems approach outlined in the regulations. These actions allow for the importation of fresh peppers from Peru while continuing to provide protection against the introduction of plant pests into the United States and the Territories.

Description of Respondents: Business or other for-profit; Federal Government.

Number of Respondents: 15.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 294.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2018–25625 Filed 11–23–18; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

November 20, 2018.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and other forms of information technology.

Comments regarding this information collection received by December 26, 2018 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street NW, Washington, DC, 20503. Commentors are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Public Lands Corps Participant Tracking Sheet.

OMB Control Number: 0596–NEW.

Summary of Collection: The Public Lands Corps (PLC) is a work and education program involving the nation's land management agencies, conservation and service corps, and environmental organizations that contribute to the rehabilitation, restoration, and repair of public lands resources and infrastructure. PLC provides opportunities for community and national service, work experience, and training to young people who are unemployed or underemployed. The law authorizing this program is 16 U.S.C. 1721–1726, Chapter 37—Public Lands Corps and Resources Assistants Program (Public Lands Corps Healthy Forest Restoration Act of 2005 [Pub. L. 109–154]) as amended in 1993, hereafter referred to as ''the Act.''

Need and use of the Information: This information collection request establishes policies and procedures for the implementation of the Public Lands Corps Participant Tracking Sheet to ensure uniform collection of information regarding tracking and monitoring participant engagement to determine the completion of requirements for non-competitive hiring eligibility as defined in the Act. Data collected through the Public Lands Corps Participant Tracking Sheet will allow the Forest Service (FS) and other Federal Land Management Agencies who sponsor PLC programs to support collaborating partners who manage eligible participants and their participation in PLC projects. If the FS is unable to collect data regarding PLC participants, it and other Federal Land Management Agencies would be unable to participate in a legally mandated program as outlined in the Act.

Description of Respondents: Non-profit Organizations and Non-Federal Government entities.

Number of Respondents: 350.

Frequency of Responses: Reporting; Quarterly.

Total Burden Hours: 8,400.

Kimble Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2018–25623 Filed 11–23–18; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the New York Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the New York Advisory Committee to the Commission

will convene by conference call at 12 p.m. (EST) on: Friday, December 14, 2018. The purpose of the meeting is to discuss topics of study.

DATES: Friday, December 14, 2018 at 12 p.m. EST.

PUBLIC CALL-IN INFORMATION: Conference call-in number: 1–877–260–1479 and conference ID# 5953601.

FOR FURTHER INFORMATION CONTACT: David Barreras, at *dbarreras@usccr.gov* or by phone at 312–353–8311.

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 ID# 5953601. 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 ID# 5953601.

Members of the public are invited to make statements during the open comment period of the meetings 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 Midwest Regional Office, U.S. Commission on Civil Rights, 230 S. Dearborn Street, Suite 2120, Chicago, IL 60604, faxed to (312) 353–8324, or emailed to David Barreras at *dbarreras@usccr.gov.* Persons who desire additional information may contact the Midwest Regional Office at (312) 353–8311.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://database.faca.gov/committee/meetings.aspx?cid=265;* 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 Midwest Regional Office at the above phone numbers, email or street address.

Agenda

Friday, December 14, 2018

- Open—Roll Call
- Discussion of Study Topics
- Open Comment
- Adjourn

Dated: November 20, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–25644 Filed 11–23–18; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Correction: Notice of Public Meeting of the Connecticut Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Correction: Announcement of meeting.

SUMMARY: The Commission on Civil Rights published a document November 20, 2018, announcing an upcoming Connecticut Advisory Committee meeting. The document contained an incorrect date of the meeting.

FOR FURTHER INFORMATION CONTACT: Barbara de La Viez, DFO, at *ero@usccr.gov* or 202–376–7533.

CORRECTION: In the **Federal Register** of November 20, 2018, in FR Doc. 2018–25258, on page 58527 in the second columns, delete ''December 7, 2018'' in the **DATES** Replace the date of the meeting to read December 12, 2018.

Dated: November 20, 2018.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2018–25651 Filed 11–23–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Procedures for Participating in User Testing of the New Commerce 232 Exclusion Process Portal

AGENCY: Bureau of Industry and Security, Office of Technology Evaluation, U.S. Department of Commerce.

ACTION: Notice on procedures for requesting participation in user testing phase.

SUMMARY: The Department of Commerce has developed an online portal that will replace the use of the Federal rulemaking portal (*http://www.regulations.gov*) for persons submitting exclusion requests, objections to exclusion requests, rebuttals, and surrebuttals in connection with duties or quotas imposed pursuant to Section 232 of the Trade Expansion Act of 1962, as amended (''232''). In order to improve the 232 exclusion process, the Department of Commerce plans to transition to the new Commerce 232 portal sometime in late 2018 to early 2019. This notice describes the process for the public to submit requests to participate in the public testing phase of the new Commerce 232 portal, and the procedures for attending the public testing.

DATES: The public testing will be held on December 6 and 7, 2018 at the U.S. Department of Commerce, Room 6872A, 1401 Constitution Avenue NW, Washington, DC 20230. Each public testing day will be broken into a morning session from 9 a.m. to 12 p.m. and an afternoon session from 1 p.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Kevin Coyne, System & Application Support Division, Bureau of Industry and Security, U.S. Department of Commerce, *kevin.coyne@bis.doc.gov.* For more information about the section 232 program, including the regulations and the text of previous investigations, see *www.bis.doc.gov/232.*

For questions regarding the December 6 and 7 public testing, please contact *Commerce232portal@bis.doc.gov,* (202) 482–5642, or (202) 482–4757.

SUPPLEMENTARY INFORMATION:

Background

Two components of the Department of Commerce, the Bureau of Industry and Security (BIS) and the International Trade Administration (ITA), have developed a new Commerce 232 portal to facilitate parties' ability to make 232 exclusion-related submissions, and the Department of Commerce's management of the 232 exclusion process. The new Commerce 232 portal will replace the use of the Federal rulemaking portal (*http://www.regulations.gov*) for parties submitting exclusion requests, objections to exclusions requests, rebuttals, and surrebuttals under the 232 exclusion process. The new portal will streamline the exclusion process for external parties, including importers and domestic manufacturers, by replacing the data collection point with web-based forms, which will enhance data integrity and quality controls. In addition, this new system will allow parties to more easily view all exclusion

request, objection, rebuttal, and surrebuttal documents in one, web-based system. Finally, parties will be able to track submission deadlines in this same system. The new portal will also allow for better collaboration between government agencies processing 232 exclusion requests.

The Department of Commerce plans to transition to the new Commerce 232 portal sometime in late 2018 to early 2019, once testing is completed and any final updates are made. This notice describes the process for the public to submit requests to participate in the public testing phase of the new Commerce 232 portal, and the procedures for attending the public testing.

Once the Commerce 232 portal is ready to be implemented, the Department of Commerce will publish a rule making changes to the 232 exclusion process in Supplements No. 1 (for steel exclusion requests) and 2 (for aluminum exclusion requests) to Part 705. The public will have an opportunity to submit comments on the new portal once the rule is published. As much as possible, the Department of Commerce seeks input from the public on the new Commerce 232 portal prior to it going live, and believes allowing parties that will use the new portal to test it and provide feedback to the development team prior to implementation will be beneficial to both the Department and the public users of the system.

Location for public testing. The public testing will occur in Washington, DC. See the **ADDRESSES** section for the physical address. There will be no remote testing available, so parties who wish to participate must attend the public testing in person.

Dates and times. The public testing will occur on December 6 and 7, 2018. Each public testing day will be broken into a morning session from 9:00 a.m. to 12:00 p.m. and an afternoon session from 1:00 p.m. to 4:00 p.m. Each party will be allowed to test the system for one hour and testing during each window will be limited to three parties at a time. For example, during the 10:00 a.m.–11:00 a.m. window, up to three parties can test the system at the same time.

Facilities and items to bring. The public testing will be done on government provided computers. Parties selected to participate are encouraged to bring examples of past exclusions, objections to exclusions, rebuttals, or surrebuttals they may have submitted or intend to submit in the near future to use in the testing environment. However, this is not required in order to participate in the public testing.

Foreign persons are not eligible to participate in the testing. People selected to participate in the testing of the Commerce 232 portal will be limited to citizens of the United States, lawful permanent residents of the United States, or any other protected individuals as defined by 8 U.S.C. 1324b(a)(3).

Costs to participate. There is no fee to participate in the public testing and participants will not be compensated for their time. In addition, participants will be responsible for all travel-related costs to attend the public testing.

Limit on number of participants. The public testing will be limited to thirty-six people because of the size limitations of the testing room and to provide sufficient opportunities for the development team to interact with those testing the Commerce 232 portal and providing feedback. Organizations may request more than one person from their organization to attend the public testing, but such requests will only be accommodated if there is space available.

Procedures To Request Participation in the Public Testing

Email requesting approval. Parties who wish to attend the public testing must send an email to *Commerce232portal@bis.doc.gov* to request approval to participate. Anyone wishing to attend this public testing must submit the email request no later than 5:00 p.m. (EST), November 29, 2018. The subject line of the email should be ''Request to attend public testing of Commerce 232 portal.''

Information to include in email request: The following information must be included in the text of the email: (1) Full name of the person that wishes to attend the public testing and a telephone number and email for this person; (2) name of the person's organization, or state ''individual'' if not affiliated with an organization; (3) if applicable, identify the number of employees in the organization and the type of organization, *e.g.,* manufacturer or distributor; (4) indicate whether the organization or individual has submitted any exclusions, objections to exclusions, rebuttals, or surrebuttals either for their own organization or on behalf of another organization; (5) if applicable, provide an estimate for the number of each type of 232 submission, including specifying whether the submissions were for steel and/or aluminum, (6) if applicable, identify any special accommodations that may be needed (see below under Special Accommodations); and (7) identify any other factors that you believe make you a good candidate to participate in the public testing of the Commerce 232 portal.

Selection Process

The Department of Commerce will accommodate as many parties as possible, space permitting. If thirty-six or fewer people submit requests to participate, the Department will likely approve all requesters, unless there is some reason why a requester may not be suitable. If more than thirty-six people request to participate, the Department will put greater weight on those that have submitted 232 submissions and will seek to have as representative a sample of public testers as possible (*e.g.,* small and mid-size enterprises, as well as large organizations, and those from the steel and aluminum industries). If there are two equally situated individuals or organizations, the Department will generally use the date of the request to determine the organization or individual to be approved, favoring the requester whose request was submitted earlier.

Each person selected to participate in the public testing will be notified by the Department of Commerce no later than 5:00 p.m. Eastern Standard Time on Friday, November 30, 2018.

Procedures for Attending the Public Testing

Visitor Access Requirement: For participants attending the training, please note that federal agencies can only accept a state-issued driver's license or identification card for access to federal facilities if such license or identification card is issued by a state that is compliant with the REAL ID Act of 2005 (Pub. L. 109–13), or by a state that has an extension for REAL ID compliance. The main entrance of the Department of Commerce is on 14th Street, NW between Pennsylvania Avenue and Constitution Avenue, across from the Ronald Reagan Building. Upon entering the building, please go through security and check in at the guard's desk. BIS and ITA staff will meet and escort visitors to the public testing room. Admittance to the room for the public testing will be available beginning at 8:30 a.m. (EST) on December 6 and 7, 2018 and the public testing will start promptly at 9:00 a.m. (EST) on December 6 and 7, 2018.

Acknowledgement for Participation in Testing Environment: Because the individuals and organizations selected to participate in the public testing of the Commerce 232 portal will be participating in a testing environment,

all selected participants on the first day of the testing will be required to acknowledge that their suggestions and comments may not be incorporated into the final version for technical or other reasons.

Special Accommodations

This public testing is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be received by the Department of Commerce no later than November 29, 2018 and should be included in the email requesting participation in the public testing referenced above.

Dated: November 20, 2018.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2018–25680 Filed 11–23–18; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Denying Export Privileges

In the Matter of: Gregory Allen Justice, Inmate Number: 73792–112, FCI Safford, P.O. Box 9000, Safford, AZ 85548.

On September 19, 2017, in the U.S. District Court for the Central District of California, Gregory Allen Justice (''Justice'') was convicted of violating Section 38 of the Arms Export Control Act (22 U.S.C. 2778 (2012)) (''AECA''), among other crimes. Justice was convicted of violating Section 38 of the AECA by knowingly and willfully attempting to export, cause others to export, and aid and abet the export to Russia, for the intended benefit of the Russian Government, of defense articles designated on the United States Munitions List (''USML''), without the required U.S. Department of State licenses. Justice, an engineer who worked for a defense contractor, knowingly and willfully sold and provided USML-controlled technical data relating to U.S. military satellite programs to a person he believed to be an agent of a Russian intelligence service, but who was in fact an undercover Federal Bureau of Investigation employee. Justice was sentenced to 60 months in prison, three years of supervised release, and a $200 special assessment.

The Export Administration Regulations (''EAR'' or ''Regulations'') are administered and enforced by the U.S. Department of Commerce's Bureau of Industry and Security (''BIS'').[1] Section 766.25 of the Regulations provides, in pertinent part, that the ''Director of [BIS's] Office of Exporter Services, in consultation with the Director of [BIS's] Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of . . . section 38 of the Arms Export Control Act (22 U.S.C. 2778).'' 15 CFR 766.25(a). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d).[1] In addition, pursuant to Section 750.8 of the Regulations, BIS's Office of Exporter Services may revoke any BIS-issued licenses in which the person had an interest at the time of his/her conviction.[2]

BIS has received notice of Justice's conviction for violating Section 38 of the AECA, and has provided notice and an opportunity for Justice to make a written submission to BIS, as provided in Section 766.25 of the Regulations. BIS has not received a submission from Justice.

Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Justice's export privileges under the Regulations for a period of 10 years from the date of Justice's conviction. I have also decided to revoke all BIS-issued licenses in which Justice had an interest at the time of his conviction.

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2018). The Regulations originally issued under the Export Administration Act of 1979, as amended, 50 U.S.C. 4601–4623 (Supp. III 2015) (''EAA''), which lapsed on August 21, 2001. The President, through Executive Order 13,222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 8, 2018 (83 FR 39,871 (Aug. 13, 2018)), continued the Regulations in full force and effect under the International Emergency Economic Powers Act, 50 U.S.C. 1701, *et seq.* (2012) (''IEEPA''). On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, Title XVII, Subtitle B of Pub. L. No. 115–232, 132 Stat. 2208 (''ECRA''). While Section 1766 of ECRA repeals the provisions of the EAA (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA's date of enactment (August 13, 2018), shall continue in effect until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA.

[1] *See also* Section 11(h) of the EAA, 50 U.S.C. 4610(h) (Supp. III 2015); Sections 1760(e) and 1768 of ECRA, Title XVII, Subtitle B of Pub. L. No. 115–232, 132 Stat. 2208, 2225 and 2233 (Aug. 13, 2018); and note 1, *supra.*

[2] *See* note 2, *supra.*

Accordingly, it is hereby ORDERED:

First, from the date of this Order until September 19, 2027, Gregory Allen Justice, with a last known address of Inmate Number: 73792–112, FCI Safford, P.O. Box 9000, Safford, AZ 85548, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the

United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Justice by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with Part 756 of the Regulations, Justice may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Justice and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until September 19, 2027.

Issued this 15th day of November, 2018.

Karen H. Nies-Vogel,

Director, Office of Exporter Services.

[FR Doc. 2018–25619 Filed 11–23–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–068]

Forged Steel Fittings From the People's Republic of China: Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC), Commerce is issuing a countervailing duty order on forged steel fittings from the People's Republic of China (China).

DATES: Applicable November 26, 2018.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Janae Martin, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–1766 or (202) 482–0238, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 5, 2018, Commerce published its final determination in the countervailing duty investigation of forged steel fittings from China.[1] On November 19, 2018, the ITC notified Commerce of its final determination, pursuant to section 705(d) of the Act, that an industry in the United States is materially injured within the meaning of section 705(b)(1)(A)(i) of the Act, by reason of subsidized imports of forged steel fittings from China.[2]

Scope of the Order [3]

The products covered by this order are forged steel fittings from China. For a complete description of the scope of this order, see the Appendix to this notice.

Countervailing Duty Order

On November 19, 2018, in accordance with section 705(d) of the Act, the ITC notified Commerce of its final determination in this investigation, in which it found that imports of forged steel fittings are materially injuring a U.S. industry.[4] Therefore, in accordance with section 705(c)(2) of the Act, we are publishing this countervailing duty order.

As a result of the ITC's final determination, in accordance with section 706(a) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, countervailing duties on unliquidated entries of subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after March 14, 2018, the date on which Commerce published its preliminary countervailing duty determination in the **Federal Register**,[5] and before July 11, 2018, the effective date on which Commerce instructed CBP to discontinue the suspension of liquidation in accordance with section 703(d) of the Act. Section 703(d) of the Act states that the suspension of liquidation pursuant to a preliminary determination may not remain in effect for more than four months. Therefore, entries of subject merchandise from China made on or after July 11, 2018, and prior to the date of publication of the ITC's final determination in the **Federal Register** are not liable for the assessment of countervailing duties due to Commerce's discontinuation of the suspension of liquidation.

Suspension of Liquidation

In accordance with section 706 of the Act, Commerce will direct CBP to reinstitute the suspension of liquidation of subject merchandise from China, effective the date of publication of the ITC's notice of final determination in the **Federal Register**, and to assess, upon further instruction by Commerce pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of the subject merchandise in an amount based on the net countervailable subsidy rates for the subject merchandise. On or after the date of publication of the ITC's final injury determination in the **Federal Register**, we will instruct CBP to require, at the same time as importers would normally deposit estimated duties on this merchandise, cash deposits for each entry of subject merchandise equal to the rates noted below. These instructions suspending liquidation will remain in effect until further notice. The all others rate applies to all producers or exporters not specifically listed, as appropriate.

Company	Subsidy rate (percent)
Both-Well (Taizhou) Steel Fittings, Co., Ltd	13.41
All-Others	13.41

Notifications to Interested Parties

This notice constitutes the countervailing duty order with respect to forged steel fittings from China pursuant to section 706(a) of the Act. Interested parties can find a list of countervailing duty orders currently in

[1] *See Forged Steel Fittings from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 83 FR 50342 (October 5, 2018) (*Final Determination*).

[2] *See* ITC Notification Letter to the Deputy Assistant Secretary for Enforcement and Compliance, referencing ITC Investigation Nos. 701–TA–589 and 731–TA–1394–95, dated November 19, 2018 (ITC Notification).

[3] *See* Memorandum to the File, ''Placing Carbon Steel Butt Weld Pipe Fitting Scope Ruling on the Record, dated September 19, 2018.

[4] *See* ITC Notification; *see also Forged Steel Fittings from China and Italy* (Inv. Nos. 701–TA–589 and 731–TA–1394–1395 (Final), USITC Publication 4850, November 2018).

[5] *See Forged Steel Fittings from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination,* 83 FR 11170 (March 14, 2018).

effect at *http://enforcement.trade.gov/stats/iastatsl.html.*

This order is issued and published in accordance with section 706(a) of the Act and 19 CFR 351.211(b).

Dated: November 20, 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 Order

The merchandise covered by this order is carbon and alloy forged steel fittings, whether unfinished (commonly known as blanks or rough forgings) or finished. Such fittings are made in a variety of shapes including, but not limited to, elbows, tees, crosses, laterals, couplings, reducers, caps, plugs, bushings, unions, and outlets. Forged steel fittings are covered regardless of end finish, whether threaded, socket-weld or other end connections.

While these fittings are generally manufactured to specifications ASME B16.11, MSS SP–79, MSS SP–83, MSS SP–97, ASTM A105, ASTM A350, and ASTM A182, the scope is not limited to fittings made to these specifications.

The term forged is an industry term used to describe a class of products included in applicable standards and does not reference an exclusive manufacturing process. Forged steel fittings are not manufactured from casting. Pursuant to the applicable specifications, subject fittings may also be machined from bar stock or machined from seamless pipe and tube.

All types of fittings are included in the scope regardless of nominal pipe size (which may or may not be expressed in inches of nominal pipe size), pressure rating (usually, but not necessarily expressed in pounds of pressure/PSI, *e.g.,* 2,000 or 2M; 3,000 or 3M; 6,000 or 6M; 9,000 or 9M), wall thickness, and whether or not heat treated.

Excluded from this scope are all fittings entirely made of stainless steel. Also excluded are flanges, butt weld fittings, butt weld outlets, nipples, and all fittings that have a maximum pressure rating of 300 pounds of pressure/PSI or less.

Also excluded are fittings certified or made to the following standards, so long as the fittings are not also manufactured to the specifications of ASME B16.11, MSS SP–79, MSS SP–83, MSS SP–97, ASTM A105, ASTM A350, and ASTM A182:

- American Petroleum Institute (API) API 5CT, API 5L, or API 11B
- Society of Automotive Engineering (SAE) SAE J476, SAE J514, SAE J516, SAE J517, SAE J518, SAE J1026, SAE J1231, SAE J1453, SAE J1926, J2044 or SAE AS 35411
- Underwriter's Laboratories (UL) certified electrical conduit fittings
- ASTM A153, A536, A576, or A865
- Casing Conductor Connectors 16–42 inches in diameter made to proprietary specifications
- Military Specification (MIL) MIL–C–4109F and MIL–F–3541
- International Organization for Standardization (ISO) ISO6150–B

To be excluded from the scope, products must have the appropriate standard or pressure markings and/or accompanied by documentation showing product compliance to the applicable standard or pressure, *e.g.,* ''API 5CT'' mark and/or a mill certification report.

Subject carbon and alloy forged steel fittings are normally entered under Harmonized Tariff Schedule of the United States (HTSUS) 7307.99.1000, 7307.99.3000, 7307.99.5045, and 7307.99.5060. They also may be entered under HTSUS 7307.92.3010, 7307.92.3030, 7307.92.9000, and 7326.19.0010. The HTSUS subheadings and specifications are provided for convenience and customs purposes; the written description of the scope is dispositive.

[FR Doc. 2018–25704 Filed 11–23–18; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–839, A–570–067]

Forged Steel Fittings From Italy and the People's Republic of China: Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC), Commerce is issuing antidumping duty orders on forged steel fittings from Italy and the People's Republic of China (China).

DATES: Applicable November 26, 2018.

FOR FURTHER INFORMATION CONTACT: Michael Bowen at (202) 482–0768 (Italy) or Kate Johnson at (202) 482–4929 (China), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.210(c), on October 5, 2018, Commerce published its final determinations in the less-than-fair-value (LTFV) investigations of forged steel fittings from Italy and China.[1] On November 19, 2018, the ITC notified Commerce of its final determinations, pursuant to section 735(d) of the Act, that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of LTFV imports of forged steel fittings from Italy and China.[2]

Scope of the Orders [3]

The products covered by these orders are forged steel fittings from Italy and China. For a complete description of the scope of these orders, see the Appendix to this notice.

Antidumping Duty Orders

On November 19, 2018, in accordance with section 735(d) of the Act, the ITC notified Commerce of its final determinations in these investigations, in which it found that an industry in the United States is materially injured by reason of imports of forged steel fittings from Italy and China.[4] Therefore, in accordance with section 735(c)(2) of the Act, Commerce is issuing these antidumping duty orders. Because the ITC determined that imports of forged steel fittings from Italy and China are materially injuring a U.S. industry, unliquidated entries of such merchandise from Italy and China, entered or withdrawn from warehouse for consumption, are subject to the assessment of antidumping duties.

Therefore, in accordance with section 736(a)(1) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise, for all relevant entries of forged steel fittings from Italy and China. With the exception of entries occurring after the expiration of the provisional measures period and before publication of the ITC's final affirmative injury determinations, as further described below, antidumping duties will be assessed on unliquidated entries of forged steel fittings from Italy and China entered, or withdrawn from warehouse,

[1] *See Forged Steel Fittings from Italy: Final Determination of Sales at Less Than Fair Value,* 83 FR 50345 (October 5, 2018); and *Forged Steel Fittings from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 83 FR 50339 (October 5, 2018).

[2] *See* ITC Notification Letter to the Deputy Assistant Secretary for Enforcement and Compliance, referencing ITC Investigation Nos. 701–TA–589 and 731–TA–1394–95, dated November 19, 2018 (ITC Notification).

[3] *See* Memorandum, ''Placing Carbon Steel Butt Weld Pipe Fitting Scope Ruling on the Record,'' dated September 19, 2018.

[4] *See* ITC Notification; *see also Forged Steel Fittings from China and Italy* (Inv. Nos. 701–TA–589 and 731–TA–1394–1395 (Final), USITC Publication 4850, November 2018).

for consumption on or after May 17, 2018, the date of publication of the preliminary determinations.[5]

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, Commerce will instruct CBP to continue to suspend liquidation on all relevant entries of forged steel fittings from Italy and China. These instructions suspending liquidation will remain in effect until further notice.

Commerce will also instruct CBP to require cash deposits equal to the estimated weighted-average dumping margins indicated in the tables below. Accordingly, effective on the date of publication in the **Federal Register** of the notice of the ITC's final affirmative injury determinations, CBP will require, at the same time as importers would normally deposit estimated duties on subject merchandise, a cash deposit equal to the estimated weighted-average dumping margins listed in the tables below.[6] For forged steel fittings from Italy, the all-others rate applies to all producers or exporters not specifically listed. For forged steel fittings from China, the China-wide entity rate applies to all Chinese exporter-producer combinations not specifically listed.

Provisional Measures

Section 733(d) of the Act states that suspension of liquidation pursuant to an affirmative preliminary determination may not remain in effect for more than four months, except where exporters representing a significant proportion of exports of the subject merchandise request that Commerce extend the four-month period to no more than six months. At the request of exporters that account for a significant proportion of forged steel fittings from Italy and China, Commerce extended the four-month period to six months in each of these investigations. Commerce published the preliminary determinations in these investigations on May 17, 2018.[7] The extended provisional measures period, beginning on the date of publication of the preliminary determinations, ended on November 12, 2018. Therefore, in accordance with section 733(d) of the Act and our practice,[8] Commerce will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of forged steel fittings from Italy and China entered, or withdrawn from warehouse, for consumption after November 12, 2018, the final day on which the provisional measures were in effect, until and through the day preceding the date of publication of the ITC's final affirmative injury determinations in the **Federal Register**. Suspension of liquidation and the collection of cash deposits will resume on the date of publication of the ITC's final determinations in the **Federal Register**.

Estimated Weighted-Average Dumping Margins

The estimated weighted-average antidumping duty margin percentages are as follows:

Italy

Exporter/producer	Estimated weighted-average dumping margin (percent)
M.E.G.A. S.p.A	80.20
I.M.L. Industria Meccanica Ligure S.p.A	80.20
All-Others	49.43

China

Exporter	Producer	Estimated weighted-average dumping margin (percent)
Both-Well (Taizhou) Steel Fittings Co., Ltd	Both-Well (Taizhou) Steel Fittings Co., Ltd	8.00
Dalian Guangming Pipe Fittings Co., Ltd	Yancheng Jiuwei Pipe Fittings Co., Ltd	8.00
Dalian Guangming Pipe Fittings Co., Ltd	Yancheng Manda Pipe Industry Co., Ltd	8.00
Dalian Guangming Pipe Fittings Co., Ltd	Yancheng Haohui Pipe Fittings Co., Ltd	8.00
Dalian Guangming Pipe Fittings Co., Ltd	Jiangsu Haida Pipe Fittings Group Co., Ltd	8.00
Eaton Hydraulics (Ningbo) Co., Ltd	Eaton Hydraulics (Ningbo) Co., Ltd	8.00
Eaton Hydraulics (Luzhou) Co., Ltd	Eaton Hydraulics (Luzhou) Co., Ltd	8.00
Eaton Hydraulics (Luzhou) Co., Ltd	Luzhou City Chengrun Mechanics Co., Ltd	8.00
Eaton Hydraulics (Luzhou) Co., Ltd	Eaton Hydraulics (Ningbo) Co., Ltd	8.00
Jiangsu Forged Pipe Fittings Co., Ltd	Jiangsu Forged Pipe Fittings Co., Ltd	8.00
Jinan Mech Piping Technology Co., Ltd	Jinan Mech Piping Technology Co., Ltd	8.00
Jining Dingguan Precision Parts Manufacturing Co., Ltd	Jining Dingguan Precision Parts Manufacturing Co., Ltd	8.00
Lianfa Stainless Steel Pipes & Valves (Qingyun) Co., Ltd	Lianfa Stainless Steel Pipes & Valves (Qingyun) Co., Ltd	8.00
Ningbo Long Teng Metal Manufacturing Co., Ltd	Ningbo Long Teng Metal Manufacturing Co., Ltd	8.00
Ningbo Save Technology Co., Ltd	Ningbo Save Technology Co., Ltd	8.00
Q.C. Witness International Co., Ltd	Ningbo HongTe Industrial Co., Ltd	8.00
Q.C. Witness International Co., Ltd	Cixi Baicheng Hardware Tools, Ltd	8.00
Qingdao Bestflow Industrial Co., Ltd	Yancheng Boyue Tube Co., Ltd	8.00
Xin Yi International Trade Co., Limited	Yancheng Jiuwei Pipe Fittings Co., Ltd	8.00
Xin Yi International Trade Co., Limited	Yancheng Manda Pipe Industry Co., Ltd	8.00
Xin Yi International Trade Co., Limited	Yancheng Haohui Pipe Fittings Co., Ltd	8.00
Xin Yi International Trade Co., Limited	Jiangsu Haida Pipe Fittings Group Co., Ltd	8.00
Xin Yi International Trade Co., Limited	Yingkou Guangming Pipeline Industry Co., Ltd	8.00
Xin Yi International Trade Co., Limited	Shanghai Lon Au Stainless Steel Materials Co., Ltd	8.00

[5] *See Forged Steel Fittings from Italy: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures,* 83 FR 22954 (May 17, 2018) (*Italy Preliminary Determination*); and *Forged Steel Fittings from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures,* 83 FR 22948 (May 17, 2018) (*China Preliminary Determination*).

[6] *See* section 736(a)(3) of the Act.

[7] *See Italy Preliminary Determination* and *China Preliminary Determination.*

[8] *See Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan, and Antidumping Duty Orders,* 81 FR 48390, 48392 (July 25, 2016).

Exporter	Producer	Estimated weighted-average dumping margin (percent)
Yingkou Guangming Pipeline Industry Co., Ltd	Yingkou Guangming Pipeline Industry Co., Ltd	8.00
Yingkou Guangming Pipeline Industry Co., Ltd	Yancheng Jiuwei Pipe Fittings Co., Ltd	8.00
Yingkou Guangming Pipeline Industry Co., Ltd	Yancheng Manda Pipe Industry Co., Ltd	8.00
Yingkou Guangming Pipeline Industry Co., Ltd	Yancheng Haohui Pipe Fittings Co., Ltd	8.00
Yingkou Guangming Pipeline Industry Co., Ltd	Jiangsu Haida Pipe Fittings Group Co., Ltd	8.00
Yuyao Wanlei Pipe Fitting Manufacturing Co., Ltd	Yuyao Wanlei Pipe Fitting Manufacturing Co., Ltd	8.00
China-Wide Entity [9]		142.72

This notice constitutes the antidumping duty orders with respect to forged steel fittings from Italy and China, pursuant to section 736(a) of the Act. Interested parties can find a list of antidumping duty orders currently in effect at *http://enforcement.trade.gov/stats/iastatsl.html.*

These orders are published in accordance with section 736(a) of the Act and 19 CFR 351.211(b).

Dated: November 20, 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 Orders

The merchandise covered by these orders is carbon and alloy forged steel fittings, whether unfinished (commonly known as blanks or rough forgings) or finished. Such fittings are made in a variety of shapes including, but not limited to, elbows, tees, crosses, laterals, couplings, reducers, caps, plugs, bushings, unions, and outlets. Forged steel fittings are covered regardless of end finish, whether threaded, socket-weld or other end connections.

While these fittings are generally manufactured to specifications ASME B16.11, MSS SP- 79, MSS SP–83, MSS SP–97, ASTM A105, ASTM A350 and ASTM A182, the scope is not limited to fittings made to these specifications.

The term forged is an industry term used to describe a class of products included in applicable standards, and does not reference an exclusive manufacturing process. Forged steel fittings are not manufactured from casting. Pursuant to the applicable specifications, subject fittings may also be machined from bar stock or machined from seamless pipe and tube.

All types of fittings are included in the scope regardless of nominal pipe size (which may or may not be expressed in inches of nominal pipe size), pressure rating (usually, but not necessarily expressed in pounds of pressure/PSI, *e.g.,* 2,000 or 2M; 3,000 or 3M; 6,000 or 6M; 9,000 or 9M), wall thickness, and whether or not heat treated.

Excluded from this scope are all fittings entirely made of stainless steel. Also excluded are flanges, butt weld fittings, butt weld outlets, nipples, and all fittings that have a maximum pressure rating of 300 pounds of pressure/PSI or less.

Also excluded are fittings certified or made to the following standards, so long as the fittings are not also manufactured to the specifications of ASME B16.11, MSS SP–79, MSS SP–83, MSS SP–97, ASTM A105, ASTM A350 and ASTM A182:

- American Petroleum Institute (API) 5CT, API 5L, or API 11B
- Society of Automotive Engineering (SAE) J476, SAE J514, SAE J516, SAE J517, SAE J518, SAE J1026, SAE J1231, SAE J1453, SAE J1926, J2044 or SAE AS 35411
- Underwriter's Laboratories (UL) certified electrical conduit fittings
- ASTM A153, A536, A576, or A865
- Casing Conductor Connectors 16–42 inches in diameter made to proprietary specifications
- Military Specification (MIL) MIL–C–4109F and MIL–F–3541
- International Organization for Standardization (ISO) ISO6150–B

To be excluded from the scope, products must have the appropriate standard or pressure markings and/or be accompanied by documentation showing product compliance to the applicable standard or pressure, *e.g.,* ''API 5CT'' mark and/or a mill certification report.

Subject carbon and alloy forged steel fittings are normally entered under Harmonized Tariff Schedule of the United States (HTSUS) 7307.99.1000, 7307.99.3000, 7307.99.5045, and 7307.99.5060. They also may be entered under HTSUS 7307.92.3010, 7307.92.3030, 7307.92.9000, and 7326.19.0010. The HTSUS subheadings and specifications are provided for convenience and customs purposes; the written description of the scope is dispositive.

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[9] The China-wide entity includes: (1) Beijing Better Products International Ltd.; (2) Dalian Newshow Pipeline Industry Co.; (3) G&T Industry Holding Ltd.; (4) Shanxi Baolongda Forging Company Ltd.; (5) Shaanxi Fenry Flanges and Fittings Co., Ltd.; (6) Shenzhen Front Valve Co., Ltd.; (7) Qingdao Eathu Casting and Forging Co., Ltd.; (8) Gaoyou Huaxing Petroleum Pipe Manufacture Co., Ltd.; and (9) the single entity comprising Jiangsu Haida Pipe Fittings Group Company Ltd., its affiliated producer Haida Pipe Co., Ltd., and its affiliated reseller Yancheng L&W International Co., Ltd.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–818]

Certain Steel Nails From the Socialist Republic of Vietnam: Rescission of Antidumping Duty Administrative Review; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding its administrative review of the antidumping duty order on certain steel nails from the Socialist Republic of Vietnam (Vietnam) for the period of review (POR) July 1, 2017, through June 30, 2018.

DATES: Applicable November 26, 2018.

FOR FURTHER INFORMATION CONTACT: Mark Flessner, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6312.

SUPPLEMENTARY INFORMATION:

Background

On July 3, 2018, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order [1] on certain steel nails from Vietnam for the POR.[2] Commerce received a timely

[1] *See Certain Steel Nails from the Republic of Korea, Malaysia, the Sultinate of Oman, Taiwan, and the Socialist Republic of Vietnam: Antidumping Duty Orders,* 80 FR 39994 (July 13, 2015).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 83 FR 31121 (July 3, 2018).

request from Mid Continent Steel & Wire, Inc. (the petitioner), in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b), to conduct an administrative review of this antidumping duty order.[3] No other party requested an administrative review.

On September 10, 2018, Commerce published in the **Federal Register** a notice of initiation with respect to 12 companies: (1) Airlift Trans Oceanic PVT LTD.; (2) CS Song Thuy; (3) Jinhai Hardware Co., Ltd.; (4) Le Phuong Trading Import Export; (5) Long Nguyen Trading & Service Co., Ltd.; (6) Orient Express Container Co., Ltd.; (7) Region Industries Co., Ltd.; (8) Rich State Inc.; (9) Sam Hwan Vina Co., Ltd.; (10) Thai Bao Im-Ex Corporation Company; (11) Truong Vinh Ltd.; and (12) United Nail Products Co. Ltd.[4] On November 5, 2018, the petitioner timely withdrew its request for an administrative review for all 12 companies.[5]

Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation of the requested review. The petitioner withdrew its request for review for all companies by the 90-day deadline, and no other party requested an administrative review of this order. Therefore, we are rescinding the administrative review of the antidumping duty order on certain steel nails from the Vietnam covering the period July 1, 2017, through June 30, 2018, in its entirety.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice in the **Federal Register**.

[3] *See* Petitioner Letter re: Certain Steel Nails from Vietnam: Request for Administrative Reviews, dated July 31, 2018.

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 45596 (September 10, 2018).

[5] *See* Petitioner Letter re: Certain Steel Nails from Vietnam: Withdrawal of Request for Administrative Reviews, dated November 5, 2018.

Notification to Importers

This notice serves as the only reminder to importers of their responsibility, under 19 CFR 351.402(f)(2), to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement may result in the presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Orders

This notice serves as the only reminder to parties subject to 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 written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is published in accordance with section 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: November 19, 2018.

James Maeder,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG560

International Affairs; U.S. Fishing Opportunities in the Northwest Atlantic Fisheries Organization Regulatory Area

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

ACTION: Notification of U.S. fishing opportunities.

SUMMARY: We are announcing 2019 fishing opportunities in the Northwest Atlantic Fisheries Organization (NAFO) Regulatory Area. This action is necessary to make fishing privileges in the NAFO Regulatory Area available on an equitable basis to the greatest extent possible. The intended effect of this notice is to alert U.S. fishing vessels of the NAFO fishing opportunities, to relay the available quotas available to U.S. participants, and to outline the process and requirements for vessels to apply to participate in the 2019 NAFO fishery.

DATES: Effective January 1, 2019, through December 31, 2019. Expressions of interest regarding fishing opportunities in NAFO will be accepted through December 11, 2018.

ADDRESSES: Expressions of interest regarding U.S. fishing opportunities in NAFO should be made in writing to Michael Pentony, U.S. Commissioner to NAFO, NMFS Greater Atlantic Regional Fisheries Office at 55 Great Republic Drive, Gloucester, MA 01930 (phone: 978–281–9315, email: *Michael.Pentony@noaa.gov*).

Information relating to chartering vessels of another NAFO Contracting Party, transferring NAFO fishing opportunities to or from another NAFO Contracting Party, or U.S. participation in NAFO is available from Patrick E. Moran in the NMFS Office of International Affairs and Seafood Inspection at 1315 East-West Highway, Silver Spring, MD 20910 (phone: 301–427–8370, fax: 301–713–2313, email: *Pat.Moran@noaa.gov*).

Additional information about NAFO fishing opportunities, NAFO Conservation and Enforcement Measures (CEM), and the High Seas Fishing Compliance Act (HSFCA) Permit required for NAFO participation is available from Shannah Jaburek, in the NMFS Greater Atlantic Regional Fisheries Office at 55 Great Republic Drive, Gloucester, MA 01930 (phone: 978–282–8456, fax: 978–281–9135, email: *Shannah.Jaburek@noaa.gov)* and online from NAFO at *https://www.nafo.int.*

FOR FURTHER INFORMATION CONTACT: Shannah Jaburek, 978–282–8456.

SUPPLEMENTARY INFORMATION:

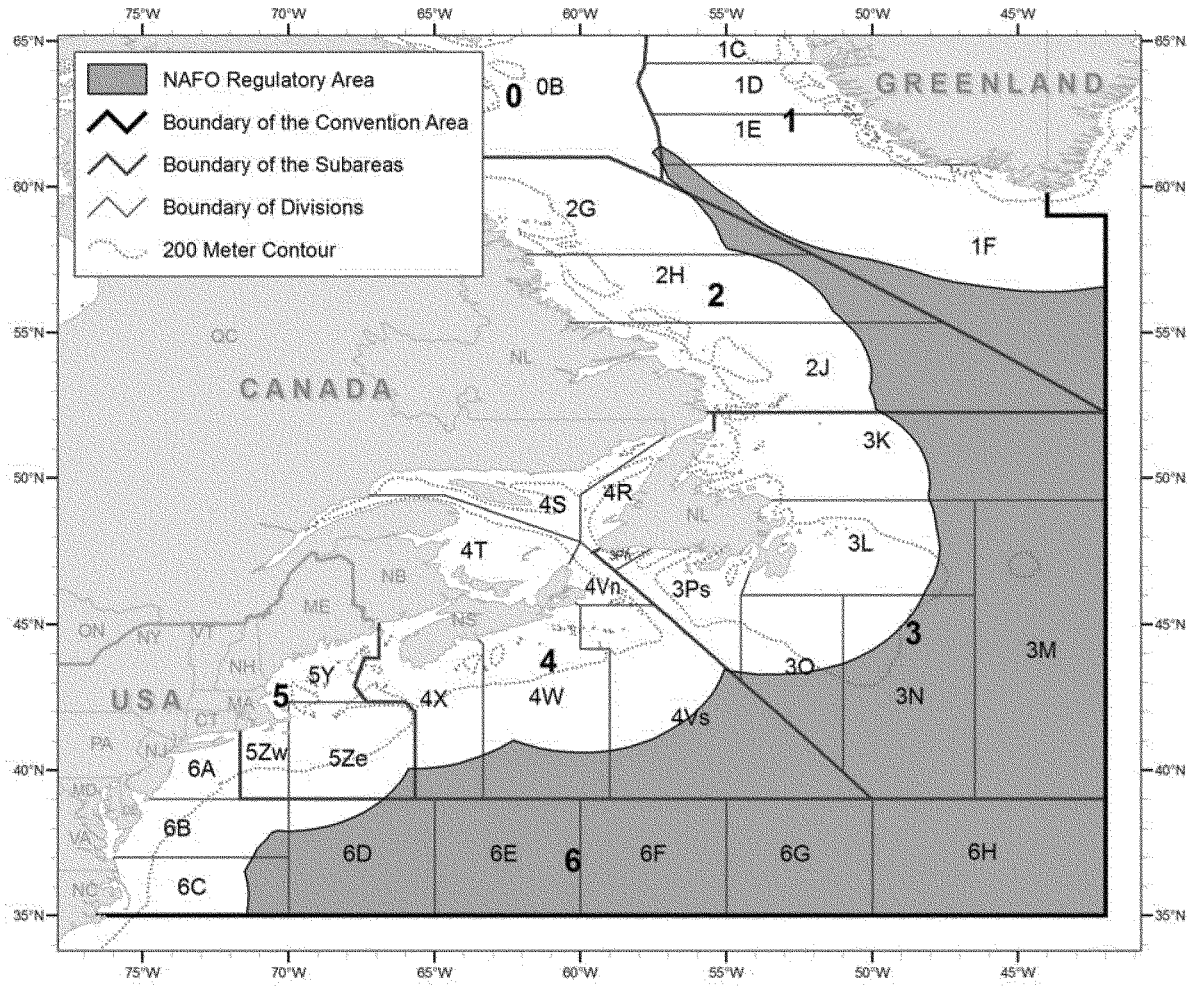
General NAFO Background

The United States is a Contracting Party to the Northwest Atlantic Fisheries Organization or NAFO. NAFO is an intergovernmental fisheries science and management body whose convention applies to most fishery resources in international waters of the Northwest Atlantic, except salmon, tunas/marlins, whales, and sedentary species such as shellfish. Currently, NAFO has 12 contracting parties from North America, Europe, Asia, and the Caribbean. NAFO's Commission is responsible for the management and conservation of the fishery resources in the Regulatory Area (waters outside the

Exclusive Economic Zones (EEZ)).

Figure 1 shows the NAFO Regulatory Area.

Figure 1. NAFO Convention Area including Statistical Subareas, Divisions, and Subdivisions.



As a Contracting Party within NAFO, the United States may be allocated catch quotas or effort allocations for certain species in specific areas within the NAFO Regulatory Area and may participate in fisheries for other species for which we have not received a specific quota. For most stocks for which the United States does not receive a specific allocation, an open allocation, known as the ''Others'' allocation under the Convention, is shared access between all NAFO Contracting Parties.

Additional information on NAFO can be found online at *https://www.nafo.int/About-us.* The 2019 NAFO Conservation and Enforcement Measures (CEM) that specify the fishery regulations, Total Allowable Catches (TAC or ''quotas'') and other information about the fishery program will be available online at: *https://www.nafo.int/Fisheries/Conservation* when completed. Information from the 2018 Annual Meeting of NAFO, at which changes to the TACs and other management measures is available on the NAFO website.

This notice announces the fishing opportunities available to U.S. vessels in NAFO regulatory waters, including specific 2019 stocks for which the United States has an allocation under NAFO, and fishing opportunities under the 'Other' NAFO allocations. This notice also outlines the application process and other requirements for U.S. vessels that wish to participate in the 2019 NAFO fisheries.

NAFO Fishing Opportunities Available to U.S. Fishing Vessels

The principal species managed by NAFO are Atlantic cod, yellowtail and witch flounders, Acadian redfish, American plaice, Greenland halibut, white hake, capelin, shrimp, skates, and *Illex* squid. NAFO specifies conservation measures for fisheries on these species occurring in its Regulatory Area, including TACs for these managed species that are allocated among NAFO Contracting Parties. The United States received quota allocations at the 2018 NAFO Annual Meeting for two stocks to be fished during 2019. The species, location by NAFO subarea, and allocation (in metric tons (mt)) of these 2019 U.S. fishing opportunities are as follows: Redfish in Division 3M, 69 mt; and *Illex* Squid in Subareas 3 & 4, 453

mt. In addition, the United States expects a transfer of at least 1,000 mt of NAFO Division 3LNO yellowtail flounder from Canada's 2019 quota allocation consistent with the continuation of a 2008 bilateral arrangement between the two countries.

The TACs that may be available to U.S. vessels for stocks where the United States has not been allocated quota (*i.e.,* the ''Others'' allocation in Annex I.A of the CEM) are as follows:

TABLE 1—2019 NAFO ''OTHERS'' ALLOCATIONS

Species	NAFO division	Others quota
Cod	3M	70
Redfish	3LN	109
	3M	124
	3O	100
Yellowtail Flounder	3LNO	85
Witch Flounder	3NO	12
White Hake	3NO	59
Skates	3LNO	258
Illex squid	Squid 3_4 (Sub-Areas 3+4)	794

Note that the United States shares these allocations with other NAFO Contracting Parties, and access is on a first come, first served basis. Directed fishing is prohibited by NAFO when the ''Others'' quota for a particular stock has been fully harvested.

Additional directed quota for these and other stocks managed within the NAFO Regulatory Area could be made available to U.S. vessels through industry-initiated chartering arrangements or government-to-government transfers of quota from other NAFO Contracting Parties.

U.S. vessels participating in NAFO may also retain bycatch of NAFO managed species to the following maximum amounts as outlined in Article 6 of the CEM. The percentage, by weight, is calculated as a percent of each stock of the total catch of species listed in Annex I.A (*i.e.,* the NAFO managed stocks previously listed) retained onboard from the applicable division at the time of inspection, based on logbook information:

1. *Cod, Division 3M:* 1,250 kg or 5 percent, whichever is more;
2. *Witch Flounder, Division 3M:* 1,250 kg or 5 percent, whichever is more;
3. *Redfish, Division 3LN:* 1,250 kg or 5 percent, whichever is more;
4. *Cod, Division 3NO:* 1,000 kg or 4 percent, whichever is more;
5. *American plaice:* While conducting a directed fishery for yellowtail flounder in Divisions 3LNO—15 percent of American plaice; otherwise, 1,250 kg or 5 percent, whichever is greater; and
6. For all other Annex I.A stocks where the U.S. has no specific quota the bycatch limit is, 2,500 kg or 10 percent unless a ban on fishing applies or the quota for the stock has been fully utilized. If the fishery for the stock is closed or a retention ban applies, the permitted bycatch limit is 1,250 kg or 5 percent.

Opportunities to fish for species not listed above (*i.e.,* species listed in Annex I.A of the NAFO CEM and non-allocated on non-regulated species), but occurring within the NAFO Regulatory Area, may also be available. U.S. fishermen interested in fishing for these other species should contact the NMFS Greater Atlantic Regional Fisheries Office (see **ADDRESSES**) for additional information. Authorization to fish for such species will include permit-related conditions or restrictions, including but not limited to, minimum size requirements, bycatch-related measures, and catch limits. Any such conditions or restrictions will be designed to ensure the optimum utilization, long-term sustainability, and rational management and conservation of fishery resources in the NAFO Regulatory Area, consistent with the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries as well as the Amendment to the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries, which has been adopted by all NAFO Contracting Parties.

Applying for These Fishing Opportunities

Expressions of interest to fish for any or all of the 2019 U.S. fishing opportunities in NAFO described above will be considered from all U.S. fishing interests (*e.g.,* vessel owners, processors, agents, others). Applicants are urged to carefully review and thoroughly address the application requirements and selection criteria as detailed below. Expressions of interest should be directed in writing to Regional Administrator John Bullard (see **ADDRESSES**).

Information Required in an Application Letter

Expressions of interest should include a detailed description of anticipated fishing operations in 2019. Descriptions should include, at a minimum:

- Intended target species;
- Proposed dates of fishing operations;
- Vessel(s) to be used to harvest fish, including the name, registration, and home port of the intended harvesting vessel(s);
- The number of fishing personnel and their nationality involved in vessel operations;
- Intended landing port or ports; including for ports outside of the United States, whether or not the product will be shipped to the United States for processing;
- Processing facilities to be used;
- Target market for harvested fish; and,
- Evidence demonstrating the ability of the applicant to successfully prosecute fishing operations in the NAFO Regulatory Area, in accordance with NAFO management measures. This may include descriptions of previously successful NAFO or domestic fisheries participation.

Note that applicant U.S. vessels must possess or be eligible to receive a valid High Seas Fishing Compliance Act (HSFCA) permit. HSFCA permits are available from the NMFS Greater Atlantic Regional Fisheries Office. Information regarding other requirements for fishing in the NAFO Regulatory Area is detailed below and is also available from the NMFS Greater Atlantic Regional Fisheries Office (see **ADDRESSES**).

U.S. applicants wishing to harvest U.S. allocations using a vessel from another NAFO Contracting Party, or hoping to enter a chartering

arrangement with a vessel from another NAFO Contracting Party, should see below for details on U.S. and NAFO requirements for such activities. If you have further questions regarding what information is required in an expression of interest, please contact Patrick Moran (see **ADDRESSES**).

Criteria Used in Identifying Successful Applicants

Applicants demonstrating the greatest benefits to the United States through their intended operations will be most successful. Such benefits may include:

- The use of U.S vessels and crew to harvest fish in the NAFO Regulatory Area;
- Detailed, positive impacts on U.S. employment as a result of the fishing, transport, or processing operations;
- Use of U.S. processing facilities;
- Transport, marketing, and sales of product within the United States;
- Other ancillary, demonstrable benefits to U.S. businesses as a result of the fishing operation; and
- Documentation of the physical characteristics and economics of the fishery for future use by the U.S. fishing industry.

Other factors we may consider include but are not limited to: A documented history of successful fishing operations in NAFO or other similar fisheries; the history of compliance by the vessel with the NAFO CEM or other domestic and international regulatory requirements, including potential disqualification of an applicant with repeated compliance issues; and, for those applicants without NAFO or other international fishery history, a description of demonstrated harvest, processing, marketing, and regulatory compliance within domestic fisheries.

To ensure equitable access by U.S. fishing interests, we may provide additional guidance or procedures, or we may issue regulations designed to allocate fishing interests to one or more U.S. applicants from among qualified applicants. After reviewing all requests for allocations submitted, we may also decide not to grant any allocations if it is determined that no requests adequately meet the criteria described in this notice.

Notification of Selected Vessels in the 2019 NAFO Fisheries

We will provide written responses to all applicants notifying them of their application status and, as needed for successful applicants, allocation awards will be made as quickly as possible so that we may notify NAFO and take other necessary actions to facilitate operations in the regulatory area by U.S. fishing interests. Successful applicants will receive additional information from us on permit conditions and applicable regulations before starting 2019 fishing operations.

Mid-Season Allocation Adjustments

In the event that an approved U.S. entity does not, is not able to, or is not expected to fish an allocation, or part thereof, awarded to them, NMFS may reallocate to other approved U.S. entities. If requested, approved U.S. entities must provide updated fishing plans and/or schedules. A U.S. entity may not consolidate or transfer allocations without prior approval from NMFS.

Chartering a Vessel To Fish Available U.S. Allocations

Under the bilateral arrangement with Canada, the United States may enter into a chartering (or other) arrangement with a Canadian vessel to harvest the transferred yellowtail flounder. For other NAFO-regulated species listed in Annexes I.A and I.B, the United States may enter into a chartering arrangement with a vessel from any other NAFO Contracting Party. Additionally, any U.S. vessel or fishing operation may enter into a chartering arrangement with any other vessel or business from a NAFO Contracting Party. The United States and the other Contracting Party involved in a chartering arrangement must agree to the charter, and the NAFO Executive Secretary must be advised of the chartering arrangement before the commencement of any charter fishing operations. Any U.S. vessel or fishing operation interested in making use of the chartering provisions of NAFO must provide at least the following information: The name and registration number of the U.S. vessel; a copy of the charter agreement; a detailed fishing plan; a written letter of consent from the applicable NAFO Contracting Party; the date from which the vessel is authorized to commence fishing; and the duration of the charter (not to exceed six months).

Expressions of interest using another NAFO Contracting Party vessel under charter should be accompanied by a detailed description of anticipated benefits to the United States, as described above. Additional detail on chartering arrangements can be found in Article 26 of the CEM (*https://www.nafo.int/Fisheries/Conservation*).

Any vessel from another Contracting Party wishing to enter into a chartering arrangement with the United States must be in full current compliance with the requirements outlined in the NAFO Convention and CEM. These requirements include, but are not limited to, submission of the following reports to the NAFO Executive Secretary:

- Notification that the vessel is authorized by its flag state to fish within the NAFO Regulatory Area during 2019;
- Provisional monthly catch reports for all vessels of that NAFO Contracting Party operating in the NAFO Regulatory Area;
- Daily catch reports for each day fished by the subject vessel within the Regulatory Area;
- Observer reports within 30 days following the completion of a fishing trip; and
- An annual statement of actions taken by its flag state to comply with the NAFO Convention.

The United States may also consider the vessel's previous compliance with NAFO bycatch, reporting, and other provisions, as outlined in the NAFO CEM, before authorizing the chartering arrangement.

Transfer of U.S. Quota Allocations to Another NAFO Party

Under NAFO rules in effect for 2019, the United States may transfer fishing opportunities by mutual agreement with another NAFO Contracting Party and with prior notification to the NAFO Executive Secretary. An applicant may request to arrange for any of the previously described U.S. opportunities to be transferred to another NAFO party, although such applications will likely be given lesser priority than those that involve more direct harvesting or processing by U.S. entities. Applications to arrange for a transfer of U.S. fishing opportunities should contain a letter of consent from the receiving NAFO Contracting Party, and should also be accompanied by a detailed description of anticipated benefits to the United States. As in the case of chartering operations, the United States may also consider a NAFO Contracting Party's previous compliance with NAFO bycatch, reporting, and other provisions, as outlined in the NAFO CEM, before entering agreeing to a transfer.

Receiving a Transfer of NAFO Quota Allocations From Another NAFO Party

Under NAFO rules in effect for 2019, the United States may receive transfers of additional fishing opportunities from other NAFO Contracting Parties. We are required to provide a letter consenting to such a transfer and must provide notice to the NAFO Executive Secretary. In the event that an applicant is able to arrange for the transfer of additional fishing opportunities from another

NAFO Contracting Party to the United States, the U.S. may agree to facilitate such a transfer. However, there is no guarantee that if an applicant has facilitated the transfer of quota from another Contracting Party to the United States, such applicant will receive authorization to fish for such quota. If quota is transferred to the United States, we may need to solicit new applications for the use of such quota. All applicable NAFO requirements for transfers must be met. As in the case of chartering operations, the United States may also consider a NAFO Contracting Party's previous compliance with NAFO bycatch, reporting, and other provisions, as outlined in the NAFO CEM, before agreeing to accept a transfer. Any fishing quota or other harvesting opportunities received via this type of transfer are subject to all U.S and NAFO rules as detailed below.

For more details on NAFO requirements for chartering and transferring NAFO allocations, contact Patrick Moran (see **ADDRESSES**).

Fishing in the NAFO Regulatory Area

U.S. applicant vessels must be in possession of, or obtain, a valid HSFCA permit, which is available from the NMFS Greater Atlantic Regional Fisheries Office. All permitted vessels must comply with any conditions of this permit and all applicable provisions of the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries and the CEM. We reserve the right to impose additional permit conditions that ensure compliance with the NAFO Convention and the CEM, the Magnuson-Stevens Fishery Conservation and Management Act, and any other applicable law.

The CEM provisions include, but are not limited to:

- Maintaining a fishing logbook with NAFO-designated entries (Annex II.A and Article 28);
- Adhering to NAFO hail system requirements (Annexes II.D and II.F; Article 28; Article 30 part B);
- Carrying an approved onboard observer for each trip consistent with requirements of Article 30 part A;
- Maintaining and using a functioning, autonomous vessel monitoring system authorized by issuance of the HSFCA permit as required by Articles 29 and 30; and
- Complying with all relevant NAFO CEM requirements, including minimum fish sizes, gear, bycatch retention, and per-tow move on provisions for exceeding bycatch limits in any one haul/set.

Further details regarding U.S. and NAFO requirements are available from the NMFS Greater Atlantic Regional Fisheries Office, and can also be found in the NAFO CEM on the internet (*https://www.nafo.int/Fisheries/Conservation*).

Vessels issued valid HSFCA permits under 50 CFR part 300 are exempt from certain domestic fisheries regulations governing fisheries in the Northeast United States found in 50 CFR 648. Specifically, vessels are exempt from the Northeast multispecies and monkfish permit, mesh size, effort-control, and possession limit restrictions (§§ 648.4, 648.80, 648.82, 648.86, 648.87, 648.91, 648.92, and 648.94), while transiting the U.S. EEZ with multispecies and/or monkfish on board the vessel, or landing multispecies and/or monkfish in U.S. ports that were caught while fishing in the NAFO Regulatory Area. These exemptions are conditional on the following requirements: The vessel operator has a letter of authorization issued by the Regional Administrator on board the vessel; for the duration of the trip, the vessel fishes, except for transiting purposes, exclusively in the NAFO Regulatory Area and does not harvest fish in, or possess fish harvested in, or from, the U.S. EEZ; when transiting the U.S. EEZ, all gear is properly stowed and not available for immediate use as defined under § 648.2; and the vessel operator complies with the provisions, conditions, and restrictions specified on the HSFCA permit and all NAFO CEM while fishing in the NAFO Regulatory Area.

Dated: November 19, 2018.

Christopher Rogers,

Acting Director, Office of International Affairs and Seafood Inspection, National Marine Fisheries Service.

[FR Doc. 2018–25591 Filed 11–23–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG645

Mid-Atlantic Fishery Management Council (MAFMC); Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold public meetings of the Council and its Committees.

DATES: The meetings will be held Monday, December 10, 2018 through Thursday, December 13, 2018. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held at the Westin Annapolis, 100 Westgate Circle, Annapolis, MD 21401 telephone: (410) 972–4300.

Council address: Mid-Atlantic Fishery Management Council, 800 N State St., Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D. Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 526–5255. The Council's website, *www.mafmc.org* also has details on the meeting location, proposed agenda, webinar listen-in access, and briefing materials.

SUPPLEMENTARY INFORMATION: The following items are on the agenda, though agenda items may be addressed out of order (changes will be noted on the Council's website when possible.)

Monday, December 10, 2018

Executive Committee—CLOSED MEETING

Ricks E Savage Award

Risk Policy Framework

Final results of the Summer Flounder Economic Management Strategy Evaluation (MSE) and discuss next steps.

Law Enforcement Workshop Report

Report on Law Enforcement/For-Hire Workshop (November 13–14, 2018) and review workshop summary and develop recommendations on further actions.

Tuesday, December 11, 2018

Discussion of Potential 2019 Mid-Year Revisions for Summer Flounder, Scup, and Black Sea Bass

Discuss timeline for revising 2019 summer flounder specifications and discuss potential for mid-year revisions to the 2019 black sea bass and scup specifications, including timing of the 2019 operational assessment.

Black Sea Bass 2019 Recreational Specifications

Review recent fishery performance, Monitoring Committee and Advisory Panel recommendations and adopt recommendations for 2019 federal waters recreational management measures.

Scup 2019 Recreational Specifications

Review recent fishery performance, Monitoring Committee and Advisory

Panel recommendations and adopt recommendations for 2019 federal waters recreational management measures.

Summer Flounder 2019 Recreational Specifications

Review recent fishery performance, Monitoring Committee and Advisory Panel recommendations and discuss timeline for developing 2019 recreational measures in early 2019 based on benchmark assessment results.

Summer Flounder, Scup, and Black Sea Bass Framework and Addendum XXXI on Conservation Equivalency, Block Island Sound Transit, and Slot Limits

Take final action.

Board-Only Meeting on Addendum XXXII for Summer Flounder and Black Sea Bass Recreational Management

Take final action.

Wednesday, December 12, 2018

Summer Flounder Commercial Issues and Goals and Objectives Amendment

Take final action.

Revised Stock Assessment Process

Presentation on Summer Flounder F-Based Management MSE

Review preliminary results of MSE to explore F-based recreational management.

Black Sea Bass Amendment and Review of Progress on Commission's Strategic Plan for Black Sea Bass

Discuss initiation of an amendment including identification of issues to consider.

Research Steering Committee Report

Report on Research Steering Committee Webinar (November 27, 2018) and discuss recommendations from the meeting.

Thursday, December 13, 2018

Atlantic Large Whale Take Reduction Team Report 2019 Implementation Plan

Review and approve 2019 Implementation Plan.

Business Session

Committee Reports (SSC and Executive Committee); Executive Director's Report; Organization Reports; and, Liaison Reports.

Continuing and New Business

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are 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 20, 2018.

Rey Israel Marquez,

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

[FR Doc. 2018–25670 Filed 11–23–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG638

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will hold a one-day meeting of its Ad Hoc Red Snapper Charter For-Hire Advisory Panel.

DATES: The meeting will convene on Wednesday, December 12, 2018, from 8:30 a.m. to 5 p.m. EDT.

ADDRESSES: The meeting will take place at the Gulf Council office.

Council address: Gulf of Mexico Fishery Management Council, 4107 West Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Dr. Matt Freeman, Economist, Gulf of Mexico Fishery Management Council; *matt.freeman@gulfcouncil.org,* telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Wednesday, December 12, 2018; 8:30 a.m.–5 p.m., EDT:

1. Adoption of Agenda
2. Presentation of Allocation Decision Tools
3. Summary and Discussion of Actions in Reef Fish Amendment 41 and Options in Referendum Eligibility
4. Presentation on Reef Fish Amendment 50 (State Management)
5. Presentation on Historical Captain Permits Framework Action
6. Other Business

—Meeting Adjourns

The Agenda is subject to change, and the latest version along with other meeting materials will be posted on *www.gulfcouncil.org* as they become available.

The meeting will be webcast over the internet. A link to the webcast will be available on the Council's website, *http://www.gulfcouncil.org.*

Although other non-emergency issues not on the agenda may come before the Advisory Panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Advisory Panel will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Gulf Council Office (see **ADDRESSES**), at least 5 working days prior to the meeting.

Dated: November 20, 2018.

Rey Israel Marquez,

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

[FR Doc. 2018–25669 Filed 11–23–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

XRIN 0648–XG463

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice of receipt of one permit application for enhancement and monitoring purposes, including an

associated Hatchery and Genetic Management Plan (HGMP), and notice of availability of a draft Environmental Assessment.

SUMMARY: We, NMFS, announce receipt of a permit application (21501) to enhance the propagation and survival of species listed under the Endangered Species Act (ESA) of 1973, as amended, from the California Department of Fish and Wildlife (CDFW) and the United States Army Corps of Engineers (Corps). Under permit application 21501, CDFW and the Corps is requesting to continue, for the next 10 years, the ongoing broodstock hatchery program in the Russian River and tributaries, and in other target streams in coastal Sonoma and Marin Counties. The permit application is expected to advance recovery of the Central California Coast (CCC) coho salmon (*Oncorhynchus kisutch)* Evolutionary Significant Unit (ESU).

DATES: Comments or requests for a public hearing on the application must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on December 26, 2018.

ADDRESSES: Written comments on the application should be submitted to the California Coastal Office, NMFS, 777 Sonoma Ave., Room 325, Santa Rosa, CA 95404. Comments may also be submitted via fax to 707–578–3435, or by email to *WCR–DCFH.hgmp@noaa.gov* (include the permit number in the subject line of the fax or email).

FOR FURTHER INFORMATION CONTACT: Bob Coey, Santa Rosa, CA (ph.: 707–575–6090; Fax: 707–578–3435; email: *WCR–DCFH.hgmp@noaa.gov).* Permit application instructions are available from the address above, or online at *https://apps.nmfs.noaa.gov.*

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

The following ESA-listed species are covered in this notice:

- Coho salmon (*Oncorhynchus kisutch*): Endangered Central California Coast (CCC) evolutionarily significant unit (ESU)
- Chinook salmon (*Oncorhynchus tshawytcha):* Threatened California Coastal (CC) ESU
- Steelhead (*Oncorhynchus mykiss):* Threatened CCC Distinct Population Segment (DPS), and threatened Northern California (NC) DPS.

Authority

Enhancement permits are issued in accordance with Section 10(a)(1)(A) of the ESA (16 U.S.C. 1539(a)(1)(A)) and regulations governing listed fish and wildlife permits (50 CFR part 222, subpart C). NMFS issues permits based on findings that such permits: (1) Are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; (3) are consistent with the purposes and policies of Section 2 of the ESA; (4) whether the permit would further a bona fide and necessary or desirable scientific purpose or enhance the propagation or survival of the endangered species, taking into account the benefits anticipated to be derived on behalf of the endangered species; and additional issuance criteria (as listed at 50 CFR § 222.308(c)(5–12)). The authority to take listed species is subject to conditions set forth in the permit.

Anyone requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). Such hearings are held at the discretion of the Assistant Administrator for Fisheries, NMFS.

Permit Application Received

Permit 21051

CDFW and the Corps have applied for an enhancement permit under Section 10(a)(1)(A) of the ESA for a period of 10 years that would allow take, associated with activities conducted through the broodstock program, of multiple life stages of CCC coho, CC Chinook salmon, CCC and NC steelhead. The permit would authorize these activities described in the permit application, which is accompanied by an HGMP. The HGMP describes fish hatchery operations, capture/release activities and monitoring activities conducted through the broodstock program which would be permitted pursuant to the final HGMP. Fish hatchery operations included in the permit application such as spawning and rearing conducted by the Corps would result in take of CCC cohoonly. Capture and release activities in the permit application include capture of endangered CCC coho broodstock by CDFW from various streams within Sonoma, Marin, and Mendocino counties; and release of endangered CCC coho broodstock, offspring and post-spawn individuals into various streams within Sonoma, Marin, and Mendocino counties. Broodstock capture and release, and monitoring and in-river research activities, also described in the application, could result in take of CCC coho, CC Chinook salmon, CCC and NC steelhead. Some of these activities are covered under separate research permits as discussed below.

Since the initiation of the broodstock program in 2001, CDFW and the Corps have collected captive broodstock from streams in the Russian River and Lagunitas/Olema Creek watersheds and artificially propagated them at the DCFH. The broodstock is derived from hatchery-reared CCC coho juveniles retained from artificial propagation at DCFH, and the capture of natural-origin young-of-year (YOY) CCC coho from various tributaries within the Russian River and the Lagunitas/Olema Creek basins (used primarily for outbreeding), and the very few CCC coho returning to the DCFH as adults. Currently, surplus broodstock from the broodstock program are used to supplement populations in the Russian River as well as salmon, Walker and Redwood creeks. In addition, the broodstock program holds and rears CCC coho from Scott Creek,[1] without propagation. Through the broodstock program, CDFW and the Corps conducted these activities under ESA 10(a)(1)(A) permits 1067 and 10094. Permit 1067 was issued September 26, 2001, and authorized the collection of CCC coho from streams located in the Russian River and Marin County watersheds for developing captive broodstock and rescue rearing at DCFH. Permit 10094 was issued September 23, 2008, and authorized scientific research and monitoring of ESA-listed anadromous salmonids in California including CCC coho. Under the proposed HGMP these activities would continue.

CDFW and the Corps' proposed HGMP for the broodstock program also includes new provisions that would authorize collection, captive rearing, broodstock spawning, and release in focus and supplemental CCC coho populations identified in the HGMP and NMFS' recovery plan for CCC coho (see *https://www.westcoast.fisheries.noaa.gov/protected_species/salmon_steelhead/recovery_planning_and_implementation/north_central_california_coast/central_california_coast_coho_recovery_plan.html*).

Prospective populations of CCC coho identified in the HGMP that permit 21501 would also include are the Garcia, Navarro, Gualala River CCC coho populations, and other focus or supplemental populations identified in the NMFS Recovery Plan for CCC coho. CDFW and the Corps propose to

[1] The DCFH rears CCC coho salmon and returns them to Kingfisher Flat Hatchery (KFH) where they then are released to Scott Creek. KFH operates under permit 1112.

conduct these new activities in order to achieve the goals of the broodstock program, which are to: (1) Prevent extirpation of CCC coho in the Russian River; (2) preserve genetic, ecological, and behavioral attributes of CCC coho in the Russian River; and (3) build self-sustaining CCC coho populations in the Russian River and throughout the CCC coho ESU.

CDFW and the Corps' proposed HGMP for the broodstock program includes provisions for a monitoring program. The proposed monitoring program is designed to determine the success of the broodstock program and has been in existence since the first release of program CCC coho in 2004. The proposed monitoring program is composed of two elements, hatchery and field monitoring.

Hatchery monitoring is associated with hatchery rearing and spawning activities and is conducted by Corps' hatchery staff. During spawning, hatchery staff record data on individual spawner performance (*i.e.* fecundity and fertility rates). During hatchery rearing, which is after spawning through release, hatchery staff collects data on life stage-specific survival. The hatchery staff retain two randomly chosen juvenile CCC coho from each family group (up to 1,500 fish) for potential use as broodstock in the event sufficient natural-origin fish from the same brood year are not available. All CCC coho collected and intended for use as broodstock at DCFH (including Scott Creek fish) are physically segregated at all times. Mortalities that occur during the routine operation of the program are removed from their respective rearing containers on a daily basis, and hatchery staff records and evaluates these daily mortalities to ensure that the number of mortalities among fry and more advanced life stages does not exceed 0.2 percent of any program production over any 24-hour period. Compliance with all applicable hatchery operations and health guidelines, as well as required specific effluent testing, is monitored and recorded by hatchery staff year-round. In addition, hatchery staff performs, monitors, and records all marking and tagging of CCC coho including: Passive integrated transponder (PIT) tagging of all fish collected from the natural environment; disk-tagging of all adults used for artificial spawning; coded-wire tagging of all broodstock program progeny to facilitate distinguishing between hatchery-origin and natural-origin fish; PIT tagging of ≥15 percent (minimum 30,000) of broodstock program progeny released to allow smolt-to-adult-return (SAR) calculations; and floy tagging of all adults that are released to allow identification of hatchery-reared adult CCC coho during spawner surveys.

Field monitoring is associated with the post-release performance of the broodstock program and has been conducted annually in a minimum of four index streams in the Russian River basin since 2004. This ongoing field monitoring, conducted by California Sea Grant under contract to the Corps, is a substantial complimentary monitoring element that is described in the HGMP, and helps to inform management of the broodstock program, but is operating independently under separate permits. The HGMP describes future monitoring efforts in out-of-basin streams to include at a minimum presence/absence surveys following release of fish of an appropriate life stage (*e.g.,* summer juvenile surveys following YOY spring release, redd surveys following adult release), appropriate genetic analysis, or other evaluation of success as funding is available.

Under the application for Permit 21501, proposed take activities for CCC coho include monitoring; collecting broodstock and non-broodstock CCC coho; conducting routine hatchery activities including artificial propagation, rearing, tissue sampling, and marking; transporting and releasing of early life stage progeny (eyed eggs and/or unfed fry), juveniles (broodstock surplus), and adult (captive rearing and broodstock surplus) CCC coho into Russian River tributaries and other target streams.

Public Comments Solicited

NMFS invites the public to comment, including any written data, views, or arguments, on the permit application and associated HGMP during a 30-day public comment period beginning on the date of this notice. This notice is provided pursuant to Section 10(c) of the ESA (16 U.S.C. 1539(c)), 50 CFR 222.303. All comments and materials received, including names and addresses, will become part of the administrative record and may be released to the public. We provide this notice in order to allow the public, agencies, or other organizations to review and comment on these documents.

Next Steps

NMFS will evaluate the applications, associated documents, and comments submitted to determine whether the applications meet the requirements of Section 10(a)(1)(A) of the ESA and Federal regulations. The final permit decisions will not be made until after the end of the 30-day public comment period and after NMFS has fully considered all relevant comments received. NMFS will also meet other legal requirements prior to taking final action, including preparation of a biological opinion. NMFS will publish notice of its final action in the **Federal Register**.

Dated: November 20, 2018.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2018–25693 Filed 11–23–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: International Fisheries Trade to Include Shrimp and Abalone.

OMB Control Number: 0648–xxxx.

Form Number(s): None.

Type of Request: Regular (request for a temporary new information collection).

Number of Respondents: 651.

Average Hours Per Response: International Fisheries Trade Permit, 5 minutes; data entry, 1 hour.

Burden Hours: 70,054.

Needs and Uses: The Seafood Traceability Program (*see* 50 CFR 300.320–300.325) is the first phase of a risk-based traceability program, which establishes permit, reporting and recordkeeping requirements needed to prevent illegally harvested and misrepresented seafood from entering into U.S. Commerce. In the development of the Seafood Traceability Program rule, 13 ''priority'' species were identified as being most at risk for Illegal, Unreported, and Unregulated (IUU) fishing and misrepresentation, and are the only species currently subject to this program. For two of those species (abalone and shrimp), NMFS stayed program requirements indefinitely (50 CFR 300.324(a)(3)). *See* 81 FR 88975 (December 9, 2016). A final rule was published on April 24, 2018 (83 FR 17762) which lifted the stay and established a compliance date of

December 31, 2018 for shrimp and abalone.

NMFS had stayed requirements for abalone and shrimp because gaps existed in the collection of traceability information for domestic aquaculture-raised shrimp and abalone, which is currently largely regulated at the state level. During development of the Seafood Traceability Program, NMFS explored the possibility of working with its state partners to establish reporting and recordkeeping requirements for aquaculture traceability information that could be shared with NMFS. However, this did not prove to be a viable approach. *See* 81 FR at 88977–78. In the Seafood Import Monitoring Program final rule, NMFS explained that ''[A]t such time that the domestic reporting and recordkeeping gaps have been closed, NMFS will then publish an action in the **Federal Register** to lift the stay of the effective date for § 300.324(a)(3) of the rule pertaining to shrimp and abalone. Adequate advance notice to the trade community would be provided'' to ensure all affected parties have sufficient time to come into compliance.

On March 23, 2018, the Consolidated Appropriations Act of 2018 (Pub. L. 115–141) was signed by the President and became law. Section 539 of Division B of the Act directed the Secretary of Commerce to, within 30 days, ''lift the stay on the effective date of the final rule for the Seafood Traceability Program published by the Secretary on December 9, 2016, (81 FR 88975 *et seq.*) for the species described in § 300.324(a)(3) of title 50, Code of Federal Regulations: provided that the compliance date for the species described in § 300.324(a)(3) of title 50, Code of Federal Regulations, shall occur not later than December 31, 2018.'' A final rule was issued to implement the Act (83 FR 17762, April 24, 2018) and provides that shrimp and abalone will be subject to the requirements of the Seafood Traceability Program under 50 CFR 300.324(a)(3), with a compliance date December 31, 2018.

The Program consists of two components: (1) Reporting of harvest events at the time of entry; and (2) permitting and recordkeeping requirements with respect to both harvest events and chain of custody information. *See* 50 CFR 300.324 and *id.* §§ 300.320–300.323 and 300.325. Application of the program's reporting and recordkeeping requirements to shrimp and abalone will enable audits of imports to be conducted to determine the origin of the products and confirm that they were lawfully acquired.

The final rule to lift the stay on shrimp and abalone contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). OMB had previously approved the information collection requirements for the Seafood Traceability Program under Control Number 0648–0739, but the burden estimates did not include the requirements for shrimp and abalone given the stay. The requirements for permitting, reporting and recordkeeping for imports of shrimp and abalone will be submitted to OMB for approval.

Affected Public: Business or other for-profit organizations.

Frequency: One time and on occasion.

Respondent's Obligation: Mandatory.

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* or fax to (202) 395–5806.

Dated: November 19, 2018.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2018–25613 Filed 11–23–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG557

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 receipt of an exempted fishing permit (EFP) application from Mr. Cory Lescher and Dr. Bradley Harris, Alaska Pacific University. If granted, this EFP would allow up to five Amendment 80 vessels in the Bering Sea and Aleutian Islands (BSAI) management area yellowfin and rock sole fisheries to retain red king crab (RKC; *Paralithodes camtschaticus*) bycatch on board for periods of no more than 72 hours during the 2019 BSAI flatfish fisheries' ''A'' season. Two concurrent studies would be conducted under this EFP. A whole-haul RKC census study would provide a comparison of whole-haul census of RKC to haul-level estimates of RKC generated from NMFS-certified observer (observer) sampling to determine the ability of current prohibited species catch (PSC) rate estimations to accurately account for RKC PSC in these fisheries. Then, an at-sea viability study would examine factors that influence RKC PSC mortality and survival. The objective of the EFP application is to provide improved understanding of RKC PSC mortality, such as shell crushing, and variables that affect it. This proposed project 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 comments at the Council meeting, you may submit comments on this document, identified by NOAA–NMFS–2018–0120, by any of the following methods:

- *Federal e-Rulemaking Portal.* Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0120,* 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: Bridget Mansfield, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the domestic groundfish fisheries in the BSAI 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. Regulations governing the BSAI groundfish fisheries appear at 50 CFR parts 600 and 679. The FMP and the EFP 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

PSC in the North Pacific groundfish trawl gear fisheries is managed under limits that can trigger closures of management areas or target fisheries. Catch, including non-target species and PSC, is estimated in part by extrapolating fishery observer samples from individual hauls up to the trip level. Non-pollock fisheries—that is, vessels not engaged in directed pollock fishing—managed under fishing cooperatives use estimates derived from observer sampling to account for PSC, by number rather than weight for crab species or by weight only for other PSC, such as halibut or salmon. Amendment 80, implemented in 2008, allocates BSAI yellowfin sole, flathead sole, rock sole, Atka mackerel, and Aleutian Islands Pacific ocean perch to the head and gut trawl catcher processor sector, and allows qualified vessels to form cooperatives. Amendment 80 cooperatives track individual vessel catch against cooperative-determined, vessel-specific limits. Cooperatives are ultimately responsible for ensuring that the bycatch allowances they administer, but set by NMFS, are not exceeded. Individual accountability is enforced by cooperatives at the vessel and company level through legal contracts and bycatch agreements among members. In this context, understanding the degree to which current observer sampling practices provide accurate data for accounting of actual bycatch quantities for a fishing haul or trip can help improve cooperative management and support conservation and fishery management objectives overall.

Fishing under this EFP would provide data to investigate the accuracy of current PSC estimation methods for individual hauls, including the degree to which high catch-per-unit-effort groundfish fishing impacts RKC PSC rates. Data from this EFP would also help industry collaborators understand and improve vessel-specific bycatch performance tracking.

Exempted Fishing Permit

On September 20, 2018, Mr. Cory Lescher submitted an application for an EFP to conduct two concurrent studies on incidentally caught RKC on select Amendment 80 trawl vessels targeting yellowfin and rock sole in the BSAI in 2019. The first study (whole-haul census study) would be conducted on up to five vessels and would consist of a series of whole-haul censuses of RKC (census of all RKC in an entire haul) in conjunction with observer sub-sampling of the same haul. Biological samples would also be collected from the RKC, with a handling time of one to two minutes per RKC, before the RKC is released back to the sea. The objectives of this study under the proposed EFP are to:

- Assess the accuracy of current sampling methods,
- collect basic biological data from RKC PSC to resolve data gaps in key characteristics associated with RKC encountered in the yellowfin and rock sole fisheries in the first part of the year, and
- examine how RKC PSC rates are influenced by haul characteristics and environmental variables.

The second study (viability study) conducted under this proposed EFP would require two vessels to hold up to a total of 384 RKC for up to 72 hours each in on-deck, saltwater flow-through tanks to monitor survival of deck-sorted RKC compared to factory-sorted RKC. This study has three objectives under the proposed EFP: First, to examine factors affecting RKC PSC mortality and survival; second, the ability to predict discard mortality using vitality assessments, and third, to assess the feasibility of collecting data on such vitality metrics.

Whole-Haul Census Study

The applicant proposes to conduct the whole-haul census study on up to five vessels in the Amendment 80 yellowfin and rock sole trawl fishery in the Bering Sea from January 20 through April 15, 2019. The participating vessels would be selected on a voluntary basis and would carry an observer as required by regulation. All stages of the whole-haul sampling process would be conducted by a trained ''sea sampler'' on each participating EFP vessel, who would be required to be a NMFS-certified observer, but who would not act as a NMFS observer during an EFP trip. The sea sampler data collection duties would be separate from those duties of the vessel's NMFS observer and their work would not interfere with or constrain the work of the NMFS observer.

The applicant's proposed sampling for the whole-haul census would consist of the following protocols. Sea samplers would conduct a whole-haul count for RKC for every haul during a trip. To achieve this, for each haul the sea sampler would instruct designated crew to remove all RKC from the sorting belt downstream of the observer sampling station. The designated crew would place such RKC in a designated tote labeled with the vessel haul number, keeping all haul-specific RKC together. The EFP sampling would occur after observer sampling and would not interfere with the observer's sampling duties or vessel operations. The sea sampler would sort the RKC from the tote, returning all non-RKC to the discard belt for immediate discard, and would collect and record RKC-specific biological data from each RKC and return it immediately to the discard belt for immediate discard to the sea. Biological data collected would include sex, carapace length, shell condition, externally visible physical injuries, vitality metrics, and for females, clutch fullness and egg condition. Vitality metrics include presence and absence of pre-determined injuries, and reflex and behavior responses, including leg flare, leg retraction, chela closure, eye retraction, and mouth closure. The sampling process would be expected to require less than 2 minutes and would have no impact on the probability of survival of the sampled RKC. The sampling protocol outlined above follow established Donaldson and Byersdorfer methods as described in the EFP application (see **ADDRESSES**).

Viability Study

The applicant proposes to conduct the RKC viability study on two vessels in the Amendment 80 yellowfin and rock sole trawl fisheries in the Bering Sea from January 20 through April 15, 2019. As with the whole-haul study proposed under this EFP application, the participating vessels in the RKC viability study would be selected on a voluntary basis and would carry a NMFS-certified fishery observer as required by regulation.

The applicant's proposed sampling for the RKC viability study would

consist of the following general protocols. For further details, please consult the EFP application available at (see **ADDRESSES**). The viability study would commence at the beginning of a fishing trip. During a predetermined haul, up to 32 incidentally caught RKC would be selected from the catch on deck or in the factory. The on-deck RKC collection would coincide with halibut deck sorting authorized under the halibut deck sorting EFP #2018–01 to allow the assessment of RKC collected from both on-deck and the factory point of discard without impeding fishing operations. On-deck collection would be conducted independent of, and would not impact, halibut deck sorting activities or observer data collections under the halibut deck sorting EFP. RKC collected on deck would be removed from the catch prior to observer sampling. The RKC EFP sea sampler would collect RKC counts and weights from pre-sorted RKC from selected hauls and provide that data to the vessel's NMFS observer. RKC collected in the factory for this viability study would be removed from the conveyor belt downstream of the observer sampling station following the protocols described for the whole-haul study.

A vitality test, as described above under the heading *Whole-Haul Census Study,* would be used to select only live RKC, including RKCs with a range of initial impairments and levels of vitality for the holding trials. Each RKC would be labeled with a uniquely numbered tag. Carapace length, sex shell condition, and vitality would be collected and recorded for each RKC at the time of collection. Each assessment would last approximately 1 to 2 minutes per RKC, after which they would immediately be placed in one of several flow-through seawater tanks on deck. Each tank would be divided into four separate sections that would hold two RKC each. The sea sampler would record water temperature and dissolved oxygen from each of the seawater tanks daily and continue monitoring individual RKC vitality every 2, 4, 6, 12, 24, 48, and 72 hours. RKC would be monitored following methods described in the EFP application (see **ADDRESSES**). Details of any mortality would be recorded, and dead RKC would be removed and discarded. Live RKC would be released 72 hours after collection. Once all RKC are released, the tank would be flushed with seawater and refilled with eight new RKC from a subsequent tow. The 72-hour period for holding RKC would provide a short window to observe for discard mortality, yet allow for adequate sample size. Metrics that may be used to predict RKC mortality would be collected for future analysis. Such metrics include, but are not limited to, fishing effort information (*e.g.,* length of tow, tow depth, bottom temperature, and total catch size), and RKC time out of water.

Exemptions

RKC is a prohibited species in the groundfish fishery, requiring immediate return to the sea with a minimum of injury. This proposed action would exempt the participating vessel, for RKC only, from the requirement, at § 679.21(b)(2)(ii), to return all prohibited species, or parts thereof, to the sea immediately, with a minimum of injury, regardless of its condition. Because some RKC would be pre-sorted before observer sampling under this proposed action, permit holders, vessel owners, and operators fishing under this permit would be exempt from § 679.7(g)(2) that otherwise prohibits biasing the observer's sampling procedure by pre-sorting RKC catch. The participating vessels would be allowed to account for the number of RKC caught through sampling methods described above. All other § 679.7(g)(2) provisions would continue to apply to all other fishing during an EFP trip.

Sorting of PSC species other than RKC before observers sample the catch onboard the vessels would continue to be prohibited.

Further, owners and operators of Amendment 80 vessels participating in this EFP are exempt from the requirement at § 679.93(c)(1), which requires that (1) all catch by vessels participating in the Amendment 80 program are weighed on a NMFS-approved scale, (2) each haul must be weighed separately, (3) all catch must be made available for sampling by a NMFS-certified observer, and (4) no sorting of catch may take place prior to weighing. Owners and operators of all other vessels participating in this EFP are exempt from regulations at § 679.28(b) that require that all catch of RKC must be weighed on a NMFS-approved scale and made available at a single location. This exemption is necessary to allow sea samplers to account for RKC sorted on deck and transferred to tanks on deck for the viability study prior to observer sampling.

Permit Conditions, Review, and Effects

Under the EFP, participating vessels would be limited to the Amendment 80 groundfish allocations under the 2019 harvest specifications (available from the Alaska Region, NMFS website at *http://alaskafisheries.noaa.gov/*). No additional target or PSC amounts beyond those authorized through regulation would be needed for this EFP; all groundfish catch will accrue against the Amendment 80 sector's yellowfin and rock sole catch and PSC allowances. EFP-authorized fishing activities would not be expected to change the nature or duration of the flatfish trawl fishery or the amount or species of fish caught by the participating vessels.

In 2019, Mr. Lescher would be required to submit to NMFS a report of the EFP results after EFP experimental fishing has ended in 2019. For each study, the report would include: Sampling design and methods, number of RKC sampled, fishing and environmental variables collected, RKC handling and mortalities, analytical results, and the total catch of each groundfish species and RKC in metric tons. The report would be made available to the public.

The fieldwork that would be conducted under this EFP is 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. 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 16, 2018.

Karen H. Abrams,

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

[FR Doc. 2018–25416 Filed 11–23–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2018–OS–0060]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by December 26, 2018.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: National Language Service Corps; DD Form 2934; OMB Control Number 0704–0449.

Type of Request: Extension.

Number of Respondents: 1,600.

Responses per Respondent: 1.

Annual Responses: 1,600.

Average Burden per Response: 36 minutes.

Annual Burden Hours: 960.

Needs and Uses: The information collection requirement is necessary to identify individuals with language and special skills who potentially qualify for employment or service opportunities in the public section during periods of national need or emergency.

A*ffected Public:* Individuals or Households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Frederick Licari.

Requests for copies of the information collection proposal should be sent to Mr. Licari at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: November 16, 2018.

Aaron T. Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2018–25441 Filed 11–23–18; 8:45 am]

BILLING CODE 5001–06–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 Department of Defense Medicare-Eligible Retiree Health Care Board of Actuaries (''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)), independent advice and recommendations related on actuarial matters associated with the Department of Defense (DoD) Medicare-Eligible Retiree Health Care Fund (''the Fund'') and other related matters. Pursuant to 10 U.S.C. 1114(c), the Board shall report to the Secretary of Defense and/or the Deputy Secretary of Defense annually on the actuarial status of the Fund and shall furnish its advice and opinion on matters referred to it by the Secretary of Defense. The Board shall review valuations of the Fund under 10 U.S.C. 1115(c) and shall report periodically, not less than once every four years, to the President and Congress on the status of the Fund. The Board shall include in such reports recommendations for such changes as in the Board's judgment are necessary to protect the public interest and maintain the Fund on a sound actuarial basis.

Pursuant to 10 U.S.C. 1114(a)(1) and (2), the Board consists of three members from among qualified professional actuaries who are members of the Society of Actuaries. Board members will serve for a term of 15-years, except that a Board member appointed to fill a vacancy occurring before the end of the term for which the predecessor was appointed shall serve only until the end of such term. A Board member may serve after the end of the term until a successor has taken office. The Board membership appointments are staggered so that a new member is appointed every five years. A Board member may be removed by the Secretary of Defense for misconduct or failure to perform functions vested in the Board and for no other reason.

Board members are entitled, pursuant to 10 U.S.C. 1114(a)(3), to receive pay at the daily equivalent of the annual rate of basic pay of the highest rate of basic pay under the General Schedule of subchapter III of chapter 53 of title 5, for each day the member is engaged in the performance of duties vested in the Board, and is entitled to travel expenses, including a per diem allowance, in accordance with section 5703 of title 5.

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 20, 2018.

Shelly Finke,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–25702 Filed 11–23–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Availability of the Great Lakes and Mississippi River Interbasin Study—Brandon Road Integrated Feasibility Study and Environmental Impact Statement—Will County, Illinois

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

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers (USACE), Rock Island and Chicago Districts, have developed ''The Great Lakes and Mississippi River Interbasin Study (GLMRIS)—Brandon Road Integrated Feasibility Study and Environmental Impact Statement (EIS)—Will County, Illinois,'' (Final GLMRIS-Brandon Road Report & EIS). The Final GLMRIS-Brandon Road Report & EIS presents a plan that could prevent aquatic nuisance species (ANS) transfer from the Mississippi River Basin to the Great Lakes Basin through an aquatic connection in the Chicago Area Waterway System. The purpose of this Study was to evaluate structural and nonstructural options and technologies near the Brandon Road Lock and Dam to prevent the upstream transfer of ANS while minimizing impacts to existing waterways uses and users. USACE analyzed and evaluated available controls to address ANS of concern and formulated alternatives specifically for the Brandon Road site.

DATES: The Final GLMRIS-Brandon Road Report & EIS is available for review beginning on Friday, November 23, 2018, ending December 24, 2018.

ADDRESSES: The Final GLMRIS-Brandon Road Report & EIS will be posted at *https://www.mvr.usace.army.mil/GLMRIS-BR.*

FOR FURTHER INFORMATION CONTACT: U.S. Army Corps of Engineers, Rock Island District, ATTN: GLMRIS-Brandon Road EIS, Clock Tower Building, P.O. Box 2004, Rock Island, IL 61204–2004; or contact online at *https://www.mvr.usace.army.mil/GLMRIS-BR.*

SUPPLEMENTARY INFORMATION: The USACE is issuing this notice pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4332 *et seq.*) and the Council on Environmental Quality regulations for implementing the procedural provisions of NEPA (43 CFR parts 1500 through 1508). This notice announces the availability of the final GLMRIS-Brandon Road EIS. The Final GLMRIS-Brandon Road Report & EIS, its appendices, and other supporting documents can be accessed at: *https://www.mvr.usace.army.mil/GLMRIS-BR.*

Background Information

The Draft GLMRIS-Brandon Road EIS was released on August 18, 2017, and included a 112-day public comment period that ended on December 8, 2017. During that time, USACE held four meetings to solicit comments from the public. USACE analyzed the comments received from the public (Appendix K) and considered them in preparation of the Final GLMRIS-Brandon Road EIS. This EIS provided the necessary information for the public to fully evaluate a range of alternatives designed to meet the purpose and need of the Final GLMRIS-Brandon Road Report & EIS and to provide thoughtful and meaningful comment for the Agency's consideration.

The Final GLMRIS-Brandon Road Report & EIS identifies six alternatives including no new action (continuing current efforts); the nonstructural alternative; and three technology alternatives using an electric barrier and/or acoustic fish deterrent and lock closure. The effectiveness of these alternatives was considered against the three different modes of ANS transport, swimming, floating, and hitchhiking. Selection of a Recommended Plan required careful evaluation of each alternative's (1) reduction in the probability of establishment in the Great Lakes Basin, (2) relative life safety risk, (3) system performance robustness and (4) costs, which include construction; mitigation; operation and maintenance, repair, replacement and rehabilitation; and navigation impacts. Evaluation also included careful consideration of cost effectiveness and incremental cost analyses, significance of the Great Lakes Basin's ecosystem, acceptability, completeness, efficiency, and effectiveness. Based on the results of the evaluation and comparison of the alternatives, the Recommended Plan is the Technology Alternative—Acoustic Fish Deterrent with Electric Barrier, which includes the following measures: nonstructural measures, acoustic fish deterrent, bubble curtain, engineered channel, electric barrier, flushing lock, and boat ramps. The Final GLMRIS-Brandon Road Report & EIS identifies potential significant adverse impacts that alternatives may have on existing uses and users of the waterways.

Dated: November 19, 2018.

Dennis W. Hamilton,

Chief, Programs and Project Management Division.

[FR Doc. 2018–25647 Filed 11–23–18; 8:45 am]

BILLING CODE 3720–58–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meetings

TIME AND DATE: 1 p.m., December 12, 2018.

PLACE: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004.

STATUS: Closed. During the closed meeting, the Board Members will discuss issues dealing with potential Recommendations to the Secretary of Energy. The Board is invoking the exemptions to close a meeting described in 5 U.S.C. 552b(c)(3) and (9)(B) and 10 CFR 1704.4(c) and (h). The Board has determined that it is necessary to close the meeting since conducting an open meeting is likely to disclose matters that are specifically exempted from disclosure by statute, and/or be likely to significantly frustrate implementation of a proposed agency action. In this case, the deliberations will pertain to potential Board Recommendations which, under 42 U.S.C. 2286d(b) and (h)(3), may not be made publicly available until after they have been received by the Secretary of Energy or the President, respectively.

MATTERS TO BE CONSIDERED: The meeting will proceed in accordance with the closed meeting agenda which is posted on the Board's public website at *www.dnfsb.gov.* Technical staff may present information to the Board. The Board Members are expected to conduct deliberations regarding potential Recommendations to the Secretary of Energy.

CONTACT PERSON FOR MORE INFORMATION: Glenn Sklar, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004–2901, (800) 788–4016. This is a toll-free number.

Dated: November 20, 2018.

Joyce L. Connery,

Acting Chairman.

[FR Doc. 2018–25832 Filed 11–21–18; 4:15 pm]

BILLING CODE 3670–01–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meetings

TIME AND DATE: 1 p.m.–4 p.m., December 20, 2018.

PLACE: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW, Room 7019, Washington, DC 20004.

STATUS: Open.

MATTERS TO BE CONSIDERED: The implicit and explicit recommendations captured in the National Academy of Public Administration's Defense Nuclear Facilities Safety Board Organizational Assessment and recent Inspector General recommendations concerning the effectiveness of the Defense Nuclear Facilities Safety Board. The Organizational Assessment and other related documents are available on the Board's public website at *www.dnfsb.gov.*

CONTACT PERSON FOR MORE INFORMATION: Glenn Sklar, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004–2901, (800) 788–4016. This is a toll-free number.

Dated: November 20, 2018.

Joyce L. Connery,

Acting Chairman.

[FR Doc. 2018–25831 Filed 11–21–18; 4:15 pm]

BILLING CODE 3670–01–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meetings; Correction

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice; correction.

SUMMARY: The Defense Nuclear Facilities Safety Board published a document in the **Federal Register** of November 7, 2018, providing notice of an upcoming public hearing on November 28, 2018. The document contained an incorrect date in the ''matters to be considered'' section.

FOR FURTHER INFORMATION CONTACT: Glenn Sklar, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004–2901, (800) 788–4016. This is a toll-free number.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of November 7, 2018, in FR Doc. 2018–24438, on page 55702, in the third column, correct ''August 28'' to read ''November 28''.

Dated: November 20, 2018.

Joyce L. Connery,

Acting Chairman.

[FR Doc. 2018–25830 Filed 11–21–18; 4:15 pm]

BILLING CODE 3670–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2018–ICCD–0099]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Borrower Defenses Against Loan Repayment

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before December 26, 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–0099. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 550 12th Street SW, PCP, Room 9086, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Borrower Defenses Against Loan Repayment.

OMB Control Number: 1845–0132.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 150,000.

Total Estimated Number of Annual Burden Hours: 150,000.

Abstract: This is a request for an extension of the current information collection for Form 1845–0132. The U.S. Department of Education continues to require the collection of this information from borrowers who believe they have cause to invoke the borrower defense to loan repayment forgiveness of a student loan. There is no change to statutory or regulatory requirements. This collection continues to be necessary to ensure Heald, Everest and/or WyoTech College borrowers who wish to invoke the borrower defense against repayment of federal student loans can do so in a uniform and informed manner. It will also allow for the uniform and directed collection of minimum borrower defense information from other federal student loan borrowers that attended the school who believe they can provide evidence of such an application for loan forgiveness.

Dated: November 20, 2018.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2018–25617 Filed 11–23–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Advisory Board Meeting

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a teleconference of the Environmental Management Advisory Board (EMAB). The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Tuesday, December 11, 2018, 12:30 p.m.–2:00 p.m.

ADDRESSES: WebEx Conference Call, US Toll: +1–415–527–5035, Attendee Access Code: 15519183.

FOR FURTHER INFORMATION CONTACT: Jennifer McCloskey, Federal Coordinator, EMAB (EM–4.3), U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585. Phone (301) 903–7427; fax (202) 586–0293 or email: *jennifer.mccloskey@em.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of EMAB is to provide the Assistant Secretary for Environmental Management (EM) with advice and recommendations on corporate issues confronting the EM program. EMAB contributes to the effective operation of the program by providing individual citizens and representatives of interested groups an opportunity to present their views on issues facing EM and by helping to secure consensus recommendations on those issues.

*Tentative Agenda:*The topic to be discussed at this meeting is the CRESP Hanford Risk Review Analysis.

Public Participation: EMAB welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Jennifer McCloskey at least seven days in advance of the meeting at the phone number or email address listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda should contact Jennifer McCloskey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Jennifer McCloskey at the address or phone number listed above. Minutes will also be available at the following website: *http://energy.gov/em/services/communication-engagement/environmental-management-advisory-board-emab.*

Signed in Washington, DC, on November 20, 2018.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2018–25650 Filed 11–23–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP17–41–000]

Eagle LNG Partners Jacksonville, LLC; Notice of Availability of the Draft Environmental Impact Statement for the Proposed Jacksonville Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a draft environmental impact statement (EIS) for the Jacksonville Project, proposed by Eagle LNG Partners Jacksonville, LLC (Eagle LNG) in the above-referenced docket. Eagle LNG requests authorization to construct and operate a liquefied natural gas (LNG) facility on the north bank of the St. Johns River in Jacksonville, Florida. Eagle LNG's Jacksonville Project would consist of an LNG terminal on about 81.1 acres of a 193.4-acre parcel of land and would produce a nominal capacity of about 1.0 million (metric) tonnes per annum (MTPA) of LNG. The LNG terminal would receive natural gas from a new 120-foot-long non-jurisdictional natural gas pipeline constructed by Peoples Gas' (a subsidiary of TECO Energy, Inc.), connected to its existing local gas distribution transmission pipeline, which is immediately adjacent to the proposed terminal site.

The draft EIS assesses the potential environmental effects of the construction and operation of the Jacksonville Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the Jacksonville Project would result in some limited adverse environmental impacts; however, these impacts would be reduced to less-than-significant levels with the implementation of Eagle LNG's proposed mitigation and the additional measures recommended in the draft EIS.

The U.S. Department of Energy, U.S. Coast Guard, U.S. Army Corps of Engineers, 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. Although the cooperating agencies provided input to the conclusions and recommendations presented in the draft EIS, the agencies will present their own conclusions and recommendations in their respective Records of Decision or determinations for the project.

The draft EIS addresses the potential environmental effects of the construction and operation of the following project facilities:

- Three LNG trains, each with a nominal capacity of 0.33 MTPA of LNG for export, resulting in a total nominal capacity of 1.0 MTPA;
- one LNG storage tank with a net capacity of 45,000 m^3;
- marine facilities with a concrete access trestle and loading platform, and two liquid loading arms capable of docking and mooring a range of LNG vessels with an LNG cargo capacity of up to 45,000 m^3;
- LNG truck loading facilities with a dual bay capable of loading 260 to 520 LNG trucks per year;
- a boil-off gas compression system;
- on-site refrigerant storage;
- ground flare and cold vent systems; and
- utilities and support facilities (*e.g.,* administration, control, and workshop buildings; roads and parking areas; power and communications; water, air, septic, and stormwater systems).

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.,* CP17–41). 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 number (CP17–41–000) 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
Wednesday, December 12, 2018. 4:00–8:00 p.m. EST ..	Jacksonville Public Library (Main), 303 North Laura Street, Jacksonville, FL 32202, (904) 630–2665.

The primary goal of this comment session 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 scoping session is scheduled from 4:00 p.m. to 8:00 p.m. local time. 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 the closing hour for the comment session. 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 30 minutes before the closing hour. 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 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 commenter.

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.

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices 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.

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 16, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–25581 Filed 11–23–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14890–000]

Southeast Oklahoma Power Corporation; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On August 27, 2018, Southeast Oklahoma Power Corporation, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal

Power Act (FPA), proposing to study the feasibility of the Pushmataha County Pumped Storage Hydroelectric Project (Pushmataha Project or project) to be located on the Kiamichi River, near the town of Talihina, in Pushmataha County, Oklahoma. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The Pushmataha Project permit application describes two adjacent, alternative developments that the applicant proposes to choose between.

Alternative 1 would consist of the following: (1) An 886-foot-long, 282-foot-high concrete-faced rockfill upper dam with a 196.85-foot-long, 17-foot-high emergency spillway with a channel to Long Creek; (2) an upper reservoir with a surface area of 488.52 acres and a storage capacity of 43,633 acre-feet; (3) a 98.4-foot-long, 39.4-foot-high concrete upper intake/outlet structure; (4) a 7,030-foot-long, 32.8-foot-diameter steel and concrete headrace tunnel; (5) a 550-foot-long, 93-foot-wide, 188.5-foot-high underground concrete pumping station/powerhouse containing four pump/generating units with a total capacity of 1,200 megawatts; (6) an 8,243-foot-long, 32.8-foot-diameter tailrace tunnel; (7) a 98.4-foot-long, 39.4-foot-high concrete lower intake/outlet structure; (8) a 13,615-foot-long, 68.9-foot-high earthen lower dam with a 33-foot-long, 13-foot-high emergency spillway with a channel that becomes a tunnel to the Kiamichi River; (9) a lower reservoir with a surface area of 727 acres and a storage capacity of 37,965 acre-feet; (10) two 20-inch-diameter, 1,085-foot-long pipes with 110 kilowatt pumps to move water from a regulating reservoir to the lower reservoir; (11) a regulating reservoir with a surface area of 40 acres and a storage capacity of 1,216 acre-feet; (12) two 20-inch-diameter, 886-foot-long pipes with two 110 kilowatt pumps to move water from the Kiamichi River to a regulating reservoir; (13) a 40-foot-long, 40-foot-wide funnel-shaped intake structure on the Kiamichi River located 1.5-feet above the bottom of the Kiamichi River tapering down to 10-foot-long, 10-foot-wide section where it connects to the two withdrawal pipes; and (14) a 124-mile-long transmission line to the Electric Reliability Council of Texas grid.

Alternative 2 would consist of the following: (1) A 1,529-foot-long, 233-foot-high concrete-faced rockfill upper dam with a 196.85-foot-long, 17-foot-high emergency spillway with a channel to a creek; (2) an upper reservoir with a surface area of 366.07 acres, and a storage capacity of 27,462 acre-feet; (3) a 98.4-foot-long, 39.4-foot-high concrete upper intake/outlet structure; (4) a 3,979-foot-long, 32.8-foot-diameter steel and concrete headrace tunnel; (5) a 545-foot-long, 90-foot-wide, 185.4-foot-high underground concrete pumping station/powerhouse containing four pump/generating units with a total capacity of 1,200 megawatts; (6) a 5,831-foot-long, 32.8-foot-diameter tailrace tunnel; (7) a 98.4-foot-long, 39.4-foot-high concrete lower intake/outlet structure; (8) a 13,911-foot-long, 52.5-foot-high earthen lower dam with a 33-foot-long, 13-foot-high emergency spillway with a channel that becomes a tunnel to the Kiamichi River; (9) a lower reservoir with a surface area of 972.71 acres and a storage capacity of 31,223 acre-feet; (10) two 20-inch-diameter, 1,532-foot-long pipes with 110 kilowatt pumps to move water from a regulating reservoir to the lower reservoir; (11) a regulating reservoir with a surface area of 40 acres and a storage capacity of 1,216 acre-feet; (12) two 20-inch-diameter, 886-foot-long pipes with two 110 kilowatt pumps to move water from the Kiamichi River to the a regulating reservoir; (13) a 40-foot-long, 40-foot-wide funnel-shaped intake structure on the Kiamichi River located 1.5-feet above the bottom of the Kiamichi River tapering down to 10-foot-long, 10-foot-wide section where it connects to the two withdrawal pipes; and (14) a 124-mile-long transmission line to the Electric Reliability Council of Texas grid.

For either alternative, the proposed project would have an estimated average annual generation of 4,368,000 megawatt-hours.

Applicant Contact: Mr. John Bobenic, Southeast Oklahoma Power Corporation, c/o Daytona Power Corp, 1800, 421–7 Avenue SW, Calgary, Alberta Canada T2P 4K9; phone: (578) 433–4933.

FERC Contact: Michael Spencer, (202) 502–6093, *michael.spencer@ferc.gov.*

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–14890–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14890) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: November 16, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–25587 Filed 11–23–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ19–3–000]

Oncor Electric Delivery Company LLC; Notice of Filing

Take notice that on November 7, 2018, Oncor Electric Delivery Company LLC submitted its tariff filing: Oncor TFO Tariff Rate Changes to be effective 10/10/2018.

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 on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on November 28, 2018.

Dated: November 16, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–25582 Filed 11–23–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ19–1–000]

Notice of Supplement Filing; City of Vernon, California

Take notice that on November 15, 2018, the City of Vernon, California submitted a Letter Supplementing October 31, 2018 City of Vernon, California tariff filing (Error in Transmission Revenue Balancing Account Adjustment).

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 on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on December 6, 2018.

Dated: November 19, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–25640 Filed 11–23–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2689–040]

Notice of Application Accepted for Filing, Soliciting Comments, Protests and Motions To Intervene; N.E.W. Hydro, LLC

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Proceeding:* Extension of License Term.

b. *Project No.:* P–2689–040.

c. *Date Filed:* November 2, 2018.

d. *Licensee:* N.E.W. Hydro, LLC.

e. *Name and Location of Project:* Oconto Falls (Lower) Hydroelectric Project, located on the Oconto River, in the City of Oconto Falls, Oconto County, Wisconsin.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

g. *Licensee Contact Information:* Mr. Michael Scarzello, Regulatory Director, Eagle Creek Renewable Energy, LLC, 116 N State Street, P.O. Box 167, Neshkoro, Wisconsin 54960, (973) 998–8400, *Michael.Scarzello@eaglecrekre.com.*

h. *FERC Contact:* Mr. Ashish Desai, (202) 502–8370, *Ashish.Desai@ferc.gov.*

i. Deadline for filing comments, motions to intervene and protests, is 30 days from the issuance date of this notice by the Commission. The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, and recommendations, using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–2689–040.

j. *Description of Proceeding:* N.E.W. Hydro, LLC, licensee for the Oconto Falls (Lower) Project No. 2689, filed a request with the Commission to extend the term of the project license, from April 30, 2024 to October 31, 2027, which would align its modified expiration date with that of the licensee's Oconto Falls (Upper) Project No. 2523, located approximately 2,000 feet upstream. The licensee requests the license term extension to coordinate and streamline relicensing efforts, including developing and implementing study plans and consultation with resource agencies for both projects.

k. This notice is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street NE, Washington, DC 20426. The filing may also be viewed on the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the Docket number (P–2689–040) excluding the last three digits in the docket number field to access the notice. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments

filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

n. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to the request to extend the license term. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: November 19, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–25638 Filed 11–23–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2837–033]

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions: Erie Boulevard Hydropower, L.P.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2837–033.

c. *Date filed:* March 29, 2018.

d. *Applicant:* Erie Boulevard Hydropower, L.P. (Erie).

e. *Name of Project:* Granby Hydroelectric Project.

f. *Location:* On the Oswego River in the town of Fulton in Oswego County, New York. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Steven P. Murphy, Director, U.S. Licensing, Erie Boulevard Hydropower, L.P., 33 West 1st Street South, Fulton, NY 13069; (315) 598–6130.

i. *FERC Contact:* Allyson Conner, (202) 502–6082 or *allyson.conner@ferc.gov.*

j. Deadline for filing comments, recommendations, terms and conditions, and prescriptions: 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file comments, recommendations, terms and conditions, and prescriptions using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–2837–033.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted, and is ready for environmental analysis at this time.

l. The existing Granby Hydroelectric Project (Granby Project) consists of: (1) An 88-foot-wide reinforced concrete intake structure that includes two bays containing trashracks and fixed-roller, vertical-lift type gates; (2) a 17-foot-wide sluice opening adjacent to the intake structure; (3) a 112-foot-long, 88-foot-wide powerhouse containing two 5.04-megawatt (MW) turbine-generator units, with a total capacity of 10.08 MW; (4) a 3,000-foot-long, 100-foot-wide tailrace; (5) two 4.16-kilovolt, 120-foot-long underground generator leads; (6) a 60-foot-long by 48-foot-wide electrical switchyard; and (7) appurtenant facilities.

The Granby Project is operated in a modified run-of-river mode. The Granby Project and the Fulton Development at Erie's Oswego River Hydroelectric Project (FERC Project No. 2474) are located at opposite ends of the same dam and share a single bypassed reach and reservoir. The flow and impoundment elevation requirements in the Oswego Project license,[1] which were based on a 2004 Offer of Settlement, affect the Granby Project. The average annual generation at the Granby Project is estimated to be 44,181 megawatt-hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

All filings must (1) bear in all capital letters the title ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the

[1] 109 FERC ¶ 62, 141 (2004).

filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions, or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. A license applicant must file no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

o. *Procedural schedule:* The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Deadline for Filing Comments, Recommendations and Agency Terms and Conditions/Prescriptions.	January 2019.
Deadline for Filing Reply Comments.	March 2019.
Commission issues EA	July 2019.
Comments on EA Due	August 2019.

Dated: November 16, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–25580 Filed 11–23–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL18–43–000]

Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company; Notice of Amended Petition for Declaratory Order

Take notice that on November 15, 2018, pursuant to Rule 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207(a)(2), Southern Company Services, Inc., acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company (collectively, Southern Companies), submitted an amendment to its petition for declaratory order and request to hold proceedings in abeyance, filed on November 28, 2017. In the amendment, Southern Companies requests that the Commission lift the abeyance in this proceeding and seeks declarations that: (1) Those certain audit recommendations be set aside, and (2) Southern Companies' formula rate in its Open Access Transmission Tariff provide the requisite flexibility to make the ratemaking adjustment necessary to allow Southern Companies to avoid normalization violation, as more fully explained in the amended petition for declaratory order.

Any person desiring to intervene or to protest in this proceeding must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. 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 Petitioners.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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 December 6, 2018.

Dated: November 16, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–25583 Filed 11–23–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ19–2–000]

Oncor Electric Delivery Company LLC; Notice of Filing

Take notice that on November 7, 2018, Oncor Electric Delivery Company LLC submitted its tariff filing: Oncor Tex-La Tariff Rate Changes to be effective 10/10/2018.

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 on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the website that enables subscribers to

receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on November 28, 2018.

Dated: November 16, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–25586 Filed 11–23–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–14–000; PF18–4–000]

Notice of Application; Mountain Valley Pipeline, LLC

Take notice that on November 6, 2018, Mountain Valley Pipeline, LLC (Mountain Valley), 625 Liberty Avenue, Suite 2000, Pittsburgh, Pennsylvania 15222, filed in Docket No. CP19–14–000 an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Parts 157 and 284 of the Commission's regulations for authorization to construct, own and operate its Southgate Project located in Virginia and North Carolina. Specifically, Mountain Valley proposes to construct: (i) Approximately 73 miles of new 24-inch and 16-inch-diameter pipeline, (ii) the 28,915 horsepower Lambert Compressor Station in Pittsylvania County, Virginia, and (iii) associated valves, piping, pig launching and receiving facilities, and appurtenant facilities. The proposed Southgate Project facilities commence near the City of Chatham, in Pittsylvania County, Virginia and terminate at a delivery point with Public Service Company of North Carolina, Inc. (PSNC) near the City of Graham in Alamance County, North Carolina. The Project is designed to create 375,000 dekatherms per day (Dth/d). Mountain Valley estimates the cost of the Southgate Project to be $468,459,509. Mountain Valley requests a separate rate zone and initial recourse rates for the Southgate Project facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Commission staff has determined that this project qualifies as a Major Infrastructure Project pursuant to the Memorandum of Understanding Implementing One Federal Decision Under Executive Order 13807 (MOU) signed on April 10, 2018. Major Infrastructure Projects are defined as projects for which multiple authorizations by Federal agencies will be required and the lead Federal agency has determined that it will prepare an Environmental Impact Statement under the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*

The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this application should be directed to William Lavarco, NextEra Energy, Inc., 801 Pennsylvania Ave. NW, Suite 220, Washington, DC 20004, by telephone at (202) 347–7127, or by email at *William.Lavarco@nee.com.*

On May 15, 2018, the Commission staff granted Mountain Valley's request to utilize the Pre-Filing Process and assigned Docket No. PF18–4–000 to staff activities involved in the Southgate Project. Now, as of the filing of the November 6, 2018 application, the Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket No. CP19–14–000, as noted in the caption of this Notice.

Pursuant to section 157.9 of the Commission's rules (18 CFR 157.9), within 90 days of this Notice, the Commission staff will either: Complete its environmental impact statement (EIS) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final EIS for this proposal. The filing of the final EIS in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 3 copies of filings made with the Commission and must provide a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list and will be notified of any meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

As of the February 27, 2018 date of the Commission's order in Docket No. CP16–4–001, the Commission will apply its revised practice concerning out-of-time motions to intervene in any new Natural Gas Act section 3 or section

7 proceeding.[1] Persons desiring to become a party to a certificate proceeding are to intervene in a timely manner. If seeking to intervene out-of-time, the movant is required to ''show good cause why the time limitation should be waived,'' and should provide justification by reference to factors set forth in Rule 214(d)(1) of the Commission's Rules and Regulations.[2]

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 3 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE, Washington, DC 20426.

Comment Date: 5:00 p.m. Eastern Time on December 10, 2018.

Dated: November 19, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–25637 Filed 11–23–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14887–000]

Southeast Oklahoma Power Corporation; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

1. On July 31, 2018, Southeast Oklahoma Power Corporation, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Southeast Oklahoma Pumped Storage Hydroelectric Project (project) to be located on the Kiamichi River, near the town of Whitesboro, in LeFlore County, Oklahoma. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

2. The proposed project would consist of the following: (1) A 2,165-foot-long, 302-foot-high concrete-faced rockfill upper dam with a 196.85-foot-long emergency spillway with a 600-foot-long, 30-foot-wide channel; (2) an upper reservoir with a surface area of 488.52 acres and a storage capacity of 43,633 acre-feet; (3) a 98.4-foot-long, 39.4-foot-high concrete upper intake/outlet structure; (4) a 6,370-foot-long, 27.8-foot-diameter steel and concrete headrace tunnel; (5) a 545-foot-long, 90-foot-wide, 185.4-foot-high underground concrete pumping station/powerhouse containing four pump/generating units with a total capacity of 1,200 megawatts; (6) a 7,439-foot-long, 27.8-foot-diameter tailrace tunnel; (7) a 98.4-foot-long, 39.4-foot-high concrete lower intake/outlet structure; (8) a 9,957-foot-long, 52.5-foot-high earthen lower dam with a 33-foot-long, 13-foot-high emergency spillway with a 1,640-foot-long tunnel to the Kiamichi River; (9) a lower reservoir with a surface area of 727 acres, and a storage capacity of 37,965 acre-feet; (10) two 20-inch-diameter, 675-foot-long pipes with 110 kilowatt pumps from the lower reservoir to the regulating reservoir; (11) a regulating reservoir with a surface area of 40 acres, and a storage capacity of 1,216 acre-feet; (12) two 20-inch-diameter, 690-foot-long pipes with two 110 kilowatt pumps from the Kiamichi River to the regulating reservoir; (13) a 40-foot-long, 40-foot-wide funnel shaped intake structure on the Kiamichi River, located 1.5-foot above the bottom of the Kiamichi River tapering down to 10-foot-long, 10-foot-wide section where it connects to the two pipes; and (14) a 124-mile-long transmission line to the Electric Reliability Council of Texas grid.

The proposed project would relocate State Road 248 (Post Oar Road) and 583rd Street because the lower reservoir would otherwise inundate them. The proposed project would have an estimated average annual generation of 4,368,000 megawatt-hours.

Applicant Contact: Mr. John Bobenic, Southeast Oklahoma Power Corporation, c/o Daytona Power Corp, 1800, 421–7 Avenue SW, Calgary, Alberta Canada T2P 4K9; phone: (578) 433–4933.

FERC Contact: Michael Spencer, (202) 502–6093, *michael.spencer@ferc.gov.*

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–14887–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14887) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: November 16, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–25585 Filed 11–23–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–525–000]

Notice of Schedule for Environmental Review of the Gulf South Pipeline Company, LP—Willis Lateral Project

On July 13, 2018, Gulf South Pipeline Company, LP (Gulf South) filed an application in Docket No. CP18–525–000 requesting a Certificate of Public Convenience and Necessity pursuant to section 7(c) of the Natural Gas Act to construct and operate certain natural gas pipeline facilities. The proposed project is known as the Willis Lateral Project (Project), and would provide about 200 million cubic feet of natural gas per day to Entergy Texas, Inc.'s Montgomery County Power Station Project near Willis, Texas.

On July 26, 2018, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's Environmental Assessment (EA)

[1] *Tennessee Gas Pipeline Company, L.L.C.,* 162 FERC ¶61,167 at ¶50 (2018).

[2] 18 CFR 385.214(d)(1).

for the Project. This instant notice identifies the FERC staff's planned schedule for the completion of the EA for the Project.

Schedule for Environmental Review

Issuance of EA—March 4, 2019
90-day Federal Authorization Decision Deadline—June 2, 2019

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

The Project would consist of the following facilities entirely within the state of Texas:

- Construction of approximately 19 miles of 24-inch-diameter pipeline in Montgomery and San Jacinto Counties;
- addition of a new 15,876 horsepower turbine engine to the existing Goodrich Compressor Station and construction of a new Meter and Regulator (M&R) station at the compressor station in Polk County;
- construction of the Index 129 tie-in and pig [1] launcher facility in San Jacinto County;
- construction of the new Willis M&R station at the terminus of the Project (including a pig receiver, filter separators with a liquid storage tank, and ancillary equipment) in Montgomery County; and
- construction of a mainline valve facility in Montgomery County.

Background

On August 31, 2018, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Willis Lateral Project, And Request for Comments on Environmental Issues* (NOI). The NOI was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers.

In response to the Notice of Application, the Commission received comments from the Texas Parks and Wildlife Department regarding appropriate best management practices for construction and restoration, special status species, surface water, and impacts on vegetation and wildlife. All substantive comments will be addressed in the EA. No comments were received in response to the NOI.

[1] A ''pig'' is a tool that the pipeline company inserts into and pushes through the pipeline for cleaning the pipeline, conducting internal inspections, or other purposes.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Additional information about the projects are available from the Commission's

Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the ''eLibrary'' link, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' excluding the last three digits (*i.e.,* CP18–525), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: November 19, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–25641 Filed 11–23–18; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2018–0543, FRL–9986–08–OEI]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Hazardous Remediation Waste Management Requirements (HWIR) Contaminated Media (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Hazardous Remediation Waste Management Requirements (HWIR) Contaminated Media (EPA ICR No. 1775.08, OMB Control No. 2050–0161), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through November 30, 2018. Public comments were previously requested via the **Federal Register** on August 3, 2018 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before December 26, 2018.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OLEM–2018–0543, to (1) EPA, either online using *www.regulations.gov* (our preferred method), or by email to *rcra-docket@epa.gov,* or by mail to: RCRA Docket (2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Peggy Vyas, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 703–308–5477; fax number: 703–308–8433; email address: *vyas.peggy@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The Resource Conservation and Recovery Act (RCRA) requires EPA to establish a national regulatory program to ensure that hazardous wastes are managed in a manner protective of human health and the environment. Under this program, EPA regulates newly generated hazardous wastes, as well as hazardous remediation wastes (*i.e.,* hazardous

wastes managed during cleanup). Hazardous remediation waste management sites must comply with all parts of 40 *CFR* part 264 except subparts B, C, and D. In place of these requirements, they need to comply with performance standards based on the general requirement goals in these sections, which are codified at 40 *CFR* 264.1(j).

Under § 264.1(j), owners/operators of remediation waste management sites must develop and maintain procedures to prevent accidents. These procedures must address proper design, construction, maintenance, and operation of hazardous remediation waste management units at the site. In addition, owners/operators must develop and maintain a contingency and emergency plan to control accidents that occur. The plan must explain specifically how to treat, store, and dispose of the hazardous remediation waste in question, and must be implemented immediately whenever fire, explosion, or release of hazardous waste or hazardous waste constituents that could threaten human health or the environment. In addition, the Remedial Action Plan streamlines the permitting process for remediation waste management sites to allow cleanups to take place more quickly.

Form Numbers: None.

Respondents/affected entities: Private sector, as well as State, Local, or Tribal governments.

Respondent's obligation to respond: Mandatory (RCRA § 3004(u)).

Estimated number of respondents: 183.

Frequency of response: One-time.

Total estimated burden: 6,361 hours per year. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $399,803 (per year), which includes $350,307 in annualized labor and $49,496 in annualized capital or operation & maintenance costs.

Changes in the Estimates: There is a decrease of 592 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is due to a decrease in the number of hazardous remediation waste management sites.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2018–25675 Filed 11–23–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2017–0652; FRL–9979–89–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Expanded Access to TSCA Confidential Business Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has submitted the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA): ''Expanded Access to TSCA Confidential Business Information'' (EPA ICR No. 2570.01, OMB Control No. 2070-[new]). This is a request for approval of a new collection. EPA did not receive any comments in response to the previously provided public review opportunity issued in the **Federal Register** of March 12, 2018. With this submission to OMB, EPA is providing an additional 30 days for public review and comment.

DATES: Comments must be received on or before December 26, 2018.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–HQ–OPPT–2017–0652, to both EPA and OMB as follows:

- To EPA online using *http://www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and
- To OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Brandon Mullings, Environmental Assistance Division, 7408M, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–4826; email address: *mullings.brandon@epa.gov.*

SUPPLEMENTARY INFORMATION:

Docket: Supporting documents, including the ICR that explains in detail the information collection activities and the related burden and cost estimates that are summarized in this document, are available in the docket for this ICR. The docket can be viewed online at *http://www.regulations.gov* or in person at the EPA Docket Center, West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is (202) 566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

ICR status: This is a new ICR. Under OMB regulations, an agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. Under PRA, 44 U.S.C. 3501 *et seq.,* an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This ICR addresses the content and form of the statements of need and agreements required under sections 14(d)(4), (d)(5), and (d)(6) of the Toxic Substances Control Act, as amended in 2016. These activities are described in the three guidance documents that have been developed to implement the new authorities in TSCA section 14(d)(4), (d)(5), and (d)(6), and include some basic logistical information on where and how to submit requests to EPA. Making a request for access to TSCA CBI is a voluntary activity, but is required in order to gain such access under TSCA section 14(d). The ICR provides burden estimates for these activities. The guidance documents are available at *https://www.epa.gov/tsca-cbi/requesting-access-cbi-under-tsca.*

Form Numbers: None.

Respondents/affected entities: Entities potentially affected by this ICR are mainly government employees (federal, state, local, tribal), as well as medical professionals, such as doctors and nurses.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 6 (total).

Frequency of response: On occasion.

Total estimated burden: 89 hours (per year). Burden is defined at 5 CFR 1320.03(b)

Total estimated cost: $5,204.11 (per year), includes $0 annualized capital or operation & maintenance costs.

Courtney Kerwin,

Director, Collection Strategies Division, Office of Environmental Information.

[FR Doc. 2018–25673 Filed 11–23–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2014–0047; FRL–9985–96–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Municipal Solid Waste Landfills (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NSPS for Municipal Solid Waste Landfills (EPA ICR No. 1557.10, OMB Control No. 2060–0220), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through November 30, 2018. Public comments were previously requested, via the **Federal Register** on June 29, 2017, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before December 26, 2018.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2014–0047, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The New Source Performance Standards (NSPS) for Municipal Solid Waste (MSW) apply to MSW landfills for which construction, modification, or reconstruction commences either on or after May 30, 1991. A MSW landfill is an entire disposal facility in a contiguous geographical space where household waste is placed in or on. An MSW landfill may also receive other types of RCRA Subtitle D wastes (§ 257.2 of this title) such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be publicly or privately owned, and may be a new landfill, an existing landfill, or a lateral expansion.

On August 29, 2016 (81 FR 59332), EPA finalized a new NSPS subpart (40 CFR part 60, subpart XXX) based on its review of subpart WWW. Concurrently, EPA finalized revised Emissions Guidelines under a new subpart (40 CFR part 60, subpart Cf). The new Emission Guidelines apply to existing landfills accepting waste after 1987 for which construction was commenced either on or before July 17, 2014. Subpart XXX applies to MSW landfills that are new, reconstructed, or modified after July 17, 2014. The requirements in Subpart WWW mimic most of the requirements in these new rules, except for that the control threshold in new rules require controls at additional landfills beyond what Subpart WWW requires.

In general, all NSPS standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance with 40 CFR part 60, subpart WWW.

Form Numbers: None.

Respondents/affected entities: Municipal Solid Waste (MSW) Landfills.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart WWW).

Estimated number of respondents: 661 (total).

Frequency of response: Annually.

Total estimated burden: 760 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $86,600 (per year); there are no annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is a decrease in the burden hours and the Capital/O&M costs in this ICR compared to the previous ICR. The change in burden and cost estimates occurred as a result of the 2016 NSPS (40 CFR part 60, subpart XXX) and Emissions Guidelines (40 CFR part 60, subpart Cf). Most of the burden previously attributed to the ICR for subpart WWW has been accounted for in the 2016 ICRs for both subparts XXX (ICR 2498.03, OMB 2060–0697) and Cf (ICR 2522.02, OMB 2060–0720) to avoid duplication of burden for identical requirements. There is an increase in number of responses compared to the previous ICR. While this ICR does not duplicate responses for the 2016 ICRs, each respondent was counted as a respondent that does not report but maintains records under subpart WWW and this resulted in an increase number of responses.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2018–25672 Filed 11–23–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2014–0078; FRL–9986–57–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Metal Coil Surface Coating Plants (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NESHAP for Metal Coil Surface Coating Plants (EPA ICR Number 1957.08, OMB Control Number 2060–0487), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through November 30, 2018. Public comments were previously requested, via the **Federal Register**, on June 29, 2017 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before December 26, 2018.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2014–0078, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at either *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Metal Coil Surface Coating Plants (40 CFR part 63, subpart SSSS) apply to existing facilities and new facilities that are major sources of hazardous air pollutants (HAP) at which a coil coating line is operated. A coil coating line is a process in which special equipment is used to apply an organic coating to the surface of metal coils; the affected source at each plant site is the collection of all coil coating lines at the site. The provisions of this Subpart do not apply to coil coating lines that are part of research or laboratory equipment or coil coating lines on which at least 85 percent of the metal coil coated, based on surface area, is less than 0.15 millimeters (0.006 inches) thick, unless the coating line is controlled by a common control device. New facilities include those that commenced construction or reconstruction after the date of proposal.

In general, all NESHAP standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance with 40 CFR part 63, subpart SSSS.

Form Numbers: None.

Respondents/affected entities: Facilities engaged in metal coil surface coating.

Respondent's obligation to respond: Mandatory (40 CFR 63, Subpart SSSS).

Estimated number of respondents: 48 (total).

Frequency of response: Initially and semiannually.

Total estimated burden: 16,100 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $1,820,000 (per year), which includes $57,600 in annualized capital/setup and/or operation & maintenance costs.

Changes in the estimates: There is a decrease in the total estimated burden and the number of responses as currently identified in the OMB Inventory of Approved Burdens. This decrease is not due to any program changes. The decrease is a result of an adjustment made to the estimated number of respondents based on data from internal Agency experts. The total number of respondents is significantly reduced since the last ICR renewal based on the delisting of methyl ethyl ketone as a HAP.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2018–25671 Filed 11–23–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No. 18–214; MB Docket No. 16–306; GN Docket No. 12–268; DA 18–1072]

Incentive Auction Task Force and Media Bureau Seek Comment on Catalog of Potentially Reimbursable Costs Incurred by Low Power Television, Television Translator and FM Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: This document seeks comment on a proposed catalog of potentially reimbursable costs that may be incurred by Low Power Television (LPTV), television translator, and FM broadcast stations as a result of the Federal Communications Commission's (Commission's) broadcast television spectrum incentive auction. Title V of the Consolidated Appropriations Act, 2018 (Reimbursement Expansion Act), requires that the Commission reimburse LPTV, television translator and FM broadcast stations for costs reasonably incurred as a result of the incentive auction.

DATES: Comments are due on or before November 21, 2018. Reply comments are due on or before December 6, 2018.

ADDRESSES: Interested parties may submit and reply comments, identified by MB Docket No. 18–214, by any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Federal Communications Commission's Website: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.

• *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• *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: 202–418–0432.

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: Pamela Gallant of the Media Bureau, Video Division, (202) 418–0614.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, DA 18–1072, released on October 22, 2018. The full text of this document is available electronically via the FCC's Electronic Document Management System (EDOCS) website at *https://www.fcc.gov/document/iatfmedia-bureau-seek-comment-lptv-translator-and-fm-catalog.* Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. This document is also available for public inspection and copying during regular business hours in the FCC Reference Information Center, which is located in Room CY–A257 at FCC Headquarters, 445 12th Street SW, Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m. The complete text may be purchased from the Commission's copy contractor, 445 12th Street SW, Room CY–B402, Washington, DC 20554. Alternative formats are available for people with disabilities (braille, large print, electronic files, audio format), by sending an email to *FCC504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

1. On March 23, 2018, the President signed into law the Consolidated Appropriations Act of 2018, which included the Reimbursement Expansion Act (REA) of 2018. In Title V of REA of 2018, Congress provided funding for and expanded the list of entities eligible to receive reimbursement for costs reasonably incurred resulting from the incentive auction to include LPTV, television translator and FM stations. To implement the REA, the Commission released a *Notice of Proposed Rulemaking* (MB Docket No. 18–214, GN Docket No. 12–268, Notice of Proposed Rulemaking and Order, FCC 18–113) that, among other things, seeks comment on the types of costs these entities are likely to incur and instructs the Media Bureau to develop a revised Catalog of Eligible Expenses. Accordingly, this *Public Notice* seeks comment on a proposed LPTV/Translator/FM Cost Catalog (Appendix A to this *Public Notice*), which was developed by a third-party contractor engaged by the Media Bureau to identify price ranges for potential services and equipment based on a market survey of industry vendors.

2. The LPTV/Translator/FM Cost Catalog will facilitate the reimbursement process. The LPTV/Translator/FM Cost Catalog provides predetermined costs or cost ranges for use as estimates when stations do not have vendor quotes, and establishes acceptable price ranges, thereby necessitating additional cost justification documentation only for expenses that are higher than the range in the Catalog or that are for equipment or services not covered by the LPTV/Translator/FM Cost Catalog. This *Public Notice* seeks comment on whether the Catalog is missing any types of expenses LPTV, translator and FM stations are likely to incur and on the price ranges in the Catalog.

Procedural Matters

4. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before the dates indicated on the first page of this document. All filings should refer to MB Docket No. 18–214. Comments may be filed: (1) Using the Commission's Electronic Comment Filing System (ECFS), or (2) by filing paper copies. Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

5. Comments and reply comments filed in response to this *document* will be available for public inspection and copying in the Commission's Reference Center, Room CY–A257, 445 12th Street SW, Washington, DC 20554, and via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number, MB Docket No. 18–214.

6. 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, commenters must submit two additional copies for each additional docket or rulemaking number.

7. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, as follows:

• All hand-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. All hand deliveries must be held together with rubber bands or fasteners. Envelopes must be disposed of before entering the building. The filing hours at this location are 8:00 a.m. to 7:00 p.m.

• Commercial overnight mail (except U.S. Postal Service mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

• All other mail, including U.S. Postal Service Express Mail, Priority Mail, and First Class Mail should be addressed to 445 12th Street SW, Washington, DC 20554.

8. Alternate formats of this *Public Notice* (computer diskette, large print, audio recording, and Braille) are available to persons with disabilities by contacting the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY), or send an email to *fcc504@fcc.gov.*

Federal Communications Commission.

Thomas Horan,

Chief of Staff.

[FR Doc. 2018–25571 Filed 11–23–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

TIME AND DATE: December 3, 2018; 10 a.m.

PLACE: 800 N. Capitol Street NW, Washington, DC.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Closed Session

1. Fact Finding No. 28—Final Report—Briefing by Commissioner Rebecca F. Dye.

CONTACT PERSON FOR MORE INFORMATION: Rachel Dickon, Secretary, (202) 523–5725.

Rachel Dickon,

Secretary.

[FR Doc. 2018–25814 Filed 11–21–18; 4:15 pm]

BILLING CODE 6731–AA–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank 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 applications will also 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 BHC Act (12 U.S.C. 1842(c)). 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 4 of the BHC Act (12 U.S.C. 1843). 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 20, 2018.

A. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Amarillo National Bancorp, Inc., Amarillo, Texas;* to acquire 100 percent of the voting shares of Commerce National Financial Services, Inc., and indirectly acquire voting shares of, Lubbock National Bank, both of Lubbock, Texas.

Board of Governors of the Federal Reserve System, November 20, 2018.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2018–25674 Filed 11–23–18; 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 10, 2018.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566. Comments can also be sent electronically to *Comments.applications@clev.frb.org:*

1. *The Richard F. McCready, Jr. Maximum United Credit Trust, Jane Houston McCready, Trustee, Winchester, Kentucky, Sarah McCready Boston, Trustee and Louise F. McCready Hart, Trustee, both of New York, New York;* to join the McCready family group, a group acting in concert, to acquire shares of WinFirst Financial Corporation, Winchester, Kentucky, and thereby acquire shares of Winchester Federal Bank, Winchester, Kentucky.

B. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Arthur Haag Sherman, the Sherman 2018 Irrevocable Trust, Sherman Tectonic FLP LP, and Sherman Family Holdings LLC, all of Houston, Texas;* as a group acting in concert, to acquire shares of T Acquisition, Inc., and thereby indirectly acquire T Bank, National Association, both of Dallas, Texas.

Board of Governors of the Federal Reserve System, November 20, 2018.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2018–25676 Filed 11–23–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, and the Determination of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)–RFA–IP–19–001, Surveillance for Respiratory Syncytial Virus (RSV) and Other Viral Respiratory Infections Among Native Americans/Alaskan Natives; RFA–IP–19–002, Increasing Influenza and Tdap Vaccination of Pregnant Women in Obstetric/Gynecologic Practices in Large Health Systems through Quality Improvement Interventions; and RFA–IP–19–003, Understanding and Improving Immunization Services Among Adult Hospital Inpatient and Observation/Clinical Decision Unit Settings.

Date: March 19–20, 2019.

Time: 10:00 a.m.–5:00 p.m., (EST).

Place: Teleconference, Centers for Disease Control and Prevention, Room 1080, 8 Corporate Square Blvd., Atlanta, GA 30329.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Gregory Anderson, M.S., M.P.H., Scientific Review Officer, CDC, 1600 Clifton Road, NE, Mailstop E60, Atlanta, Georgia 30329, (404) 718–8833, *gca5@cdc.gov.*

The Chief Operating Officer, Centers for Disease Control and Prevention, has

been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Sherri Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2018–25589 Filed 11–23–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10286, CMS–10440 and CMS–10507]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (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 25, 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: William Parham at (410) 786–1326.

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–10286 Notice of Research Exception under the Genetic Information Nondiscrimination Act

CMS–10440 Data Collection to Support Eligibility Determinations for Insurance Affordability Programs and Enrollment through Affordable Insurance Exchanges, Medicaid and Children's Health Insurance Program Agencies (CMS–10440)

CMS–10507 State-based Exchange Annual Report Tool (SMART)

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:* Extension of a currently approved collection; *Title of Information Collection:* Notice of Research Exception under the Genetic Information Nondiscrimination Act; *Use:* Under the Genetic Information Nondiscrimination Act of 2008 (GINA), a plan or issuer may request (but not require) a genetic test in connection with certain research activities so long as such activities comply with specific requirements, including: (i) The research complies with 45 CFR part 46 or equivalent federal regulations and applicable State or local law or regulations for the protection of human subjects in research; (ii) the request for the participant or beneficiary (or in the case of a minor child, the legal guardian of such beneficiary) is made in writing and clearly indicates that compliance with the request is voluntary and that non-compliance will have no effect on eligibility for benefits or premium or contribution amounts; and (iii) no genetic information collected or acquired will be used for underwriting purposes. The Secretary of Labor or the Secretary of Health and Human Services is required to be notified if a group health plan or health insurance issuer intends to claim the research exception permitted under Title I of GINA. Nonfederal governmental group health plans and issuers solely in the individual health insurance market or Medigap market will be required to file with the Centers for Medicare & Medicaid Services (CMS). The Notice of Research Exception under the Genetic Information Nondiscrimination Act is a model notice that can be completed by group health plans and health insurance issuers and filed with either the Department of Labor or CMS to comply with the notification requirement. *Form Number:* CMS–10286 (OMB control number 0938–1077); *Frequency:* Occasionally; *Affected Public:* State, Local or Tribal Governments; Private Sector; *Number of Respondents:* 2; *Number of Responses:* 2; *Total Annual Hours:* 0.5. (For policy questions regarding this collection contact Usree Bandyopadhyay at 410–786–6650.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of*

Information Collection: Data Collection to Support Eligibility Determinations for Insurance Affordability Programs and Enrollment through Affordable Insurance Exchanges, Medicaid and Children's Health Insurance Program Agencies; *Use:* Information collected by the Marketplace, Medicaid or CHIP agency will be used to determine eligibility for coverage through the Marketplace and insurance affordability programs (*i.e.,* Medicaid, CHIP, and advance payment of the premium tax credits), and assist consumers in enrolling in a QHP if eligible. Applicants include anyone who may be eligible for coverage through any of these programs.

The Marketplace verifies the information provided on the application, communicates with the applicant or his/her authorized representative and subsequently provides the information to the health plan selected by the applicant so that it can enroll him/her in a QHP. The Marketplace also uses the information provided in support of its ongoing operations, including activities such as verifying continued eligibility for all programs, processing appeals, reporting on and managing the insurance affordability programs for eligible individuals, performing oversight and quality control activities, combatting fraud, and responding to any concerns about the security or confidentiality of the information. *Form Number:* CMS–10440 (OMB control number: 0938–1191); *Frequency:* Annually; *Affected Public:* Private Sector (Business or other for-profits, Not-for-Profit Institutions); *Number of Respondents:* 4,662,000; *Total Annual Responses:* 4,662,000; *Total Annual Hours:* 946,386. (For policy questions regarding this collection contact Anne Pesto at 410–786–3492.)

3. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* State-based Exchange Annual Report Tool (SMART); *Use:* The annual report is the primary vehicle to insure comprehensive compliance with all reporting requirements contained in the Affordable Care Act (ACA). It is specifically called for in Section 1313(a)(1) of the Act which requires an State Based Exchange (SBEs) (including an Exchange using the Federal Platform) to keep an accurate accounting of all activities, receipts, and expenditures, and to submit a report annually to the Secretary concerning such accounting.

CMS and other Federal agencies use the information collected from the SMART to determine if a state is maintaining a compliant, operational Exchange. It also provides a mechanism to collect innovative approaches to meeting challenges encountered by the SBEs during the preceding year, as well as to provide information to CMS regarding potential changes in priorities and approaches for the upcoming year. *Form Number:* CMS–10507 (OMB control number: 0938–1244); *Frequency:* Annually; *Affected Public:* State, Local, or Tribal governments; *Number of Respondents:* 17; *Total Annual Responses:* 17; *Total Annual Hours:* 3,415. (For policy questions regarding this collection contact Christy Woods at 301–492–5140.)

Dated: November 20, 2018.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2018–25700 Filed 11–23–18; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Matching Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS)

ACTION: Notice of a New Matching Program.

SUMMARY: In accordance with subsection (e)(12) of the Privacy Act of 1974, as amended, the Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS) is providing notice of a new matching program between CMS and the Peace Corps, ''Verification of Eligibility for Minimum Essential Coverage Under the Patient Protection and Affordable Care Act Through a Peace Corps Health Benefit Plan.''

DATES: The deadline for comments on this notice is December 26, 2018.The re-established matching program will commence not sooner than 30 days after publication of this notice, provided no comments are received that warrant a change to this notice. The matching program will be conducted for an initial term of 18 months (from approximately January 2019 to June 2020) and within 3 months of expiration may be renewed for one additional year if the parties make no change to the matching program and certify that the program has been conducted in compliance with the matching agreement.

ADDRESSES: Written comments can be sent to: CMS Privacy Act Officer, Division of Security, Privacy Policy & Governance, Information Security & Privacy Group, Office of Information Technology, CMS, 7500 Security Blvd., Baltimore, MD 21244–1870, Mailstop: N3–15–25, or by email to: *walter.stone@cms.hhs.gov.* Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9:00 a.m. to 3:00 p.m.

FOR FURTHER INFORMATION CONTACT: If you have questions about the matching program, you may contact Jack Lavelle, Senior Advisor, Marketplace Eligibility and Enrollment Group, Center for Consumer Information and Insurance Oversight, CMS, 7501 Wisconsin Ave., Bethesda, MD 20814, (410) 786–0639, or by email at *Jack.Lavelle1@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974, as amended (5 U.S.C. 552a) provides certain protections for individuals applying for and receiving federal benefits. The law governs the use of computer matching by federal agencies when records in a system of records (meaning, federal agency records about individuals retrieved by name or other personal identifier) are matched with records of other federal or non-federal agencies. The Privacy Act requires agencies involved in a matching program to:

1. Enter into a written agreement, which must be prepared in accordance with the Privacy Act, approved by the Data Integrity Board of each source and recipient federal agency, provided to Congress and the Office of Management and Budget (OMB), and made available to the public, as required by 5 U.S.C. 552a(o), (u)(3)(A), and (u)(4).

2. Notify the individuals whose information will be used in the matching program that the information they provide is subject to verification through matching, as required by 5 U.S.C. 552a(o)(1)(D).

3. Verify match findings before suspending, terminating, reducing, or making a final denial of an individual's benefits or payments or taking other adverse action against the individual, as required by 5 U.S.C. 552a(p).

4. Report the matching program to Congress and the OMB, in advance and annually, as required by 5 U.S.C. 552a(o) (2)(A)(i), (r), and (u)(3)(D).

5. Publish advance notice of the matching program in the **Federal Register** as required by 5 U.S.C. 552a(e)(12). This matching program meets these requirements.

This matching program meets these requirements.

Barbara Demopulos,

CMS Privacy Advisor, Information Security and Privacy Group, Division of Security, Privacy Policy and Governance, Office of Information Technology, Centers for Medicare & Medicaid Services.

Participating Agencies

Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS), and the Peace Corps.

Authority for Conducting the Matching Program

The statutory authority for the matching program is 42 U.S.C. 18001, *et seq.*

Purpose(s)

The purpose of the matching program is to assist CMS in determining individuals' eligibility for financial assistance in paying for private health insurance coverage. In this matching program, the Peace Corps provides CMS with data identifying all Peace Corps volunteers and the dates when each volunteer was eligible for coverage under a Peace Corps health benefit plan, which CMS and state administering entities (AEs) use to verify whether an individual who is applying for or is enrolled in private health insurance coverage under a qualified health plan through a federally-facilitated or state-based health insurance exchange is eligible for coverage under a Peace Corps health benefit plan. CMS makes the data provided by the Peace Corps available to AEs through a data services hub to use in determining the applicant's or enrollee's eligibility for financial assistance (including an advance tax credit and cost sharing reduction, which are types of insurance affordability programs) in paying for private health insurance coverage. Peace Corps health benefit plans provide minimum essential coverage, and eligibility for such plans usually precludes eligibility for financial assistance in paying for private coverage. The data provided by the Peace Corps under this matching program will be used by CMS and AEs to authenticate identity, determine eligibility for financial assistance, and determine the amount of the financial assistance.

Categories of Individuals

The categories of individuals whose information is involved in the matching program are:

- Active and recently separated Peace Corps volunteers, identified in data CMS receives from the Peace Corps; and
- Consumers who apply for or are enrolled in private insurance coverage under a qualified health plan through a federally-facilitated health insurance exchange (and other relevant individuals, such as applicants' and enrollees' household members), whose records are matched against the data CMS receives from the Peace Corps.

Categories of Records

The categories of records which will be provided by the Peace Corps to CMS in this matching program are identity records and minimum essential coverage period records, consisting of these data elements:

1. Record type.
2. data record number.
3. social security number of Peace Corps volunteer.
4. last name of Peace Corps volunteer.
5. middle name of Peace Corps volunteer.
6. first name of Peace Corps volunteer.
7. gender of Peace Corps volunteer.
8. date of birth of Peace Corps volunteer.
9. Peace Corps volunteer coverage begin date.
10. Peace Corps volunteer actual end date.
11. Peace Corps volunteer projected coverage end date. CMS will not send any data about individual applicants/enrollees to the Peace Corps in order to receive this data about Peace Corps volunteers. The Peace Corps will send CMS a bulk file each day from Tuesday through Saturday, which will contain this data for all active Peace Corps volunteers and all Peace Corps volunteers who left service within the prior three months.

System(s) of Records

The records used in this matching program about Peace Corps volunteers will be disclosed to CMS from the Peace Corps system of records identified below, and will be matched against applicant/enrollee records in the CMS system of records identified below:

A. System of Records Maintained by CMS

- MCMS Health Insurance Exchanges System (HIX), CMS System No. 09–70–0560, last published in full at 78 FR 63211 (Oct. 23, 2013), as amended at 83 FR 6591 (Feb. 14, 2018).

B. System of Records Maintained by the Peace Corps

- Peace Corps Manual Section 897, Attachment B, PC–17 Volunteer Applicant and Service Records System, 75 FR 53000 (Oct. 14, 2010). Routine use (i), which authorizes disclosure of records ''to verify active or former Volunteer service,'' authorizes the Peace Corps' disclosures to CMS.

[FR Doc. 2018–25639 Filed 11–23–18; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meetings

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of meetings of the AIDS Research Advisory Committee, NIAID.

The meetings will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: AIDS Research Advisory Committee, NIAID.

Date: January 28, 2019.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: Reports from the Division Director and other staff.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1/E2, 45 Center Drive Bethesda, MD 20892.

Contact Person: Mark A. Mueller, Executive Secretary, AIDS Research Advisory Committee, Division of AIDS, NIAID/NIH, 5601 Fishers Lane, RM 8D39, Bethesda, MD 20892, 301–402–2308, *mark.mueller@nih.gov*.

Name of Committee: AIDS Research Advisory Committee, NIAID.

Date: June 3, 2019.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: Reports from the Division Director and other staff.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1/E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Mark A. Mueller, Executive Secretary, AIDS Research Advisory Committee, Division of AIDS, NIAID/NIH, 5601 Fishers Lane, RM 8D39 Bethesda, MD 20892, 301–402–2308, *mark.mueller@nih.gov*.

Name of Committee: AIDS Research Advisory Committee, NIAID.

Date: September 9, 2019.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: Reports from the Division Director and other staff.

Place: National Institutes of Health, Natcher Building, Conference Rooms, E1/E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Mark A. Mueller, Executive Secretary, AIDS Research Advisory

Committee, Division of AIDS, NIAID/NIH, 5601 Fishers Lane, RM 8D39, Bethesda, MD 20892, 301–402–2308, *mark.mueller@nih.gov*.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 20, 2018.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–25629 Filed 11–23–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; MID Independent SEP.

Date: December 13, 2018.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Robert C. Unfer, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room 3F40A, National Institutes of Health, NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–9823, (240) 669–5035, *robert.unfer@nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; MID Independent SEP.

Date: December 18, 2018.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Robert C. Unfer, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room 3F40A, National Institutes of Health, NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–9823, (240) 669–5035, *robert.unfer@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 20, 2018.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–25628 Filed 11–23–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director; Notice of Charter Renewal

In accordance with Title 41 of the U.S. Code of Federal Regulations, Section 102–3.65(a), notice is hereby given that the Charter for the National Toxicology Program Board of Scientific Counselors was renewed for an additional two-year period on November 14, 2018.

It is determined that the National Toxicology Program Board of Scientific Counselors is in the public interest in connection with the performance of duties imposed on the National Toxicology Program by law, and that these duties can best be performed through the advice and counsel of this group.

Inquiries may be directed to Claire Harris, Acting Director, Office of Federal Advisory Committee Policy, Office of the Director, National Institutes of Health, 6701 Democracy Boulevard, Suite 1000, Bethesda, Maryland 20892 (Mail code 4875), Telephone (301) 496–2123, or *Harriscl@nih.gov*.

Dated: November 20, 2018.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–25627 Filed 11–23–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of meetings of the National Advisory Allergy and Infectious Diseases Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Allergy and Infectious Diseases Council.

Date: January 28, 2019.

Open: 10:30 a.m. to 11:40 a.m.

Agenda: Report from the Institute Director.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1/E2, 45 Center Drive, Bethesda, MD 20892.

Closed: 11:40 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1/E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Matthew J. Fenton, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rm 4F50, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov*.

Name of Committee: National Advisory Allergy and Infectious Diseases Council Allergy, Immunology and Transplantation Subcommittee.

Date: January 28, 2019.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Open: 1:00 p.m. to adjournment.

Agenda: Reports from the Division Director and other staff.

Place: National Institutes of Health, Natcher Building Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Matthew J. Fenton, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rm 4F50, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov*.

Name of Committee: National Advisory Allergy and Infectious Diseases Council Microbiology and Infectious Diseases Subcommittee.

Date: January 28, 2019.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Rooms F1/F2, 45 Center Drive, Bethesda, MD 20892.

Open: 1:00 p.m. to adjournment.

Agenda: Reports from the Division Director and other staff.

Place: National Institutes of Health, Natcher Building, Conference Rooms F1/F2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Matthew J. Fenton, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rm 4F50, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov*.

Name of Committee: National Advisory Allergy and Infectious Diseases Council Acquired Immunodeficiency Syndrome Subcommittee.

Date: January 28, 2019.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Room A, 45 Center Drive, Bethesda, MD 20892.

Open: 1:00 p.m. to adjournment.

Agenda: Program advisory discussions and reports from division staff.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1/E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Matthew J. Fenton, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rm 4F50, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov*.

Name of Committee: National Advisory Allergy and Infectious Diseases Council Allergy, Immunology and Transplantation Subcommittee.

Date: June 3, 2019.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Open: 1:00 p.m. to adjournment.

Agenda: Reports from the Division Director and other staff.

Place: National Institutes of Health, Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Matthew J. Fenton, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rm 4F50, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov*.

Name of Committee: National Advisory Allergy and Infectious Diseases Council Microbiology and Infectious Diseases Subcommittee.

Date: June 3, 2019.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Rooms F1/F2, 45 Center Drive, Bethesda, MD 20892.

Open: 1:00 p.m. to adjournment.

Agenda: Reports from the Division Director and other staff.

Place: National Institutes of Health, Natcher Building, Conference Rooms F1/F2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Matthew J. Fenton, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rm 4F50, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov*.

Name of Committee: National Advisory Allergy and Infectious Diseases Council; Acquired Immunodeficiency Syndrome Subcommittee.

Date: June 3, 2019.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Room A, 45 Center Drive, Bethesda, MD 20892.

Open: 1:00 p.m. to adjournment.

Agenda: Program advisory discussions and reports from division staff.

Place: National Institutes of Health, Natcher Building, Conference Rooms, E1/E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Matthew J. Fenton, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rm 4F50, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov*.

Name of Committee: National Advisory Allergy and Infectious Diseases Council.

Date: June 3, 2019.

Open: 10:30 a.m. to 11:40 a.m.

Agenda: Report from the Institute Director.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1/E2, 45 Center Drive, Bethesda, MD 20892.

Closed: 11:40 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1/E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Matthew J. Fenton, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rm 4F50, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov*.

Name of Committee: National Advisory Allergy and Infectious Diseases Council; Microbiology and Infectious Diseases Subcommittee.

Date: September 9, 2019.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Rooms F1/F2, 45 Center Drive, Bethesda, MD 20892.

Open: 1:00 p.m. to adjournment.

Agenda: Reports from the Division Director and other staff.

Place: National Institutes of Health, Natcher Building, Conference Rooms F1/F2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Matthew J. Fenton, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rm 4F50, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov*.

Name of Committee: National Advisory Allergy and Infectious Diseases Council.

Date: September 9, 2019.

Open: 10:30 a.m. to 11:40 a.m.

Agenda: Report from the Institute Director.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1/E2, 45 Center Drive, Bethesda, MD 20892,

Closed: 11:40 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1/E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Matthew J. Fenton, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rm 4F50, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov*.

Name of Committee: National Advisory Allergy and Infectious Diseases Council; Allergy, Immunology and Transplantation Subcommittee.

Date: September 9, 2019.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Open: 1:00 p.m. to adjournment.

Agenda: Reports from the Division Director and other staff.

Place: National Institutes of Health, Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Matthew J. Fenton, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rm 4F50, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov*.

Name of Committee: National Advisory Allergy and Infectious Diseases Council; Acquired Immunodeficiency Syndrome Subcommittee.

Date: September 9, 2019.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Room A, 45 Center Drive, Bethesda, MD 20892.

Open: 1:00 p.m. to adjournment.

Agenda: Program advisory discussions and reports from division staff.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1/E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Matthew J. Fenton, Ph.D., Director, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rm 4F50, Bethesda, MD 20892, 301–496–7291, *fentonm@niaid.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.niaid.nih.gov/facts/facts.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 20, 2018.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–25630 Filed 11–23–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; NIMH Pathway to Independence Awards (K99/R00).

Date: November 28, 2018.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: David W. Miller, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–9734, *millerda@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: November 19, 2018.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–25570 Filed 11–23–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of Marine Technical Surveyors, Inc. (Donaldsonville, LA) as a Commercial Gauger

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Marine Technical Surveyors, Inc. (Donaldsonville, LA) as a commercial gauger.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Marine Technical Surveyors, Inc. (Donaldsonville, LA), has been approved to gauge petroleum and certain petroleum products for customs purposes for the next three years as of May 8, 2018.

DATES: Marine Technical Surveyors, Inc. (Donaldsonville, LA) was approved as a commercial gauger as of May 8, 2018. The next triennial inspection date will be scheduled for May 2021.

FOR FURTHER INFORMATION CONTACT: Melanie Glass, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 19 CFR 151.13, that Marine Technical Surveyors, Inc. 2382 Highway 1 South, Donaldsonville, LA 70346, has been approved to gauge petroleum and certain petroleum products, in accordance with the provisions of 19 CFR 151.13.

Marine Technical Surveyors, Inc. (Donaldsonville, LA) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank gauging.
7	Temperature Determination.
8	Sampling.
12	Calculations.
17	Maritime Measurements.

Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: November 13, 2018.

Patricia Hawes Coleman,

Acting Executive Director, Laboratories and Scientific Services.

[FR Doc. 2018–25610 Filed 11–23–18; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of Laboratory Service Inc. (Savannah, GA) as a Commercial Gauger

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of Laboratory Service Inc. (Savannah, GA) as a commercial gauger.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Laboratory Service Inc. (Savannah, GA), has been approved to gauge petroleum and certain petroleum products for customs purposes for the next three years as of September 14, 2016.

DATES: Laboratory Service Inc. (Savannah, GA) was approved as a commercial gauger and laboratory as of September 14, 2016. The next triennial inspection date will be scheduled for September 2019.

FOR FURTHER INFORMATION CONTACT: Melanie Glass, Laboratories and

Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 19 CFR 151.13, that Laboratory Service Inc. 1084 W. Lathrop, Savannah, GA 31415, has been approved to gauge petroleum and certain petroleum products, in accordance with the provisions of 19 CFR 151.13.

Laboratory Service Inc. (Savannah, GA) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank gauging.
7	Temperature determination.
17	Maritime measurement.

Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.

Dated: November 13, 2018.

Patricia Hawes Coleman,

Acting Executive Director, Laboratories and Scientific Services.

[FR Doc. 2018–25609 Filed 11–23–18; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of WFR Metering, Inc. (Houston, TX), as a Commercial Gauger

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of WFR Metering, Inc. (Houston, TX) as a commercial gauger.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that WFR Metering, Inc. (Houston, TX), has been approved to gauge petroleum and certain petroleum products for customs purposes for the next three years as of July 12, 2017.

DATES: WFR Metering, Inc. (Houston, TX) was approved and accredited as a commercial gauger as of July 12, 2017. The next triennial inspection date will be scheduled for July 2020.

FOR FURTHER INFORMATION CONTACT: Melanie Glass, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 19 CFR 151.13, that WFR Metering, Inc. 450 Gears Road. Ste 105, Houston, TX 77067 has been approved to gauge petroleum and certain petroleum products, in accordance with the provisions of 19 CFR 151.13.

WFR Metering, Inc. (Houston, TX) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API Chapters	Title
8	Sampling.

Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories

Dated: November 13, 2018.

Patricia Hawes Coleman,

Acting Executive Director, Laboratories and Scientific Services.

[FR Doc. 2018–25605 Filed 11–23–18; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Atlantic Product Services, Inc. (Carteret, NJ), as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Atlantic Product Services, Inc. (Carteret, NJ), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Atlantic Product Services, Inc. (Carteret, NJ), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of May 24, 2018.

DATES: Atlantic Product Services, Inc. (Carteret, NJ) was accredited and approved, as a commercial gauger and laboratory as of May 24, 2018. The next triennial inspection date will be scheduled for May 2021.

FOR FURTHER INFORMATION CONTACT: Dr. Justin Shey, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Atlantic Product Services, Inc., 2 Terminal Rd., KMI Bldg. OB2, Carteret, NJ 07008 has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Atlantic Product Services, Inc. is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
1	Vocabulary.
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
11	Physical Properties.
12	Calculations.
17	Marine Measurement.

Atlantic Product Services, Inc. is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum

products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–01	D 287	Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method).
27–04	D 95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27–05	D 4928	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.
27–06	D 473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27–08	D 86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.
27–11	D 445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity).
27–13	D 4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy Dispersive X-ray Fluorescence Spectrometry.
27–14	D 2622	Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry.
27–46	D 5002	Standard Test Method for Density and Relative Density of Crude Oils by Digital Density Analyzer.
27–48	D 4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27–50	D 93	Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester.
27–53	D 2709	Standard Test Method for Water and Sediment in Middle Distillate Fuels by Centrifuge.
27–58	D 5191	Standard Test Method For Vapor Pressure of Petroleum Products (Mini Method).
N/A	D 5769	Determination of Benzene, Toluene, and Total Aromatics in Finished Gasolines by Gas Chromatography/Mass Spectrometry.
N/A	D 3606	Standard Test Method for Determination of Benzene and Toluene in Finished Motor and Aviation Gasoline by Gas Chromatography.
N/A	D 2700	Standard Test Method for Motor Octane Number of Spark-Ignition Engine Fuel.
N/A	D 2699	Standard Test Method for Research Octane Number of Spark-Ignition Engine Fuel.
N/A	D 130	Standard Test Method for Corrosiveness to Copper from Petroleum Products by Copper Strip Test.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov*. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories*.

Dated: November 13, 2018.

Patricia Hawes Coleman,

Acting Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2018–25604 Filed 11–23–18; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation of Coastal Gulf and International (Luling, LA), as a Commercial Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation of Coastal Gulf and International (Luling, LA), as a commercial laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Coastal Gulf and International (Luling, LA), has been accredited to test petroleum and certain petroleum products for customs purposes as of July 25, 2018.

DATES: Coastal Gulf and International (Luling, LA) was accredited, as a commercial laboratory as of July 25, 2018. The next triennial inspection date will be scheduled for July 2020.

FOR FURTHER INFORMATION CONTACT: Dr. Justin Shey, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12, that Coastal Gulf and International, 13615 River Road, Luling, LA 70070 has been accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12.

Coastal Gulf and International is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–01	D 287	Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method).
27–02	D 1298	Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov*. Please

reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: November 13, 2018.

Patricia Hawes Coleman,

Acting Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2018–25611 Filed 11–23–18; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of SGS North America, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of SGS North America, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that SGS North America, Inc., has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes for the next three years as of July 20, 2018.

DATES: *Applicable Dates:* The accreditation and approval of SGS North America, Inc., as commercial gauger and laboratory became effective on July 20, 2018. The next triennial inspection date will be scheduled for July 2021.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Cassata, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that SGS North America, Inc., 614 Heron Drive, Bridgeport, NJ 08014, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. SGS North America, Inc., is approved for the following gauging procedures for petroleum and certain petroleum products set forth by the American Petroleum Institute (API):

API chapters	Title
1	Vocabulary.
3	Tank gauging.
7	Temperature Determination.
8	Sampling.
12	Calculations.
17	Maritime Measurements.

SGS North America, Inc., is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–01	D287	Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method).
27–05	D4928	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.
27–06	D473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27–07	D4807	Standard Test Method for Sediment in Crude Oil by Membrane Filtration.
27–08	D86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.
27–11	D445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids.
27–13	D4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.
27–48	D4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27–50	D93	Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester.
27–53	D2709	Standard Test Method for Water and Sediment in Middle Distillate Fuels by Centrifuge.
27–58	D5191	Standard Test Method For Vapor Pressure of Petroleum Products (Mini Method).
N/A	D97	Standard Test Method for Pour Point of Petroleum Products.
N/A	D130	Standard Test Method for Corrosiveness to Copper from Petroleum Products by Copper Strip Test.
N/A	D381	Standard Test Method for Gum Content in Fuels by Jet Evaporation.
N/A	D525	Standard Test Method for Oxidation Stability of Gasoline (Induction Period Method).
N/A	D664	Standard Test Method for Acid Number of Petroleum Products by Potentiometric Titration.
N/A	D1319	Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption.
N/A	D2699	Standard Test Method for Research Octane Number of Spark-Ignition Engine Fuel.
N/A	D2700	Standard Test Method for Motor Octane Number of Spark-Ignition Engine Fuel.
N/A	D3237	Standard Test Method for Lead in Gasoline by Atomic Absorption Spectroscopy.
N/A	D3606	Standard Test Method for Determination of Benzene and Toluene in Finished Motor and Aviation Gasoline by Gas Chromatography.
N/A	D4377	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity).
N/A	D5453	Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Spark Ignition Engine Fuel, Diesel Engine Fuel, and Engine Oil by Ultraviolet Fluorescence.
N/A	D5599	Standard Test Method for Determination of Oxygenates in Gasoline by Gas Chromatography and Oxygen Selective Flame Ionization Detection.
N/A	D5708	Standard Test Methods for Determination of Nickel, Vanadium, and Iron in Crude Oils and Residual Fuels by Inductively Coupled Plasma (ICP) Atomic Emission Spectrometry.
N/A	D5769	Determination of Benzene, Toluene, and Total Aromatics in Finished Gasolines by Gas Chromatography/Mass Spectrometry.
N/A	D6377	Standard Test Method for Determination of Vapor Pressure of Crude Oil: VPCRx (Expansion Method).
N/A	D7346	Standard Test Method for No Flow Point and Pour Point of Petroleum Products and Liquid Fuels.
N/A	D7671	Standard Test Method for Corrosiveness to Silver by Automotive Spark–Ignition Engine Fuel–Silver Strip Method.
N/A	D7689	Standard Test Method for Cloud Point of Petroleum Products and Liquid Fuels (Mini Method).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories: *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: November 13, 2018.

Patricia Hawes Coleman,

Acting Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2018–25603 Filed 11–23–18; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of Coastal Gulf and International (Baton Rouge, LA), as a Commercial Gauger

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of Coastal Gulf and International (Baton Rouge, LA), as a commercial gauger.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Coastal Gulf and International (Baton Rouge, LA), has been approved to gauge petroleum and certain petroleum products for customs purposes for the next three years as of July 26, 2018.

DATES: Coastal Gulf and International (Baton Rouge, LA) was approved, as a commercial gauger as of July 26, 2018. The next triennial inspection date will be scheduled for July 2021.

FOR FURTHER INFORMATION CONTACT: Dr. Justin Shey, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.13, that Coastal Gulf and International, 2668 Rome Dr., Baton Rouge, LA 70814 has been approved to gauge petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13. Coastal Gulf and International is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
12	Calculations.
17	Marine Measurement.

Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: November 13, 2018.

Patricia Hawes Coleman,

Acting Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2018–25608 Filed 11–23–18; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of Coastal Gulf and International (Corpus Christi, TX), as a Commercial Gauger

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of Coastal Gulf and International (Corpus Christi, TX), as a commercial gauger.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Coastal Gulf and International (Corpus Christi, TX), has been approved to gauge petroleum and certain petroleum products for customs purposes for the next three years as of August 7, 2018.

DATES: Coastal Gulf and International (Corpus Christi, TX) was approved, as a commercial gauger as of August 7, 2018. The next triennial inspection date will be scheduled for August 2021.

FOR FURTHER INFORMATION CONTACT: Dr. Justin Shey, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.13, that Coastal Gulf and International, 4738 Neptune Dr., Corpus Christi, TX 78405 has been approved to gauge petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13. Coastal Gulf and International is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
12	Calculations.
17	Marine Measurement.

Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: November 13, 2018.

Patricia Hawes Coleman,

Acting Executive Director, Laboratories and Scientific Services Directorate.

[FR Doc. 2018–25607 Filed 11–23–18; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7001–N–58]

30-Day Notice of Proposed Information Collection: Housing Trust Fund (HTF) Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 30 days of public comment.

DATES: *Comments Due Date:* December 26, 2018.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806, Email: *OIRA Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Anna P. Guido at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Person with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on July 5, 2018 at 83 FR 31413.

A. Overview of Information Collection

Title of Information Collection: Housing Trust Fund (HTF) Program.

OMB Approval Number: 2506–New.

Type of Request: New collection.

Form Number: SF–1199A, HUD–27055, SF–424, SF–425.

Description of the need for the information and proposed use: The information collected through HUD's Integrated Disbursement and Information System (IDIS) (24 CFR 93.402) is used by HUD Field Offices, HUD Headquarters, and HTF Grantees. The information on program funds committed and disbursed is used by HUD to track grantee performance and to determine compliance with the statutory 24-month commitment deadline and the regulatory 5-year expenditure deadline (§ 93.400(d)). The project-specific property, tenant, owner, and financial data is used to make program management decisions about how well program participants are achieving the statutory objectives of the HTF Program. Program management reports are generated by IDIS to provide data on the status of program participants' commitment and disbursement of HTF funds. These reports are provided to HUD staff as well as to HTF grantees.

Financial, project, tenant and owner documentation are used to determine compliance with HTF Program cost limits (§ 93.404), eligible activities (§ 93.200), and eligible costs (§ 93.201). Other information collected under Subpart H (Other Federal Requirements) is primarily intended for local program management and is only viewed by HUD during routine monitoring visits. The written agreement with the owner for long-term obligation (§ 93.404(b)) and tenant protections (§ 93.303) are required to ensure that the property owner complies with these important elements of the HTF Program and are also reviewed by HUD during monitoring visits. HUD reviews all other data collection requirements during monitoring to assure compliance with the requirements of the Act and other related laws and authorities.

HUD tracks grantee performance and compliance with the requirements of 24 CFR parts 91 and 93. Grantees use the required information in the execution of their program, and to gauge their own performance in relation to stated goals.

Estimated Number of Respondents/ Estimated Number of Responses:

Regulatory section	Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
§ 93.100(a)	Notification of intent to participate	56.00	1.00	56.00	4.00	224.00	$39.07	$8,751.68
2 CFR 200.200	Form SF–424 Family	56.00	1.00	56.00	9.00	504.00	39.07	19,691.28
2 CFR 200.200	Form SF–425	56.00	1.00	56.00	1.50	84.00	39.07	3,281.88
31 U.S.C. 3512	HUD Form 27055	56.00	1.00	56.00	0.50	28.00	39.07	1,093.96
§ 93.100(b)	Submission of Consolidated Plan	56.00	0.20	11.20	40.00	448.00	39.07	17,503.36
§ 91.220	Action Plan	56.00	1.00	56.00	10.00	560.00	39.07	21,879.20
§ 93.101	Distribution of assistance	56.00	1.00	56.00	4.00	224.00	39.07	8,751.68
§ 93.150(a)	Site and Neighborhood Standards	56.00	1.00	56.00	4.00	224.00	39.07	8,751.68
§ 93.150(b)	New rental housing site and neighborhood requirements.	56.00	1.00	56.00	5.00	280.00	39.07	10,939.60
§ 93.200(b)	Establishment of terms of assistance	56.00	1.00	56.00	4.00	224.00	39.07	8,751.68
§ 93.200(d)	Terminated projects	1.00	1.00	1.00	20.00	20.00	39.07	781.40
§ 93.201(b)(2)	Establish refinancing guidelines	56.00	1.00	56.00	4.00	224.00	39.07	8,751.68
§ 93.300(a)	Establish maximum per-unit development subsidy amount.	56.00	1.00	56.00	4.00	224.00	39.07	8,751.68
§ 93.300(b)	Underwriting and subsidy layering	168.00	1.00	168.00	4.00	672.00	39.07	26,255.04
§ 93.301(a)	Property standards—New construction	56.00	1.00	56.00	3.00	168.00	39.07	6,563.76
§ 93.302(b)	Establish rent limitations	56.00	1.00	56.00	4.00	224.00	39.07	8,751.68
§ 93.302(c)	Establish utility allowance	56.00	1.00	56.00	4.00	224.00	39.07	8,751.68
§ 93.302(d)(1)	Establish affordability requirements	56.00	1.00	56.00	4.00	224.00	39.07	8,751.68
§ 93.302(d)(3)	Establish preemptive procedures before foreclosure.	56.00	1.00	56.00	4.00	224.00	39.07	8,751.68
§ 93.302(e)(1)	Initial income determination	1,821.00	1.00	1,821.00	1.00	1,821.00	39.07	71,146.47
§ 93.302(e)(1)	Annual income determination	5,600.00	1.00	5,600.00	0.25	1,400.00	39.07	54,698.00
§ 93.304(f)	Establish resale or recapture provisions.	0.00	1.00	0.00	5.00	0.00	39.07	0.00
§ 93.304(m)(1)	Underwriting standards for homeownership assistance.	0.00	1.00	0.00	6.00	0.00	39.07	0.00
§ 93.304(m)(2)	Establish policies for anti-predatory lending.	0.00	1.00	0.00	4.00	0.00	39.07	0.00

Regulatory section	Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
§ 93.304(m)(3)	Establish reasonable refinancing for subordinated HTF loans.	0.00	1.00	0.00	4.00	0.00	39.07	0.00
§ 93.305(1)	Establish modest housing guidelines	0.00	1.00	0.00	5.00	0.00	39.07	0.00
§ 93.350(a)	Nondiscrimination and equal opportunity procedures.	56.00	1.00	56.00	8.00	448.00	39.07	17,503.36
§ 93.350(b)(1)	Affirmative marketing procedures	56.00	1.00	56.00	10.00	560.00	39.07	21,879.20
§ 93.351	Lead-based paint	56.00	1.00	56.00	1.00	56.00	39.07	2,187.92
§ 93.352	Displacement, relocation, and acquisition procedures.	56.00	1.00	56.00	4.00	224.00	39.07	8,751.68
§ 93.353	Conflict of interest adjudication	2.00	1.00	2.00	4.00	8.00	39.07	312.56
§ 93.354	Funding Accountability and Transparency Act.	56.00	12.00	672.00	1.00	672.00	39.07	26,255.04
§ 93.356(b)	VAWA notification requirements	56.00	1.00	56.00	4.00	224.00	39.07	8,751.68
§ 93.356(d)	VAWA lease term/addendum	56.00	1.00	56.00	4.00	224.00	39.07	8,751.68
§ 93.356(f)	VAWA Emergency transfer plan	56.00	1.00	56.00	4.00	224.00	39.07	8,751.68
§ 93.402(b)(1)	IDIS—Project set-up	168.00	1.00	168.00	1.00	168.00	39.07	6,563.76
§ 93.402(c)(1)	IDIS—HTF drawdowns	168.00	1.00	168.00	1.00	168.00	39.07	6,563.76
§ 93.402(d)(1)	IDIS—Project completion	168.00	1.00	168.00	1.00	168.00	39.07	6,563.76
§ 93.403(a)	Program income administration	56.00	1.00	56.00	4.00	224.00	39.07	8,751.68
§ 93.403(b)(1)	Repayment for ineligible activities	2.00	1.00	2.00	5.00	10.00	39.07	390.70
§ 93.404(b)	Written agreement	168.00	1.00	168.00	2.00	336.00	39.07	13,127.52
§ 93.404(d)(1)	Project completion inspection	168.00	1.00	168.00	2.00	336.00	39.07	13,127.52
§ 93.404(d)(2)(i)	Onsite inspection upon completion	560.00	1.00	560.00	2.00	1,120.00	39.07	43,758.40
§ 3.404(d)(2)(ii)	Onsite inspections post completion	504.00	1.00	504.00	2.00	1,008.00	39.07	39,382.56
§ 3.404(d)(2)(iv)	Project owner annual certification	168.00	1.00	168.00	2.00	336.00	39.07	13,127.52
§ 93.404(e)	Annual financial oversight of 10 or more units.	168.00	1.00	168.00	2.00	336.00	39.07	13,127.52
§ 93.405	Uniform administrative requirements	56.00	1.00	56.00	4.00	224.00	39.07	8,751.68
§ 93.406(a)	Annual CFR 200 audit	56.00	1.00	56.00	10.00	560.00	39.07	21,879.20
§ 93.407(a)(1)	Program recordkeeping	56.00	1.00	56.00	8.00	448.00	39.07	17,503.36
§ 93.407(a)(2)	Project recordkeeping	560.00	1.00	560.00	2.00	1,120.00	39.07	43,758.40
§ 93.407(a)(3)	Financial recordkeeping	56.00	12.00	672.00	2.00	1,344.00	39.07	52,510.08
§ 93.407(a)(4)	Program administration records	56.00	12.00	672.00	8.00	5,376.00	39.07	210,040.32
§ 93.407(a)(5)	Records concerning other Federal requirements.	56.00	1.00	56.00	10.00	560.00	39.07	21,879.20
§ 93.408	Performance reports	56.00	12.00	672.00	2.50	1,680.00	39.07	65,637.60
§ 93.451	Annual performance reviews	56.00	1.00	56.00	8.00	448.00	39.07	17,503.36
Total		12,298.00		14,717.20		26,835.00		1,048,443.45

Total cost: 26,835.00 hours * $39.07 (Hourly rate for GS12).

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(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;

(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 collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: November 16, 2018.

Anna P. Guido,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2018–25655 Filed 11–23–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6131–N–02]

The Performance Review Board

AGENCY: Office of the Deputy Secretary, HUD.

ACTION: Amended notice of appointments.

SUMMARY: On October 18, 2018, the Department of Housing and Urban Development published a notice announcing the establishment of two Performance Review Boards to make recommendations to the appointing authority on the performance of its senior executives. The notice inadvertently omitted a member included in the Deputy Secretary's September 24, 2018, memorandum appointing individuals to the Performance Review Board. Today's notice amends the October 18, 2018, notice by adding Nelson Bregon to the Departmental Performance Review Board to review career SES performance.

For the convenience of the reader, the entire corrected list of membership on the Departmental Performance Review Boards is provided. Pamela H. Patenaude (Chair), Patricia Hoban-Moore, Felicia Purifoy, Danielle Bastarache, John Benison, Nelson Bregon, Virginia Sardone, Bryan Greene, Ivery Himes, George Tomchick, and Kurt Usowski will serve as members of the Departmental Performance Review Board to review career SES performance. Seth D. Appleton, Maren Kasper, John Bravacos, Ralph Gaines, and Joseph Grassi will serve as members of the Departmental Performance Review Board to review noncareer SES performance. The address is: Department of Housing and Urban

Development, Washington, DC 20410–0050.

FOR FURTHER INFORMATION CONTACT: Persons desiring any further information about the Performance Review Board and its members may contact Lynette Warren, Director, Office of Executive Resources, Department of Housing and Urban Development, Washington, DC 20410. Telephone (202) 708–1381. (This is not a toll-free number).

Dated: November 19, 2018.

Pamela H. Patenaude,

Deputy Secretary.

[FR Doc. 2018–25648 Filed 11–23–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7000–N–02]

60-Day Notice of Proposed Information Collection: Legal Instructions Concerning Applications for Full Insurance Benefits—Assignment of Multifamily Mortgages to the Secretary

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* January 25, 2019.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Nacheshia Foxx, Reports Liaison Officer, Department of Housing and Urban Development, 451 Seventh Street SW, Room 10276, Washington, DC 20410–0500.

FOR FURTHER INFORMATION CONTACT: Arnette Georges, Assistant General Counsel for Multifamily Mortgage Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 9230, Washington, DC 20410–0500 telephone 202–402–3826. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Foxx.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Legal Instructions Concerning Applications for Full Insurance Benefits—Assignment of Multifamily Mortgage to the Secretary.

OMB Approval Number: 2510–0006.

Type of Request: Extension of a currently approved collection.

Form Number: N/A.

Description of the Need for the Information and Proposed Use: Mortgagees of FHA-insured mortgages may receive mortgage insurance benefits upon assignment of mortgages to the Secretary. In connection with the assignment, legal documents (*e.g.,* mortgage, mortgage note, security agreement, title insurance policy) must be submitted to the Department. The instructions contained in the Legal Instructions Concerning Applications for Full Insurance Benefits—Assigment of Multifamily Mortgage describe the documents to be submitted and the procedures for submission.

The Legal Instructions Concerning Applications for Full Insurance Benefits—Assigment of Multifamily Mortgage, in its current form and structure, can be found at *https://www.hud.gov/sites/documents/LEGINSTRFULLINSBEN.PDF.*

HUD proposes to revise this document to reflect changes in the multifamily rental and healthcare programs since 2011, address physical documentation requirements for electronic UCC filings, update instructions for Section 232-insured loans that were processed under LEAN and/or portfolio structures, and other clarifying changes to reflect current HUD requiments and policies, as well as current practices in real estate, title insurance and mortgage financing transactions.

Agency Form Numbers, if Applicable: N/A.

Members of Affected Public: FHA-approved Mortgagees who have or will have multifamily rental or healthcare loans.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Number of respondents	Burden hours	Frequency of response	Total burden hours
110	26	Occasion	2,860

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(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;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses or revising the physical documentions requirements for electronically filed or issued response;

(5) Ways to reflect changes to the Security Instrument (HUD 94000M), which also serves as the Security Agreement;

(6) Ways to reflect bonds, master lease, or condominium structures in multifamily rental projects;

(7) Ways to update the instructions for assigning non-traditional loan documents (including LEAN-related documents) and acceptable recording/assignment criteria; and

(8) Ways to update the instruactions to accommodate portfolio structures and other changes in FHA's Healthcare Programs.

HUD encourages interested parties to submit comment in response to these questions.

Authority: 12 U.S.C. 1701z–1 Research and Demonstrations.

Dated: November 20, 2018.

Ariel Pereira,

Associate General Counsel for Legislation & Regulations.

[FR Doc. 2018–25656 Filed 11–23–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7001–N–57]

30-Day Notice of Proposed Information Collection: Neighborhood Stabilization Program 2 Reporting NSP2

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 30 days of public comment.

DATES: *Comments Due Date:* December 26, 2018.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax:202–395–5806, Email: *OIRA Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Anna P. Guido at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Person with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on August 27, 2018 at 83 FR 43700.

A. Overview of Information Collection

Title of Information Collection: Neighborhood Stabilization Program 2 Reporting NSP2.

OMB Approval Number: 2506–0185.

Type of Request: Extension of currently approved collection.

Form Number: N/A.

Description of the Need for the Information and Proposed Use: This information describes the reporting and recordkeeping requirements of the Neighborhood Stabilization Program 2 (NSP2). The data required includes program level, project level and beneficiary level information collected and reported on by NSP2 grantees. The data identifies who benefits from the NSP2 program and how statutory requirement are satisfied. The respondents are State, local government, non-profit and consortium applicants.

Estimated Number of Respondents/ Estimated Number of Responses:

Description of information collection	Number of respondents	Number of responses	Total number of responses	Hours per response	Total hours	Cost per response	Total cost
Neighborhood Stabilization Program (Year 1)							
Online Quarterly Reporting via DRGR	56.00	4.00	224.00	4.00	896.00	36.24	32,471.04
DRGR voucher submissions	56.00	38.00	2,128.00	0.18	383.04	36.24	13,881.37
Total Paperwork Burden	112.00				1,279.04	36.24	46,352.41
(Year 2)							
Online Quarterly Reporting via DRGR	42.00	4.00	168.00	4.00	672.00	36.24	24,353.28
Quarterly Voucher Submissions	42.00	38.00	1596.00	0.18	287.28	36.24	10,411.03
Annual Reporting via DRGR/IDIS	14.00	1.00	14.00	3.00	42.00	36.24	1,522.08
Annual Income Certification Reporting	14.00	1.00	14.00	3.00	42.00	36.24	1,522.08
Total Paperwork Burden	112.00				1,043.28	36.24	37,808.47
(Year 3)							
Online Quarterly Reporting via DRGR	22.00	4.00	88.00	4.00	352.00	36.24	12,756.48
Annual Reporting via DRGR/IDIS	34.00	1.00	34.00	4.00	136.00	36.24	4,928.64
Quarterly Voucher Submissions	22.00	4.00	88.00	0.20	17.60	36.24	637.82
Annual Income Certification Reporting	34.00	1.00	34.00	3.00	102.00	36.24	3,696.48

Description of information collection	Number of respondents	Number of responses	Total number of responses	Hours per response	Total hours	Cost per response	Total cost
Total Paperwork Burden	112.00	.....	.....	.....	607.60	36.24	22,019.42

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(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;

(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 collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: November 16, 2018.

Anna P. Guido,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2018–25654 Filed 11–23–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7001–N–56]

30-Day Notice of Proposed Information Collection: Multifamily Financial Management Template

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for 30 days of public comment.

DATES: *Comments Due Date:* December 26, 2018.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806, Email: *OIRA Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Inez C. Downs, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email *Inez.C.Downs@hud.gov,* or telephone 202–402–8046. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Downs.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on August 16, 2018 at 83 FR 40780.

A. Overview of Information Collection

Title of Information Collection: Multifamily Financial Management Template.

OMB Approved Number: 2502–0551.

Type of Request: Reinstatement without change, of previously approved collection.

Form Number: None.

Description of the need for the information and proposed use: Owners of certain HUD-insured and HUD assisted properties are required to submit annual financial statements to HUD via the internet in the HUD prescribed format and chart of accounts, and in accordance with the Generally Accepted Accounting Principles (GAAP). Most owners of Multifamily Housing (MFH) properties are required to submit annual financial statements to HUD. In accordance with the Department's Uniform Financial Reporting Standards (UFRS) regulation, 24 CFR part 5, owners of certain HUD-insured and HUD-assisted properties are required to submit annual financial statements electronically to HUD via the internet in the HUD-prescribed format and chart of accounts, and in accordance with the Generally Accepted Accounting Principles (GAAP). The Department uses this information to monitor the owner's compliance with regulatory requirements and to assess fiscal performance.

Respondents: Business or other for profit.

Estimated Number of Respondents: 26,995.

Estimated Number of Responses: 26,995.

Frequency of Response: 1.

Average Hours per Response: 14.

Total Estimated Burden: 377,930.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(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;

(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 collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: November 14, 2018.

Inez C. Downs,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2018–25653 Filed 11–23–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7007–N–07]

60-Day Notice of Proposed Information Collection: Manufactured Housing Survey

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The Department of Housing and Urban Development (HUD) is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comments from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* January 25, 2019.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–5534 (this is not a toll-free number) or email at *Anna.P.Guido@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410–5000; email Anna P. Guido at *Anna.P.Guido@hud.gov* or telephone 202–402–5535 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the proposed collection of information described in Section A.

A. Overview of Information Collection

Title of Information Collection: Manufactured Housing Survey.

OMB Approval Number: 2528–0029.

Type of Request: Revision of a currently approved collection.

Form Number: No forms.

Description of the need for the information and proposed use: The Manufactured Housing Survey collects data on the characteristics of newly manufactured homes placed for residential use. Key data collected includes sales price and the number of units placed and sold within 4 months of shipment. Other selected housing characteristics collected include size, location, and titling. HUD uses the statistics to respond to a Congressional mandate in the Housing and Community Development Act of 1980, 42 U.S.C. 5424 note, which requires HUD to collect and report manufactured home sales and price information for the nation, census regions, states, and selected metropolitan areas and to monitor whether new manufactured homes are being placed on owned rather than rented lots. HUD also used these data to monitor total housing production and its affordability.

Furthermore, the Manufactured Housing Survey serves as the basis for HUD's mandated indexing of loan limits. Section 2145(b) of the Housing and Economic Recovery Act (HERA) of 2008 requires HUD to develop a method of indexing to annually adjust Title I manufactured home loan limits. This index is based on manufactured housing price data collected by this survey. Section 2145 of the HERA of 2008 also amends the maximum loan limits for manufactured home loans insured under Title I. HUD implemented the revised loan limits, as shown below, for all manufactured home loans for which applications are received on or after March 3, 2009.

Loan type	Purpose	Old loan limit	New loan limit
MANUFACTURED HOME IMPROVEMENT LOAN	For financing alterations, repairs and improvements upon or in connection with existing manufactured homes.	$17,500	$25,090
MANUFACTURED HOME UNIT(S)	To purchase or refinance a Manufactured Home unit (s).	48,600	69,678
LOT LOAN	To purchase and develop a lot on which to place a manufactured home unit.	16,200	23,226
COMBINATION LOAN FOR LOT AND HOME	To purchase or refinance a manufactured home and lot on which to place the home.	64,800	92,904

Method of Collection: The methodology for collecting information on new manufactured homes involves contacting dealers from a monthly sample of new manufactured homes shipped by manufacturers. The units are sampled from lists obtained from the Institute for Building Technology and Safety. Dealers that take shipment of the selected homes are mailed a survey form four months after shipment for recording the status of the manufactured home.

Affected Public: Business firms or other for-profit institutions.

Estimated Number of Respondents: 4,860.

Estimated Time per Response: 20 min.

Estimated Total Annual Burden Hours: 1,620.

Estimated Total Annual Cost: $0. (This is not the cost of respondents' time but the indirect costs respondents may incur for such things as purchases of specialized software or hardware needed to report, or expenditures for accounting or records maintenance series required specifically by the collection.)

Respondent's Obligation: Voluntary.

Legal Authority: Title 42 U.S.C. 5424 note, Title 13 U.S.C. Section 8(b), and Title 12, U.S.C., Section 1701z–1.

B. Solicitation of Public Comment

This notice solicits comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(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;

(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 the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: November 9, 2018.

Todd M. Richardson,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 2018–25649 Filed 11–23–18; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[190A2100DD/AAKC001030/ A0A501010.999900.253G]

Notice To Acquire Land Into Trust for the Confederated Tribes of the Grand Ronde Community of Oregon

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of final agency determination.

SUMMARY: The Assistant Secretary—Indian Affairs has made a final determination to acquire 25.49 acres, more or less into trust for the Confederated Tribes of the Grand Ronde Community of Oregon on October 31, 2018.

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene M. Round Face, Bureau of Indian Affairs, Division of Real Estate Services, 1849 C Street NW, MS–4642–MIB, Washington, DC 20240, telephone (202) 208–3615.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by part 209 of the Departmental Manual, and is published to comply with the requirement of 25 CFR 151.12(c)(2)(ii) that notice of the decision to acquire land in trust be promptly published in the **Federal Register**.

On October 31, 2018, the Assistant Secretary—Indian Affairs issued a decision to accept land in trust for Confederated Tribes of the Grand Ronde Community of Oregon under the authority of The Grand Ronde Restoration Act of November 22, 1983, Public Law 98–165 and Section 5 of the Indian Reorganization Act of 1934 (48 Stat. 984).

Confederated Tribes of the Grand Ronde Community of Oregon, Tillamook County, Oregon

Legal Descriptions Containing 25.49 Acres, More or Less

The land referred to as former ''Kilchis Point Property'' property, herein and is described as: Tax Lots 100 and 200 Township 1S, Range 10W, Section 2—Kilchis Point property

Parcel 1: Beginning at the Southwest corner of Lot 9, Block 5, Barview Addition to Bay City and the P.O.B. of the following described tract; thence East to the Southeast corner of said Lot 9; thence South to the Southwest corner of Lot 7, Block 10, Barview Addition to Bay City; thence East to the Southeast corner of said Lot 7; thence South to the Southwest corner of Lot 6, Block 13, Barview Addition to Bay City; thence East to the Southeast corner of said Lot 6; thence South to the Southwest corner of Lot 12, Block 13, Barview Addition to Bay City; thence East to the Southeast corner of said Lot 12; thence South along the West lines of Lots 4 and 13, Block 19, and Lots 4 and 13, Block 22 to the South line of Kelchis Street; thence West to the Southwest corner of Adams Street and Kelchis Street; thence North along the West sideline of Adams Street to a point West of the Northwest corner of Lot 8, Block 13, Barview Addition, said point being at the intersection of the West sideline and the Westerly extension of the South line of Clam Street; thence West to the line of mean low water of Tillamook Bay; thence in a Northwesterly direction along the line of mean low water of Tillamook Bay to a point that bears West of the Northwest corner of Lot 6, Block 7, Cone and McCoy's Addition; thence East to the line of mean high water of Tillamook Bay; thence in a Southerly direction along the line of mean high water of Tillamook Bay to the P.O.B.

Parcel 2: Government Lot 1, in Section 3, Township 1 South, Range 10 West of the Willamette Meridian, Tillamook County, Oregon.

Excepting therefrom any portion of said lot lying within the boundaries of the property conveyed to The Confederated Tribes of the Grand Ronde Community of Oregon by Warranty Deed recorded September 2, 2015, Instrument No. 2015–005452, Records of Tillamook County, Oregon.

Dated: October 31, 2018.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

[FR Doc. 2018–25692 Filed 11–23–18; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[19XD0120SW/DT10100000/ DSW000000.54AB00; OMB Control Number 1035–0003]

Agency Information Collection Activities; Application To Withdraw Tribal Funds From Trust Status

AGENCY: Office of the Special Trustee for American Indians, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Office of the Special Trustee for American Indians (OST), we are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before January 25, 2019.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to the Jeffrey M. Parrillo, Departmental Information Collection Clearance Officer, Department of the Interior, Office of the Secretary, Office of the Chief Information Officer, Planning and Performance Management Division, 1849 C Street NW, Washington, DC 20240; or by email to *jeffrey_parrillo@ios.doi.gov.* Please reference Office of Management and Budget (OMB) Control Number 1035–0003 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact John Montel by email to *john_montel@ost.doi.gov,* or by telephone at (202) 208–3939.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information

collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the OST; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the OST enhance the quality, utility, and clarity of the information to be collected; and (5) how might the OST minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: This notice is for renewal of information collection under OMB regulations at 5 CFR part 1320 that implement the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* These regulations require interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8 (d)). This notice identifies an information collection activity that the OST is submitting to OMB for renewal.

Public Law 103–412, The American Indian Trust Fund Management Reform Act of 1994, allows Indian tribes on a voluntary basis to take their funds out of trust status within the Department of the Interior (and the Federal Government) in order to manage such funds on their own. 25 CFR part 1200, subpart B, Sec. 1200.13, ''How does a tribe apply to withdraw funds?'' describes the requirements for application for withdrawal. The Act covers all tribal trust funds including judgment funds as well as some settlements funds, but excludes funds held in Individual Indian Money accounts. Both the Act and the regulations state that upon withdrawal of the funds, the Department of the Interior (and the Federal Government) have no further liability for such funds. Accompanying their application for withdrawal of trust funds, tribes are required to submit a Management Plan for managing the funds being withdrawn, to protect the funds once they are out of trust status.

This information collection allows the OST to collect the tribes' applications for withdrawal of funds held in trust by the Department of the Interior. If OST did not collect this information, the OST would not be able to comply with the American Indian Trust Fund Management Reform Act of 1994, and tribes would not be able to withdraw funds held for them in trust by the Department of the Interior.

Title of Collection: Application to Withdraw Tribal Funds from Trust Status, 25 CFR 1200.

OMB Control Number: 1035–0003.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Tribal governments.

Total Estimated Number of Annual Respondents: One respondent, on average, every three years.

Total Estimated Number of Annual Responses: 1.

Estimated Completion Time per Response: 750 hours.

Total Estimated Number of Annual Burden Hours: 750.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Once per tribe per trust fund withdrawal application.

Total Estimated Annual Non-hour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Jerold Gidner,

Principal Deputy Special Trustee, Office of the Special Trustee for American Indians.

[FR Doc. 2018–25726 Filed 11–23–18; 8:45 am]

BILLING CODE 4334–63–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–589 and 731–TA–1394–1395 (Final)]

Forged Steel Fittings From China and Italy

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that an industry in the United States is materially injured by reason of imports of forged steel fittings from China and Italy that have been found by the U.S. Department of Commerce (''Commerce'') to be sold in the United States at less than fair value (''LTFV''), and to be subsidized by the government of China.

Background

The Commission instituted these investigations effective October 5, 2017, following receipt of a petition filed with the Commission and Commerce by Bonney Forge Corporation, Mount Union, Pennsylvania, and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Pittsburgh, Pennsylvania. Effective May 17, 2018, the Commission established a general schedule for the conduct of the final phase of its investigations on forged steel fittings, following notification of preliminary determinations by Commerce that imports of forged steel fittings from China, Italy, and Taiwan were being sold at LTFV within the meaning of 733(b) of the Act (19 U.S.C. 1673b(b)).[2] Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission,

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] *Forged Steel Fittings from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures,* 83 FR 22948, May 17, 2018; *Forged Steel Fittings From Italy: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures,* 83 FR 22954, May 17, 2018; *and Forged Steel Fittings from Taiwan: Affirmative Preliminary Determination of Sales at Less Than Fair Value,* 83 FR 22957, May 17, 2018; *see also Forged Steel Fittings from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination,* 83 FR 11170, March 14, 2018.

Washington, DC, and by publishing the notice in the **Federal Register** on June 4, 2018 (83 FR 25715). The hearing was held in Washington, DC, on August 2, 2018, and all persons who requested the opportunity were permitted to appear in person or by counsel. The Commission subsequently issued its final affirmative determination regarding dumped imports of forged steel fittings from Taiwan on September 14, 2018 (83 FR 47640, September 20, 2018). Following notification of final determinations by Commerce that imports of forged steel fittings from Italy and China were being sold at LTFV within the meaning of section 735(a) of the Act (19 U.S.C. 1673d(a)),[3] and subsidized by the government of China within meaning of section 705(a) of the Act (19 U.S.C. 1671d(a)),[4] notice of the supplemental schedule of the final phase of the Commission's antidumping and countervailing duty investigations with respect to China and Italy was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 22, 2018 (83 FR 53295).

The Commission made these determinations pursuant to sections 705(b) and 735(b) of the Act (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)). It completed and filed its determinations in these investigations on November 19, 2018. The views of the Commission are contained in USITC Publication 4850 (November 2018), entitled *Forged Steel Fittings from China and Italy: Investigation Nos. 701–TA–589 and 731–TA–1394–1395 (Final).*

By order of the Commission.

Issued: November 19, 2018.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2018–25612 Filed 11–23–18; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. *CRH plc, et al.;* Response to Public Comment

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h), that one comment was received concerning the proposed Final Judgment in this case, and that comment together with the Response of the United States to Public Comment have been filed with the United States District Court for the District of Columbia in *United States of America* v. *CRH plc, et al.,* Civil Action No. 1:18–cv–1473. Copies of the comment and the United States' Response are available for inspection on the Antitrust Division's website at *http://www.justice.gov/atr* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Patricia A. Brink,

Director of Civil Enforcement.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *CRH PLC, CRH Americas Materials, Inc.*, and *Pounding Mill Quarry Corporation,* Defendants.

Case No. 18–cv–1473–DLF
Judge: Dabney L. Friedrich

RESPONSE OF PLAINTIFF UNITED STATES TO PUBLIC COMMENT ON THE PROPOSED FINAL JUDGMENT

Pursuant to the requirements of the Antitrust Procedures and Penalties Act (the ''APPA'' or ''Tunney Act''), 15 U.S.C. §§ 16(b)–(h), the United States hereby responds to the public comment received regarding the proposed Final Judgment in this case. After careful consideration of the submitted comment, the United States continues to believe that the divestiture required by the proposed Final Judgment provides an effective and appropriate remedy for the antitrust violation alleged in the Complaint. In addition, the divestiture has the effect of increasing competitive choices for some customers. As a result of the divestiture, two quarries that previously did not compete—because they were under common ownership—now do. The United States will move the Court for entry of the proposed Final Judgment after the public comment and this response have been published pursuant to 15 U.S.C. § 16(d).

I. PROCEDURAL HISTORY

Defendants CRH plc and CRH Americas Materials, Inc. (collectively, ''CRH'') agreed to acquire the assets of Defendant Pounding Mill Quarry Corporation (''Pounding Mill''), which primarily consisted of four aggregate quarries located in West Virginia and Virginia. The United States filed a civil antitrust Complaint on June 22, 2018, seeking to enjoin the proposed acquisition. The Complaint alleged that the likely effect of this acquisition would be to lessen competition substantially in the markets for aggregate and asphalt concrete that are used in West Virginia Department of Transportation (''WVDOT'') road projects in southern West Virginia. This loss of competition likely would result in increased prices and decreased service in these markets. Therefore, the Complaint alleged that the proposed acquisition violates Section 7 of the Clayton Act, 15 U.S.C. § 18, and should be enjoined.

Simultaneously with the filing of the Complaint, the United States filed a proposed Final Judgment, a Stipulation signed by Plaintiff and Defendants consenting to entry of the proposed Final Judgment after compliance with the requirements of the Tunney Act, 16 U.S.C. § 16, and a Competitive Impact Statement (''CIS'') describing the transaction and the proposed Final Judgment. The United States published the proposed Final Judgment and the CIS in the **Federal Register** on July 2, 2018, *see* 83 Fed. Reg. 30956 (July 2, 2018), and caused summaries of the proposed Final Judgment and CIS, together with directions for the submission of written comments relating to the proposed Final Judgment, to be published in the *Washington Post* and *Bluefield Daily Telegraph* from July 2, 2018, through July 10, 2018. The 60-day public comment period ended on September 10, 2018. The United States received one public comment. *See* Tunney Act Comments of the State of West Virginia on the Proposed Final Judgment (''WV Comment''), attached hereto as Exhibit A.

II. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. § 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are

[3] *Forged Steel Fittings from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 83 FR 50339, October 5, 2018 and *Forged Steel Fittings from Italy: Final Determination of Sales at Less Than Fair Value,* 83 FR 50345, October 5, 2018.

[4] *Forged Steel Fittings from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 83 FR 50342, October 5, 2018.

ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States* v. *U.S. Airways Group, Inc.,* 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the ''court's inquiry is limited'' in Tunney Act settlements); *United States* v. *InBev N.V./S.A.,* No. 08–1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanisms to enforce the final judgment are clear and manageable'').

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government's complaint, whether the decree is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Instead:

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[1]

In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also U.S. Airways,* 38 F. Supp. 3d at 74–75 (noting that a court should not reject the proposed remedies because it believes others are preferable and that room must be made for the government to grant concessions in the negotiation process for settlements); *Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant ''due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case''). The ultimate question is whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.' '' *Microsoft,* 56 F.3d at 1461 (*quoting United States* v. *Western Elec. Co.,* 900 F.2d 283, 309 (D.C. Cir. 1990)). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also U.S. Airways,* 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60. As a court in this district confirmed in *SBC Communications,* courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' *SBC Commc'ns,* 489 F. Supp. 2d at 15.

In its 2004 amendments,[2] Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. § 16(e)(2); *see also U.S. Airways,* 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973)

[1] *See also BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass'').

[2] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for a court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. § 16(e) (2004), *with* 15 U.S.C. § 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

(statement of Sen. Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11. A court can make its public interest determination based on the competitive impact statement and response to public comments alone. *U.S. Airways,* 38 F. Supp. 3d at 76. *See also United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); S. Rep. No. 93–298 93d Cong., 1st Sess., at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

III. THE INVESTIGATION AND PROPOSED FINAL JUDGMENT

The Department of Justice conducted an extensive investigation into the proposed acquisition and the proposed divestiture. The Department reviewed business documents, conducted economic analysis, and interviewed a substantial number of customers and actual and potential competitors in the aggregate and asphalt-concrete markets to ascertain whether the acquisition would be anticompetitive. The Department also worked extensively with the State of West Virginia and, in particular, the agency most familiar with the markets at issue, WVDOT, which sets quality standards for aggregate used in road construction and repair and qualifies suppliers of aggregate to bid on WVDOT road projects. Later, the Department thoroughly vetted the potential divestiture over the course of several months, a process that included re-interviewing customers, competitors, and the proposed divestiture buyer, document and data requests, and the retention of an expert geologist. Throughout this process, the Department worked in cooperation with the WVDOT to ensure it was satisfied that the divestiture would eliminate any concerns about the acquisition.[3]

In the Complaint, the United States alleged that CRH supplies aggregate in Wyoming, Raleigh, Mercer, and Summers Counties in West Virginia (these counties are referred to in the Complaint as ''Southern West Virginia''). Before being acquired by CRH, Pounding Mill owned two quarries that also supplied aggregate in Southern West Virginia. Without the divestiture, the proposed acquisition would have resulted in CRH owning nearly all of the aggregate quarries that supply Southern West Virginia and would have eliminated the horizontal, head-to-head competition between CRH and Pounding Mill in the supply of aggregate.

The Complaint also alleged that the acquisition would raise vertical competition concerns. In addition to aggregate, CRH produces and sells asphalt concrete. Aggregate is an essential input in asphalt concrete. AAA Paving and Sealing, Inc. (''AAA Paving''), a recent entrant, is the only company that competes with CRH to supply asphalt concrete in Southern West Virginia. Before the acquisition, AAA Paving relied on Pounding Mill to supply the aggregate it needs to manufacture asphalt concrete. The acquisition therefore would have put the quarries that are AAA Paving's only economically viable sources of aggregate under the ownership of CRH, its competitor in the sale of asphalt concrete. According to the Complaint, if CRH were to acquire its rival's only economically viable source of aggregate, it would have the incentive and ability to disadvantage AAA Paving by withholding this essential input or supplying it on less favorable terms, resulting in higher prices for the sale of asphalt concrete in Southern West Virginia.

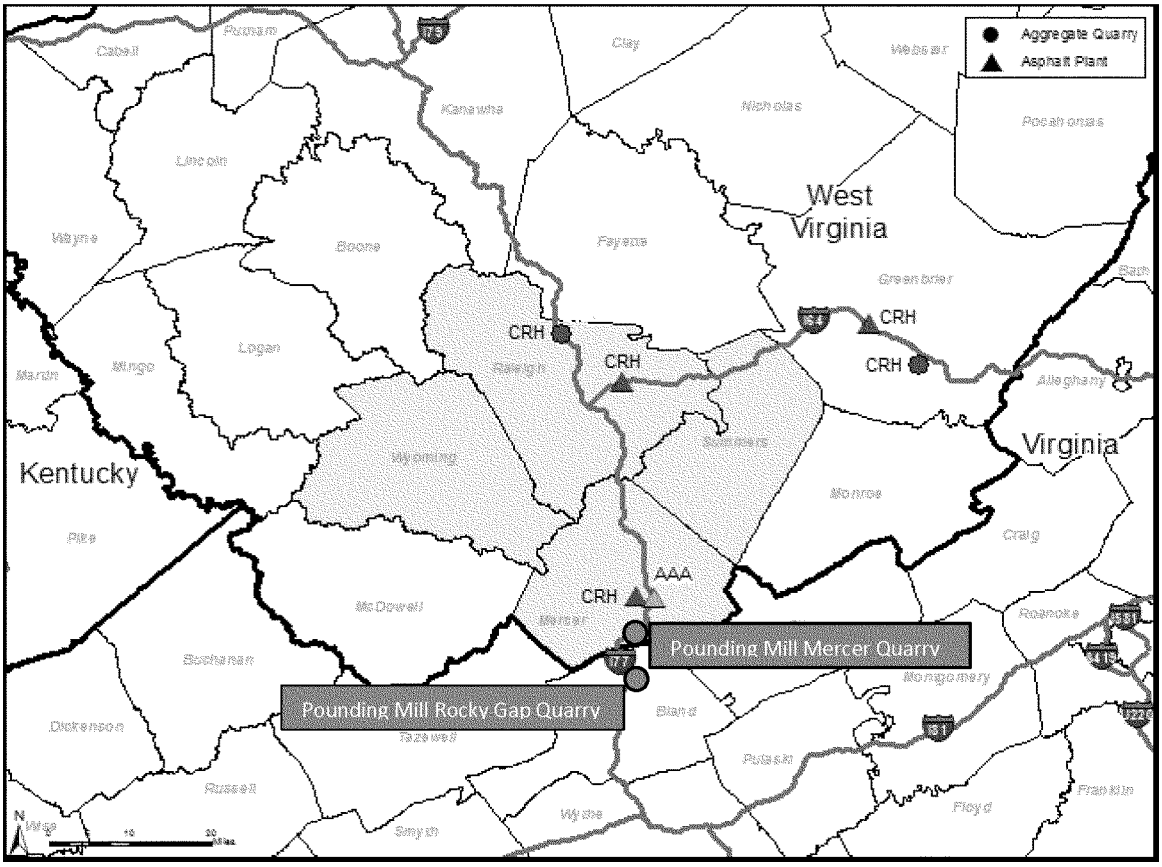
Under the proposed Final Judgment, CRH is required to divest Pounding Mill's Rocky Gap quarry located in Rocky Gap, Virginia (hereinafter, the ''Rocky Gap Quarry'') and related assets to Salem Stone Corporation (''Salem Stone''). *See* Figure 1, below. After a thorough evaluation of Salem Stone, the United States approved Salem Stone as the buyer. Salem Stone is a strong aggregate competitor in markets near Southern West Virginia. Salem Stone has extensive experience producing and selling aggregate, and is familiar with both WVDOT's approval process and with the surrounding area. As a result, Salem Stone is well-positioned to operate the divestiture assets and provide meaningful competition.

The divestiture required by the proposed Final Judgment therefore will preserve, and indeed in some respects increase, competition in the markets for WVDOT aggregate and WVDOT asphalt concrete by establishing a new, independent, and economically viable WVDOT aggregate supplier in Southern West Virginia. The divestiture also will ensure that AAA Paving, CRH's sole competitor in the supply of asphalt concrete, has an independent aggregate supplier to which it could economically turn.

BILLING CODE 4410–11–P

[3] The Department's cooperation with WVDOT included seeking and obtaining comments and revisions to the proposed Final Judgment.

Figure 1: Asphalt-Concrete Plants and Aggregate Quarries



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IV. SUMMARY OF COMMENT AND THE UNITED STATES' RESPONSE

A. Summary of WVAGO Comment

The State of West Virginia through its Office of the Attorney General (''WVAGO'') submitted the only comment received in this matter. The comment contends that the proposed settlement will not resolve the competitive concerns the United States alleged in its Complaint because the settlement will not preserve AAA Paving's ability to compete in the sale of asphalt concrete.[4] The comment contends that two companies—CRH and AAA Paving—supply asphalt concrete in the southern part of West Virginia and that if CRH were to acquire Pounding Mill's quarries, AAA Paving would not have an independent source of supply for the aggregate it needs to manufacture asphalt concrete. (WV Comment, ¶ 1.) The comment also contends that the Mercer Quarry, which CRH acquired from Pounding Mill, is the closest source of aggregate to the southern part of West Virginia.[5] (*Id.* at ¶ 2.) The comment claims that AAA Paving's next-closest alternative, the Rocky Gap Quarry, is not a viable option for AAA Paving because that quarry is 17 miles away from AAA Paving. (*Id.* at ¶¶ 5, 10.) The comment further claims that purchasing from the Rocky Gap Quarry would require AAA Paving to incur higher costs for its aggregate, which would make AAA Paving's asphalt concrete less competitive. (*Id.* at ¶ 7.)

WVAGO's comment also expresses the following concerns. First, the comment contends that CRH has refused to supply AAA Paving with aggregate on several occasions since it acquired the Mercer Quarry. (*Id.* at ¶ 4.) Second, the comment claims that when CRH refused to supply AAA Paving with aggregate from the Mercer Quarry, CRH provided AAA Paving with monetary credits to account for the additional trucking costs AAA Paving would incur by having to purchase aggregate from the Rocky Gap Quarry, but that ''CRH will not provide those trucking credits forever.'' (*Id.* at ¶ 6.) Finally, the comment contends that AAA Paving's costs for aggregate have already increased since CRH acquired Pounding Mill. (*Id.* at ¶ 10.)

B. The United States' Response

The United States evaluated WVAGO's comment, investigated the basis for the claims in the comment, and continues to believe that the divestiture of the Rocky Gap Quarry completely remedies the anticompetitive harm alleged in the Complaint. The proposed Final Judgment secures a structural remedy that fully addresses both the horizontal harm alleged in the aggregate market and the vertical harm alleged in the asphalt-concrete market. The divestiture of Pounding Mill's Rocky Gap Quarry to Salem Stone creates a new competitor in Southern West Virginia and therefore preserves the competition that would have been lost

[4] The State of West Virginia currently is litigating an antitrust action against CRH and others in the Circuit Court of Kanawha County, West Virginia. That lawsuit alleged, across the entire state of West Virginia, ''monopolization of the markets for aggregates, asphalt, and asphalt paving as well as unreasonable restraints of trade in those markets.'' (WV Comment, p. 1.) The United States' proposed Final Judgment is not intended to resolve these much broader claims, but instead is designed to remedy the anticompetitive effects in a four-county area that would otherwise result from the combination of CRH and Pounding Mill.

[5] The comment does not define the geographic area it refers to as the ''southern part of the State of West Virginia.'' The geographic area described in the comment may differ from the four-county area defined in the United States' Complaint as ''Southern West Virginia.''

absent the divestiture. Indeed, as discussed in more detail below, AAA Paving views the divestiture as leaving it with more alternative sources of aggregate than it had before the acquisition, because the Rocky Gap Quarry now is a nearby alternative to CRH's Mercer Quarry.

Terry Parks, Vice President of AAA Paving, believes that the Rocky Gap Quarry is a viable alternative to the Mercer Quarry for AAA Paving's aggregate needs. *See* Declaration of Terry Parks (''Parks Decl.''), attached hereto as Exhibit B, at ¶ 6. The comment incorrectly claims that AAA Paving would need to truck aggregate 17 miles from the Rocky Gap Quarry. The Rocky Gap Quarry is 14 miles away from AAA Paving, and only 7.5 miles further away from AAA Paving than the Mercer Quarry. (*Id.*) Mr. Parks' declaration directly refutes WVAGO's claim that AAA Paving would not be competitive in the asphalt-concrete market if it had to purchase aggregate from the Rocky Gap Quarry. (*Id.* at ¶ 8 (''The Rocky Gap Quarry is a viable alternative to the Mercer Quarry for AAA Paving's aggregate requirements. To obtain aggregate from the Rocky Gap Quarry, AAA Paving would need to truck aggregate an additional 7.5 miles beyond the distance from AAA Paving's plant to the Mercer Quarry. I do not anticipate that that additional distance would significantly raise my costs.'').)

Moreover, the allegations upon which WVAGO bases its comment are unsupported and factually incorrect. For example, the comment states that CRH refused to supply AAA Paving with aggregate on several occasions since CRH acquired the Mercer Quarry. (WV Comment, ¶ 4). Mr. Parks, however, confirmed that CRH has never refused to provide AAA Paving with aggregate. (Parks Decl., ¶ 7.) Indeed, according to Mr. Parks, AAA Paving continues to purchase aggregate from the Mercer Quarry and the prices CRH charges AAA Paving have not increased since CRH acquired the quarry. (*Id.*) Further, while WVAGO alleged that AAA Paving's costs for aggregate have increased since CRH acquired Pounding Mill, Mr. Parks states that AAA Paving's costs for aggregate have not in fact increased. (*Id.*)

In addition, the comment states that CRH provided AAA Paving with credits when it refused to supply AAA Paving with aggregate from the Mercer Quarry to account for the additional trucking costs that AAA Paving would incur by having to purchase from the Rocky Gap Quarry, but ''CRH will not provide those trucking credits forever.'' (WV Comment, ¶ 6.) Mr. Parks, however, explained that while CRH has supplied AAA Paving with discounts (or credits), it was not because CRH refused to supply AAA Paving with aggregate. (Parks Decl., ¶ 10.) Rather, the discounts were a goodwill gesture by CRH, because a major road construction project near the Mercer Quarry was causing significant traffic delays. (*Id.*) CRH offered to supply AAA Paving from a CRH quarry that is further away and provide AAA Paving with discounts to make up for the additional trucking costs. (*Id.*) At this point, AAA Paving has not purchased any aggregate from the Rocky Gap Quarry. (*Id.* at ¶ 9.)

Further, AAA Paving and other aggregate customers stand to benefit from the divestiture of the Rocky Gap Quarry to Salem Stone. The divestiture creates competition between the Rocky Gap Quarry and the Mercer Quarry, which previously did not compete because both were owned by Pounding Mill. Prior to the acquisition, the closest competing aggregate suppliers for customers near the Mercer Quarry were located in Lewisburg, West Virginia—over 60 miles to the northeast. Due to the high cost of trucking aggregate, prices for aggregate are often disciplined by the total cost to the purchaser of obtaining aggregate from the *next* closest quarry, which includes the additional trucking costs of transporting aggregate from a farther quarry. The closer quarry can price aggregate just below the amount the customer would pay to obtain aggregate from the next closest quarry. So, prior to the acquisition, the Mercer Quarry should have set its prices to AAA Paving just below what the Lewisburg, West Virginia quarries would charge, based on their likely transportation costs. After the divestiture, the next closest competitor to the Mercer Quarry is now the Rocky Gap Quarry, which is over 50 miles closer; AAA Paving will need to travel only about 7.5 additional miles to obtain aggregate from the Rocky Gap Quarry. (*Id.* at ¶ 6). Consequently, the price of aggregate quoted to AAA Paving and other customers from the Rocky Gap Quarry is likely to be lower following the divestiture than it would have been prior to the acquisition. In sum, the divestiture ensures that CRH's acquisition of Pounding Mill will not result in less competition or fewer alternatives for AAA Paving or other nearby customers.

V. CONCLUSION

After careful consideration of the public comment, the Department continues to believe that the proposed Final Judgment, as drafted, provides an effective and appropriate remedy for the antitrust violations alleged in the Complaint, and is therefore in the public interest. The Department will move this Court to enter the proposed Final Judgment after the comment and this response are published pursuant to 15 U.S.C. § 16(d).

Dated: November 16, 2018

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA

Christine A. Hill
Attorney, United States Department of Justice, Antitrust Division, Defense, Industrials, and Aerospace Section, 450 Fifth Street, N.W., Suite 8700, Washington, D.C. 20530, (202) 305–2738, christine.hill@usdoj.gov

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EXHIBIT A
TO RESPONSE

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STATE OF WEST VIRGINIA
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August 21, 2018

Maribeth Petrizzi
Chief, Defense, Industrials, and Aerospace Section
Antitrust Division
United States Department of Justice
450 Fifth Street, N.W., Suite 8700
Washington, D.C. 20530

Re: Tunney Act Comments in *United States v. CRH plc, et al.*, Civil Action No. 1:18-cv-01473 (D.D.C.)

Dear Ms. Petrizzi:

Attached please find comments of the State of West Virginia in *United States v. CRH plc, et al.*, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16 (Tunney Act).

Sincerely,

Douglas L. Davis
Assistant Attorney General

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA
United States Department of Justice
Antitrust Division
450 Fifth Street, N.W., Suite 8700
Washington, D.C. 20530

Plaintiff,

v.

CRH PLC
Belgard Castle
Dublin, Ireland 22,

CRH AMERICAS MATERIALS, INC.
900 Ashwood Parkway
Suite 600
Atlanta, Georgia 30338

and

POUNDING MILL QUARRY CORPORATION
171 Saint Clair Crossing
Bluefield, Virginia 24605

Defendants.

TUNNEY ACT COMMENTS OF THE STATE OF WEST VIRGINIA
ON THE PROPOSED FINAL JUDGMENT

The State of West Virginia is aggressively prosecuting an antitrust action seeking injunctive relief and damages against CRH plc, CRH Americas Materials, Inc (formerly known as Oldcastle, Inc. and Oldcastle Materials, Inc.) and others arising from the monopolization of the markets for aggregates, asphalt, and asphalt paving as well as unreasonable restraints of trade in those markets.

The aims of this litigation include restoration of competition in the asphalt manufacturing and paving industries, maintenance of a competitive market for aggregates that supply the asphalt manufacturing industry in West Virginia, and recovery of overcharges paid by the State of West Virginia as a result of the defendants' unlawful conduct. Ex. A, Complaint. Without waiving any rights to a hearing on any part of the State's complaint, either in West Virginia Circuit Court or in these proceedings, the State of West Virginia offers the following:

1. In the southern part of the State of West Virginia, there are two primary entities engaged in the production of asphalt and the provision of asphalt paving services for West Virginia Department of Transportation Division of Highways paving projects: AAA Paving and CRH, plc and its wholly-owned subsidiaries ("CRH").

2. In these proceedings, CRH is seeking approval for its acquisition of the Mercer County quarry which is the closest supply of aggregates used in the manufacture of asphalt in this area.

3. While this acquisition was under review, CRH threatened that, if it were permitted to buy the Mercer County quarry, AAA Paving would not be able to buy aggregate from CRH for the manufacture of AAA's asphalt. Ex. B, Dep. of Terry Parks, at 37:17-38:19 (March 18, 2018).

4. Since the acquisition closed, CRH has already refused to supply AAA Paving with aggregate from the Mercer County quarry on several occasions, claiming that the quarry's production is being entirely consumed by CRH's own asphalt manufacturing.

5. When AAA Paving is unable to obtain aggregate from the Mercer County quarry, AAA's next closest supply is from the Rocky Gap quarry which is 17 miles away, almost entirely uphill, on a route that requires 30 to 60 minutes of trucking time, depending on traffic.

6. For the time being, CRH has agreed to provide AAA Paving with trucking credits so that this travel time does not render Rocky Gap stone less competitive. CRH will not provide those trucking credits forever.

7. Without trucking credits, Rocky Gap aggregate would require AAA Paving to incur higher costs for its aggregate, which would in turn render AAA's asphalt and asphalt paving services less competitive in a market which is already dominated by CRH.

8. Because the asphalt manufacturing and paving markets will be adversely affected by CRH's acquisition of Pounding Mill, the State of West Virginia requests that the Department of Justice withdraw its consent to the Proposed Final Judgment.

9. The State of West Virginia believes the Proposed Final Judgment will have an adverse effect on the asphalt manufacturing and paving markets in West Virginia and that it fails to adequately address the anticompetitive effects of the acquisition by CRH on the asphalt manufacturing and asphalt paving markets. The proposed Final Judgment simply will not remedy the effects of the acquisition on these markets. Neither the proposed Final Judgment nor the Competitive Impact Statement address the adverse impacts already being experienced by CRH's most significant competitor in Southern West Virginia.

10. The Proposed Final Judgment will actually exacerbate the competitive climate for aggregates, asphalt manufacturing and asphalt paving in Southern West Virginia. Pounding Mill Quarry Corporation, the seller of the Mercer County quarry was independent of CRH and AAA Paving. Now the quarry is operated by CRH or its subsidiaries. The Rocky Gap quarry sold to Salem Stone does not alleviate the problems because it is too far away to allow AAA Paving to be competitive in the asphalt manufacturing and asphalt paving markets. The costs for AAA

Paving have increased and it has no economically viable alternative. The Proposed Final Judgment does not address this at all.

11. If the Department chooses not to withdraw its consent, the State of West Virginia requests that the Proposed Final Judgment be disapproved by the Court because it is not in the public interest and fails to meet the standards in 15 U.S.C. § 16(e).

Sincerely,

Douglas L. Davis (WV Bar No. 5502)
Assistant Attorney General
Consumer Protection/Antitrust Division
Post Office Box 1789
Charleston, WV 25326-1789

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

2017 APR 11 AM 10:24

STATE OF WEST VIRGINIA, ex rel. PATRICK MORRISEY, ATTORNEY GENERAL, and PAUL A. MATTOX, JR. IN HIS OFFICIAL CAPACITY AS SECRETARY OF TRANSPORATION AND COMMISSIONER OF HIGHWAYS, WEST VIRGINIA DEPARTMENT OF TRANSPORTATION,

Plaintiffs,

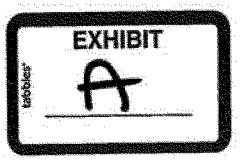
v. CIVIL ACTION NO. 17-C-41

CRH, PLC; OLDCASTLE, INC.; OLDCASTLE MATERIALS, INC.; WEST VIRGINIA PAVING, INC.; SOUTHERN WEST VIRGINIA PAVING, INC.; SOUTHERN WEST VIRGINIA ASPHALT, INC.; KELLY PAVING, INC.; CAMDEN MATERIALS, LLC; AMERICAN ASPHALT & AGGREGATE, INC.; AMERICAN ASPHALT OF WEST VIRGINIA, LLC; BLACKTOP INDUSTRIES AND EQUIPMENT COMPANY,

Defendants.

COMPLAINT

1. Plaintiffs, the State of West Virginia, by and through its duly elected Attorney General, Patrick Morrisey ("Attorney General"), and the Paul A. Mattox, Jr. in his official capacity as Secretary of Transportation and Commissioner of Highways, West Virginia Department of Transportation ("DOH") (collectively, the "State"), bring this action under the West Virginia Antitrust Act against CRH, plc; Oldcastle, Inc.; Oldcastle Materials, Inc.; West Virginia Paving, Inc.; Southern West Virginia Paving, Inc.; Southern West Virginia Asphalt, Inc.; Kelly Paving, Inc.; Camden Materials, LLC; American Asphalt & Aggregate, Inc.; American Asphalt of West Virginia, LLC; and Blacktop Industries and Equipment Company (collectively, "Defendants").



JURISDICTION AND VENUE

2. The Circuit Court of Kanawha County, West Virginia, is authorized to hear this matter under Article VIII, Section 6 of the West Virginia Constitution, W. Va. Code § 56–3–33, W. Va. Code § 51–2–2, W. Va. Code §§ 47–18–8, 9 and 15.

3. Defendants transact business in Kanawha County. Venue thus properly lies in the Circuit Court of Kanawha County, West Virginia. *See* W. Va. Code § 56–1–1; *see also id.* § 47–18–15.

PARTIES

4. Plaintiff, the State of West Virginia, by and through its duly elected Attorney General, Patrick Morrisey, is authorized, in its sovereign capacity, to bring this action under West Virginia Code §§ 47–18–8, –9, and –15.

5. Plaintiff, Paul A. Mattox, Jr., in his official capacity as Secretary of Transportation and Commissioner of Highways, West Virginia Department of Transportation ("DOH"), is authorized to bring this action under W. Va. Code § 47–18–9 and W. Va. Code § 17–2A–8.

6. The West Virginia Division of Highways is responsible for the construction and maintenance of more than 38,000 miles of publicly owned roads and bridges throughout West Virginia.

7. Annual paving contracts awarded by DOH in the state averaged more than $130 million per year between 2010 and 2014, totaling more than $665 million.

8. Defendant CRH, plc is a corporation organized under the laws of Ireland and is headquartered in Dublin, Ireland. CRH, plc is the ultimate owner of its subsidiaries, which include Oldcastle, Inc.; Oldcastle Materials, Inc.; West Virginia Paving, Inc.; Southern West Virginia Paving, Inc.; and Southern West Virginia Asphalt, Inc. Upon information and belief, CRH, plc

exercises dominion and control over its subsidiaries and reports all earnings from each of these entities in its consolidated reports filed with public agencies.

9. Upon information and belief, CRH, plc is the largest building materials company in North America, operating in all fifty U.S. states and six Canadian provinces.

10. Upon information and belief, CRH, plc is the largest producer of asphalt and the third largest producer of aggregates and readymixed concrete in the United States.

11. CRH, plc's business is vertically integrated from primary resource quarries into aggregates, asphalt and readymixed concrete products. CRH, plc's business is further integrated into asphalt paving services through which it is the leading supplier of product to highway repair and maintenance demand in the United States.

12. Defendant Oldcastle, Inc. is a principal subsidiary of CRH, plc; is incorporated in Delaware; and is headquartered in Atlanta, Georgia. Oldcastle, Inc.'s actions are controlled and dominated by CRH, plc. Upon information and belief, Oldcastle, Inc. is responsible for CRH, plc's operations in North America.

13. Defendant Oldcastle Materials, Inc. is a principal subsidiary of CRH, plc; is incorporated in Delaware; and is headquartered in Atlanta, Georgia. Oldcastle Materials, Inc.'s actions are controlled and dominated by CRH, plc. Upon information and belief, Oldcastle Materials owns West Virginia Paving, Inc.

14. Defendant West Virginia Paving, Inc. ("WV Paving") is a West Virginia corporation duly authorized to conduct business in the State of West Virginia, with its principal place of business located in Dunbar, West Virginia. WV Paving is a principal subsidiary of CRH, plc. WV Paving engages in the business of manufacturing, selling, and/or applying asphalt and asphalt-related products in West Virginia markets.

15. Defendant Southern West Virginia Paving, Inc. ("Southern WV Paving") is a West Virginia corporation duly authorized to conduct business in the State of West Virginia, with its principal place of business located in Sprague, West Virginia. Southern WV Paving's officers are the same as WV Paving's officers and its "local office" listing is the same as WV Paving. Southern WV Paving engages in the business of manufacturing, selling, and/or applying asphalt and asphalt-related products in West Virginia markets.

16. Defendant Southern West Virginia Asphalt, Inc. ("Southern WV Asphalt") is a West Virginia corporation duly authorized to conduct business in the State of West Virginia, with its principal place of business located in Sprague, West Virginia. Southern WV Asphalt's officers are the same as WV Paving's officers and its "local office" listing is the same as WV Paving. Southern WV Asphalt engages in the business of manufacturing, selling, and/or applying asphalt and asphalt related products in West Virginia markets.

17. Upon information and belief, CRH, plc acquired Southern WV Paving and Southern WV Asphalt through its subsidiary WV Paving.

18. Because all operations of CRH, plc subsidiaries are ultimately controlled and directed by CRH, plc, CRH, plc; Oldcastle, Inc.; Oldcastle Materials, Inc.; WV Paving; Southern WV Paving; and Southern WV Asphalt are collectively referred to herein as "CRH."

19. Defendant Kelly Paving, Inc. ("Kelly Paving") is a West Virginia corporation duly authorized to conduct business in the State of West Virginia. Kelly Paving is a wholly owned subsidiary of Shelly and Sands, Inc., an Ohio corporation. Kelly Paving engages in the business of manufacturing, selling, and/or applying asphalt and asphalt-related products in West Virginia markets. Kelly Paving is a partner in a joint venture with WV Paving in Camden Materials LLC.

20. Camden Materials, LLC ("Camden Materials") is a West Virginia limited-liability company duly authorized to conduct business in the State of West Virginia, with its

principal place of business located in Dunbar, West Virginia. Camden Materials is a joint venture between WV Paving and Kelly Paving. Upon information and belief, Camden Materials is owned in equal parts by WV Paving and Kelly Paving. Camden Materials engages in the business of manufacturing and selling asphalt. Camden Materials is operated by WV Paving.

21. Defendant American Asphalt & Aggregate, Inc. ("American Asphalt & Aggregate") is a West Virginia corporation duly authorized to conduct business in the State of West Virginia, with its principal place of business located in Kenova, West Virginia. American Asphalt & Aggregate engages in the business of manufacturing, selling, and/or applying asphalt and asphalt-related products. Upon information and belief, American Asphalt & Aggregate is owned in whole or in part by Daron Dean.

22. Defendant American Asphalt of West Virginia, LLC ("American Asphalt") is a Delaware limited-liability company formed in June 2012. American Asphalt is authorized to conduct business in the State of West Virginia and its principal place of business is located in Kenova, West Virginia. American Asphalt's members are Southern WV Asphalt and American Asphalt & Aggregate. Upon information and belief, American Asphalt is owned in equal parts by Southern WV Asphalt and American Asphalt & Aggregate. American Asphalt engages in the business of manufacturing, selling, and/or applying asphalt and asphalt-related products. Upon information and belief, Daron Dean operates American Asphalt.

23. Defendant Blacktop Industries and Equipment Company ("Blacktop Industries") is a West Virginia corporation duly authorized to conduct business in the State of West Virginia, with its principal place of business located in Kenova, West Virginia. Blacktop Industries engages in the business of manufacturing, selling, and/or applying asphalt and asphalt-related products. Upon information and belief, Blacktop Industries is a subsidiary of American Asphalt & Aggregate, and owned in whole or in part by Daron Dean.

DEFINITIONS

24. "Aggregate" means crushed stone and gravel produced at quarries, mines, or gravel pits used to manufacture asphalt concrete and readymix concrete.

25. "Stone product" refers to any product produced at an aggregate quarry.

26. "Asphalt concrete" or "asphalt" means a paving material produced by combining and heating asphalt cement (also referred to in the industry as "liquid asphalt" or "asphalt oil") with aggregate.

27. "Hot-mix plant" means a plant that produces asphalt concrete.

TRADE AND COMMERCE

The Relevant Product Markets

Aggregate

28. Aggregate is a stone product used to manufacture asphalt.

29. Aggregate is a low-priced commodity that is very heavy and bulky.

30. Transportation costs comprise a substantial portion of the price per ton of aggregate and, accordingly, transportation costs limit the areas to which aggregate can be shipped economically.

31. As a result, the geographic location of aggregate quarries, mines, and gravel pits, along with the associated transportation costs of aggregate, create regional markets for the sale of aggregate suitable for manufacturing asphalt.

32. Establishing a new, successful aggregate production facility in or in close proximity to southern West Virginia is difficult, time-consuming, and costly.

33. To be cost competitive, an aggregate production facility must be able to produce large amounts of consistent quality aggregate in close proximity to the hot-mix plants where the aggregate will be used.

34. Environmental and zoning permits must be obtained to operate an aggregate-production facility.

35. State and local zoning provisions make it very difficult to open an aggregate production facility in southern West Virginia or southwest Virginia in close proximity to southern West Virginia.

36. Aggregate differs from all other types of stone products in its physical composition, functional characteristics, customary uses, and pricing.

37. Other stone products are not acceptable substitutes for manufacturing asphalt.

38. Manufacturers of asphalt recognize aggregate as a distinct product.

39. Aggregate used for paving roads under DOH contracts must possess specific qualities and characteristics.

40. Not all aggregates are suitable for manufacturing asphalt that meets DOH specifications.

41. DOH must inspect and certify aggregate producers and suppliers before the aggregate can be used to manufacture asphalt for DOH paving contracts.

42. A current list of approved aggregate suppliers for DOH paving contracts is attached hereto as Exhibit A.

43. The production and sale of DOH approved aggregate used to manufacture DOH approved asphalt concrete constitutes a line of commerce and a relevant market for antitrust purposes.

Asphalt concrete

44. The production and sale of asphalt concrete that meets DOH specifications for DOH-contract paving projects is a separate product market.

45. Establishing a new, successful hot-mix plant in or in close proximity to southern West Virginia is difficult, time-consuming, and costly.

46. To be cost competitive, the hot-mix plant must be able to obtain large amounts of consistent quality aggregate in close proximity to the hot-mix plant and be in close proximity to DOH paving projects requiring asphalt concrete.

47. Environmental and zoning permits must be obtained to operate a hot-mix plant.

48. State and local zoning provisions make it very difficult to open a hot-mix plant in southern West Virginia or southwest Virginia in close proximity to southern West Virginia.

49. DOH must inspect and certify producers of asphalt concrete before the asphalt concrete can be used for DOH paving contracts.

50. A current list of approved asphalt concrete manufacturing plants for DOH paving contracts is attached hereto as Exhibit B.

51. Asphalt concrete is composed of about 95 percent aggregate and 5 percent liquid asphalt.

52. Because asphalt is composed primarily of aggregate, asphalt is heavy and cannot be trucked large distances because it is prohibitively expensive to do so.

53. Similarly, heat is required to manufacture asphalt, and the finished product must be applied while it is hot.

54. For that reason, the extent to which manufactured asphalt can be transported is limited by the distance and time it takes to deliver the product.

Asphalt Paving

55. Asphalt paving is a separate product market because contractors can acquire paving equipment to apply asphalt manufactured for a DOH paving project without owning or controlling a hot-mix plant or an aggregate producing facility.

56. Some of the Defendants occasionally win DOH paving or road construction contract bids, and then purchase asphalt from an independent manufacturer.

57. Occasionally, when Defendants lose bids, they in turn supply asphalt to the winning bidder.

The Relevant Geographic Markets

58. For antitrust purposes and due to terrain and transportation options and costs, West Virginia is divided into different geographic markets for the asphalt and asphalt paving markets.

59. The geographic markets include the North Asphalt Market, which is comprised of the following counties: Hancock, Brooke, Ohio, Marshall, Wetzel, Tyler, and Pleasants.

60. The West Central Asphalt Market is comprised of the following counties: Wood, Ritchie, Wirt, Calhoun, Roane, Jackson, and Mason.

61. The Southwest Asphalt Market is comprised of the following counties: Putnam, Kanawha, Cabell, Wayne, Lincoln, Boone, Logan, and Mingo.

62. The South Asphalt Market is comprised of the following counties: Raleigh, Wyoming, Summers, Monroe, Mercer and McDowell.

63. The Northeast Asphalt Market is comprised of the following counties: Jefferson, Berkeley, Morgan, Mineral, Hampshire Hardy, and Grant.

64. The East Central Asphalt Market is comprised of the following counties: Tucker, Barbour, Upshur, Randolph, Pendleton, Gilmer, Braxton, Webster, Pocahontas, Clay, Nicholas, Greenbrier, and Fayette.

65. The North Central Asphalt Market is compromised of the following counties: Monongalia, Marion, Preston, Doddridge, Harrison, Taylor, and Lewis.

66. CRH, through its subsidiaries, is the successful bidder on the vast majority of all DOH paving contracts in the Southwest and South Asphalt Markets.

67. Kelly Paving is the successful bidder on the majority of all DOH paving contracts in the North Paving Market.

68. Together, CRH, through its subsidiaries, and Kelly Paving are the successful bidders on the vast majority of all DOH asphalt paving contracts in the West Central Asphalt Market.

69. CRH, through its subsidiaries or joint ventures, owns or controls all of the DOH approved asphalt manufacturing plants serving the Southwest Asphalt Market.

70. CRH, through its subsidiaries or joint ventures, owns or controls all except one of the DOH approved asphalt manufacturing plants serving the South Asphalt Market.

71. CRH, through its subsidiaries or joint ventures, owns or controls all of the DOH approved asphalt manufacturing plants serving the West Central Asphalt Market.

72. Through the ownership or control of the hot-mix plants, CRH has obtained market power that allows it to exclude competitors and/or raise prices in the Southwest and South Asphalt markets.

73. Through the ownership or control of hot-mix plants, CRH and Kelly Paving have obtained market power that allows them to exclude competitors and/or raise prices in the West Central Asphalt market.

74. The relevant geographic area for the purposes of this complaint is made up of the South, Southwest and West Central Asphalt Markets.

FACTUAL BACKGROUND

The Defendants' Acquisition History

75. CRH has engaged in an ongoing series of anticompetitive combinations, acquisitions, agreements, and practices since 2000.

76. Defendants have thereby acquired, maintained, and enhanced market power in the market for the sale and production of DOH-approved asphalt in the relevant geographic markets.

77. CRH has the ability to control asphalt prices and exclude competitors throughout the relevant geographic markets in West Virginia.

78. In 2000, CRH began its quest to control the asphalt manufacture and sale and asphalt paving markets in West Virginia through the acquisition of WV Paving via one or more of its subsidiaries.

79. Through its subsidiary, WV Paving, CRH acquired Southern WV Paving and Southern WV Asphalt.

80. The Shelly Company, which is based in Ohio, was acquired by CRH through one or more of its subsidiaries in 2000.

81. The Shelly Company also is engaged in the manufacture of asphalt, paving, and aggregates production.

82. The Shelly Company owns asphalt manufacturing plants along the Ohio River that are or have been DOH certified suppliers of asphalt.

83. As recently as 2011, The Shelly Company had two DOH approved hot-mix plants.

84. As of 2014, The Shelly Company has just one hot-mix plant near Gallipolis, Ohio.

85. In a press release issued by CRH in 2000, it announced its $362 million acquisition of The Shelly Company and identified West Virginia as one of its three "main market positions."

86. Since the acquisition, the Shelly Company has disappeared from the North Paving Market, although it owns several aggregate facilities along the Ohio River and aggregate terminals in West Virginia.

87. CRH competed with Kelly Paving for DOH paving projects until 2006.

88. In 2006, CRH, through one if its subsidiaries (WV Paving), entered into a joint venture with Kelly Paving to form Camden Materials.

89. Camden Materials is operated by WV Paving and manufactures DOH-approved asphalt in Parkersburg, Wood County.

90. Since the formation of Camden Materials, CRH has not bid on any DOH paving projects in the North Asphalt Market, though it easily could with the hot-mix plant in Parkersburg, and several hot-mix plants owned by its subsidiary, The Shelly Company, in Ohio across the Ohio River.

91. Kelly Paving was the successful bidder on 62 percent of the DOH paving projects by dollar amount from 2010 through 2014 in the North Asphalt Market.

92. After the formation of Camden Materials, Kelly Paving continued to bid on DOH asphalt paving projects in the West Central Asphalt Market, but it has essentially split the market with CRH.

93. Upon information and belief, Kelly Paving has not bid on DOH projects in Mason County since 2006, even though it did so before forming Camden Materials.

94. In the West Central Asphalt market, CRH won 41 percent of the DOH paving contracts by dollar volume while Kelly Paving won 37 percent from 2010 through 2014.

95. Together, CRH and Kelly Paving account for nearly 80 percent of the West Central Asphalt Market.

96. Before June 2012, American Asphalt & Aggregates and Blacktop competed against CRH for DOH asphalt paving projects.

97. In June of 2012, American Asphalt—a CRH-owned joint venture between American Asphalt & Aggregate and Southern WV Asphalt—was formed.

98. Since the formation of the American Asphalt joint venture, American Asphalt & Aggregates and Blacktop Industries have stopped competing with CRH in the West Central Asphalt Market for DOH asphalt paving projects.

99. Since 2013, Blacktop Industries has failed to win a bid in the Southwest Asphalt Market, although it won bids in this market before the formation of American Asphalt.

100. Upon information and belief, as a part of the joint venture agreement, American Asphalt & Aggregate shuttered two of its asphalt plants that had previously competed against CRH and also agreed not to compete, through Blacktop Industries.

101. From 2010 through 2014, CRH's market share for DOH asphalt paving projects in the Southwest Asphalt Market has increased from about 60 percent to about 93 percent by dollar volume.

102. Appalachian Paving & Aggregate, LLC, an asphalt-and-paving business located in Lenore, West Virginia, won a $3.6 million contract to pave an airport in Mingo County in 2009.

103. Shortly after winning the Mingo County airport project, Appalachian Paving & Aggregate, LLC was acquired by CRH in 2010.

104. Upon information and belief, after the acquisition, Appalachian Paving & Aggregates LLC stopped bidding on DOH paving projects.

105. CRH formerly competed with Mountain Companies, a group of commonly owned Kentucky corporations, for DOH paving projects in the Southwest and West Central Asphalt Markets.

106. In 2006 CRH acquired Mountain Companies, through its Oldcastle Materials subsidiary and others.

107. Mountain Enterprises, one of the Mountain Companies, dominated WV Paving in the southern counties of the Southwest Asphalt Market for years.

108. Rather than compete against Mountain Enterprises, CRH simply acquired it.

109. As part of that acquisition, CRH also acquired W-L Construction & Paving, Inc., a Kentucky company owned by Mountain Companies owners, and entered into a joint venture with Bizzack, Inc., another company previously owned entirely by Mountain Companies' owners.

110. Upon information and belief, CRH also acquired the assets of Orders & Haynes Paving Co., Inc.

111. Orders & Haynes had previously provided asphalt paving services in the Southwest Asphalt Market in competition to CRH.

112. Upon information and belief, CRH later acquired the assets of Yellowstar Materials, Inc. in Ivydale, West Virginia.

113. Upon information and belief, Yellowstar, which owned two asphalt plants, was formed by a former Vice President of WV Paving, Harry Dunmire.

114. Upon information and belief, Yellowstar had the potential to compete with CRH within West Virginia for DOH asphalt paving projects.

115. Upon information and belief, CRH recognized the competition posed by Yellowstar and threatened the company, by, among other things, claiming it would put an asphalt plant directly next to Yellowstar.

116. Upon information and belief, CRH also threatened trucking companies to not haul for Yellowstar or they would lose CRH business.

117. Upon information and belief, CRH's threats worked.

118. Upon information and belief, Yellowstar finally submitted and sold its assets to CRH.

119. Upon information and belief, Yellowstar's hot-mix plants were then torn down.

120. Upon information and belief,, Yellowstar's owner, Harry Dunmire, was forced to sign a 10-year non-compete clause with CRH when the assets were sold to CRH.

121. MAC Construction & Excavating, Inc., a company headquartered in Indiana, entered the West Virginia asphalt paving market, providing competition to CRH.

122. MAC Construction showed early success in outbidding WV Paving on two large DOH asphalt paving projects in 2014.

123. Upon information and belief, shortly after winning the bids in 2014, CRH acquired the company and MAC Construction requested revocation of a permit to operate a hot-mix plant in St. Albans, West Virginia.

124. CRH purposefully took actions to maintain and enhance its market power in the asphalt manufacturing and sale, and asphalt paving markets through predatory and exclusionary actions.

125. Upon information and belief, CRH:

(a) induced boycotts against its competitors;

(b) expressly threatened to put new competitors out of business;

(c) made aggressive overtures to buy out the few remaining competitors in the market; and

(d) mandated statewide covenants not to compete, for as many as ten years, from its vanquished business rivals.

126. Through its market power in DOH-approved asphalt concrete and asphalt-concrete paving, CRH has created substantial barriers to those who might consider entering the asphalt manufacturing or paving markets.

127. Upon information and belief, CRH has restricted the supply of asphalt concrete to competing paving companies; threatened new entrants in these markets with reprisals unless they ceased operations or sold to CRH; and engaged in other predatory conduct that makes it

economically irrational for anyone to consider launching or expanding asphalt production or paving businesses in the West Central, Southwest and South Asphalt markets.

The Defendants' Market Power

128. CRH has dominant market power for DOH approved asphalt concrete and asphalt paving in the relevant geographic markets, whether measured by DOH contracts won/subcontracted or by total dollar volume of asphalt concrete sold.

South Paving Market

129. CRH operates all the DOH compliant hot-mix plants in the South Asphalt Market.

130. In the South Paving Market from 2010 to 2014, CRH's market share for DOH paving projects increased from 90 percent to nearly 100 percent, as measured in dollars.

131. During the overall time period, CRH averaged 95 percent of the market share, which totaled $35,102,384.00 in contracts.

132. During the same time period, four competitors to CRH in the South Asphalt market—Teays River Construction, Inc.; Triton Construction Inc.; Ahern & Associates, Inc.; and Pro Contracting Group— stopped bidding on DOH contracts or failed to win any DOH asphalt paving contracts.

133. Upon information and belief, CRH's competitors could no longer acquire DOH-compliant asphalt from CRH at competitive prices.

Southwest Paving Market

134. CRH operates all the DOH compliant hot-mix plants in the Southwest Asphalt Market.

135. In the Southwest Asphalt Market, from 2010 to 2014, CRH's market share for DOH paving projects increased from about 60 percent to about 93 percent, as measured in dollars.

136. During the overall time period, CRH averaged 79 percent of the market share, which totaled $87,292,926.00 in contracts.

137. During the same period of time, three competitors to CRH in the Southwest Asphalt market—MAC Construction & Excavating; Blacktop Industries; and Appalachian Paving & Aggregate— stopped bidding on DOH contracts or failed to win any DOH-asphalt paving contracts.

138. Upon information and belief, CRH acquired MAC Construction and Appalachian Paving & Aggregate.

139. CRH formed a joint venture with Blacktop's owner, Daron Dean.

140. Upon information and belief, a fourth competitor, Alan Stone Co, Inc., could no longer acquire DOH-compliant asphalt from CRH at competitive prices and stopped bidding on DOH paving contracts in the Southwest Asphalt Market.

West Central Asphalt Market

141. CRH and the joint venture it formed with Kelly Paving (Camden Materials) operate all the DOH compliant hot-mix plants in the West Central Asphalt Market.

142. In the West Central Asphalt Market from 2010 to 2014, CRH's market share for DOH paving projects increased from a low of about 15 percent to about 48 percent, as measured in dollars.

143. In the West Central Asphalt Market from 2010 to 2014, Kelly Paving's market share increased from a low of about 18 percent to 42 percent, as measured in dollars.

144. During the overall time period in the West Central Asphalt Market, CRH and Kelly Paving, combined, averaged 78 percent of the market share, which totaled $54,349,055 in contracts.

145. Upon information and belief, after forming Camden Materials, CRH and Kelly Paving effectively quit bidding against each other in the West Central Asphalt Market.

146. During the same period of time, two competitors to CRH in the West Central Asphalt market, Blacktop Industries and Kokosing Construction Company, have stopped bidding on DOH contracts or have failed to win any DOH-asphalt paving contracts.

147. CRH formed a joint venture with Blacktop's owner, Daron Dean in 2012.

148. Upon information and belief, Kokosing could no longer acquire DOH-compliant asphalt from CRH, Kelly Paving, or Camden Materials at competitive prices and stopped bidding on DOH paving contracts.

North Asphalt Market

149. In the North Asphalt Market from 2010 to 2014, Kelly Paving's market share for DOH paving projects increased from a low of about 48 percent to about 72 percent, as measured in dollars.

150. During the overall time period, Kelly Paving, averaged 62 percent of the market share in the North Asphalt Market, which totaled $23,415,125.00 in contracts.

151. During the same time period, two competitors to Kelly Paving in the North Asphalt market—Ohio-West Virginia Excavating and J.F. Allen Company—stopped bidding on DOH contracts or failed to win any DOH asphalt paving contracts.

152. Two other competitors continue to bid and win DOH paving contracts in the North Asphalt Market: Lash Paving, Inc. and Klug Bros, Inc.

153. Lash has about 12 percent of the market while Klug has about 17 percent.

154. CRH does not bid on DOH paving contracts in the North Asphalt Market, although it could successfully through its subsidiary, The Shelly Company.

155. Upon information and belief, CRH has agreed with Kelly Paving not to bid on DOH paving contracts in the North Asphalt Market. CRH owns or controls all of the DOH approved hot-mix plants in the West Central, Southwest and South Asphalt Markets.

156. CRH can control the price of DOH approved asphalt concrete through its hot-mix plants and paving operations.

157. CRH can refuse to sell to competitors or increase the prices to the point where its competitors can't win DOH paving projects.

The Defendants' Conduct Adversely Affects the Markets

158. CRH's' prices for DOH approved asphalt and asphalt paving have not been constrained by competition in the relevant geographic markets.

159. CRH's prices for DOH approved asphalt and asphalt paving have been constrained by DOH bid specifications, but only marginally.

160. DOH engineers estimate what they believe a DOH paving project will cost when they post the project for bids.

161. DOH engineers use past contracts to help determine what future prices might be. These are known as engineering estimates.

162. Thus, if bids for DOH projects come in over the engineering estimates, DOH can reject the bids.

163. DOH does not reject bids very often, and frequently approves bids that exceed the engineering estimates.

164. From 2010 through 2014, DOH only rejected 5 of about 425, paving project contracts in the South, Southwest and West Central Asphalt Markets.

165. DOH frequently must accept the contract bids that exceed engineering estimates due to the exigency of paving projects.

166. Thus, over time, the prices will rise for DOH paving projects unless they are constrained by competition, regardless of the costs of the inputs for the projects such as aggregate, liquid asphalt and labor.

167. Due to the lack of competition, the costs per ton for DOH approved asphalt increased from about $83 to $87 per ton in 2010 to $102 to $110 per ton in 2014 in the South, Southwest and West Central Asphalt Markets.

168. In contrast, in the Northeast Asphalt Market, where the market is divided fairly evenly among five or more competitors—including CRH, which has about 19 percent of the market—from 2010–14, the prices of DOH approved asphalt increased from $73 to $84 per ton.

169. The increase of prices for DOH approved asphalt, thus, was almost double in the South, Southwest and West Central Asphalt Markets as compared to the Northeast Paving Market.

170. The accelerated increase in DOH approved asphalt prices per ton cannot be explained by anything other than the lack of competition.

171. In the South Asphalt Market, from 2010–14, CRH was the sole bidder on 63 of 72 DOH paving contracts.

172. Out of all 72 contracts in the South Asphalt Market, there were one or two bidders on 97 percent of the contracts.

173. By 2013, CRH was winning about 95 percent of all the DOH paving contracts in the South Asphalt Market.

174. In the Southwest Asphalt Market, from 2010–14, CRH was the sole bidder on 113 of 248 DOH paving contracts.

175. Out of all 248 contracts, there were one or two bidders on 95.5 percent of the contracts.

176. By 2013, CRH was winning about 95 percent of all the DOH paving contracts in the Southwest Asphalt Market.

177. In the West Central Asphalt Market, from 2010–14, CRH was the sole bidder on 12 of 105 DOH paving contracts.

178. Out of all 105 contracts, there were one or two bidders on 63.4 percent of the contracts.

179. However, upon information and belief, the West Central Asphalt Market is where CRH and Kelly Paving agreed to split the DOH paving contracts.

180. Thus, in the South, Southwest and West Central Asphalt Markets, CRH has been able to raise the price of DOH approved asphalt and asphalt paving services to supra-competitive levels because it has had virtually no competition in those markets.

181. The State of West Virginia has paid the supra-competitive prices for DOH approved asphalt and asphalt paving to its detriment in the South, Southwest and West Central Asphalt markets.

Anticompetitive Effects and Damages

182. The State has suffered injury to its general welfare and economy due to the unlawful actions of Defendants.

183. The State will be subject to a continuing threat of injury to its general welfare and economy unless Defendants are enjoined from continuing their unlawful conduct.

184. CRH not only has market power but has used it to cause DOH and thus, West Virginia tax payers enormous damage.

185. The DOH asphalt paving contracts were unlawfully inflated and DOH was overcharged on asphalt paving projects in an amount to be determined, from 2010 through 2014 in the South, Southwest and West Central Asphalt Markets.

186. Due to Defendants' unlawful conduct, the cost of DOH approved asphalt and asphalt paving services may have been artificially inflated in the South, Southwest and West Central Asphalt Markets causing the base price used in 2010 to be higher than it would have been in a competitive market.

187. DOH purchased about 2,260,000 tons of asphalt through DOH approved asphalt paving contracts from 2010 through 2014 in the relevant geographic markets.

188. The unnecessarily high prices for asphalt and asphalt paving services in West Virginia has secondary, and perhaps more detrimental, impacts. The State may be forced to either delay road construction repairs or not pursue them at all, causing immeasurable consequential economic damage and unconscionable public safety risks. West Virginia's ability to finance its road construction and maintenance is strained. As the West Virginia Blue Ribbon Commission on Highways observed in May 2016: "To compensate for stagnant state and federal revenues, the ***WVDH has increased the overall paving cycle to nearly 30 years when a 12-year paving cycle is desired.*** This means that on average a road paved today will not be repaved for 30 years. However, because WVDOH, rightly, considers those roads with the most use to be the highest priority, ***many lower volume local service roads may never get repaved and might have to become unpaved gravel roads."*** West Virginia Blue Ribbon Commission on Highways, *Investing in West Virginia's Future, Phase I* (emphasis added).

COUNT I
Restraints of trade in violation of W. Va. Code § 47–18–3
(Against CRH, Camden Materials, and Kelly Paving)

189. The State incorporates by reference and thereby re-alleges the preceding paragraphs as if fully set forth herein.

190. Before CRH and Kelly Paving began the Camden Materials joint venture, they competed against each other for DOH paving contracts.

191. CRH and Kelly Paving agreed and conspired with each other to form Camden Materials, an asphalt manufacturer and seller.

192. Upon information and belief, as part of the agreement to form Camden Materials, CRH agreed not to bid on DOH paving contracts in the North Asphalt Market and Kelly Paving and CRH agreed not to bid against or to provide complementary bids to each other's in the West Central Asphalt Market.

193. CRH and Kelly Paving, as part of the formation of Camden Materials conspired to divide the North and West Central Asphalt Markets for DOH paving contracts.

194. Upon information and belief Camden Materials has refused to sell DOH approved asphalt to competitors of CRH and Kelly Paving at competitive prices.

195. The foregoing actions taken by CRH, Camden Materials and Kelly Paving have restrained trade in the DOH approved asphalt manufacturing and sale market and the DOH approved asphalt paving market in violation of W.Va. Code § 47–18–3.

196. The conspiracy between CRH, Camden Materials and Kelly Paving had the purpose and effect of raising prices for DOH approved asphalt and DOH approved asphalt paving in the West Central Asphalt Market.

197. The conspiracy between CRH, Camden Materials and Kelly Paving had the purpose and effect of eliminating or excluding competition and thus raising prices for DOH

approved asphalt and DOH approved asphalt paving in the West Central Asphalt Market in violation of W. Va. Code § 47–18–3.

198. As a direct result of the conspiracy between CRH, Camden Materials and Kelly Paving, the prices for DOH approved asphalt and DOH asphalt paving contracts were higher than they otherwise would have been if competition had been unrestrained in the West Central Asphalt Market in violation of W. Va. Code § 47–18–3.

COUNT II
Restraints of trade in violation of W.Va. Code § 47–18–3
(Against CRH, American Asphalt, American Asphalt & Aggregate and Blacktop Industries)

199. The State incorporates by reference and thereby re-alleges the preceding paragraphs as if fully set forth herein.

200. Before CRH and American Asphalt & Aggregate began the American Asphalt joint venture, they competed against each other for DOH paving contracts in the West Central and Southwest Asphalt Markets.

201. CRH and its competitors, American Asphalt & Aggregate and Blacktop Industries (collectively "Dean") agreed and conspired with each other to form American Asphalt, an asphalt manufacturer, seller and paving company.

202. Upon information and belief, as part of the agreement to form American Asphalt, Dean agreed not to bid on DOH paving contracts in the West Central and Southwest Asphalt Markets or to provide uncompetitive bids to those submitted by CRH in the West Central and Southwest Asphalt Markets.

203. CRH and Dean, as part of the formation of American Asphalt conspired to divide the Southwest and West Central Asphalt Markets for DOH paving contracts.

204. The foregoing actions taken by CRH, American Asphalt and Dean have restrained trade in the DOH approved asphalt manufacturing and sale and the DOH approved asphalt paving markets in violation of W. Va. Code § 47–18–3.

205. The conspiracy between CRH, American Asphalt and Dean had the purpose and effect of raising prices for DOH approved asphalt and DOH approved asphalt paving in the Southwest and West Central Asphalt Markets.

206. The conspiracy between CRH, American Asphalt and Dean had the purpose and effect of eliminating or excluding competition and thus raising prices for DOH approved asphalt and DOH approved asphalt paving in the Southwest and West Central Asphalt Markets in violation of W. Va. Code § 47–18–3.

207. As a direct result of the conspiracy between CRH, American Asphalt and Dean, the prices for DOH approved asphalt and DOH asphalt paving contracts were higher than they otherwise would have been if competition had been unrestrained in the relevant geographic markets in West Virginia, in violation of W. Va. Code § 47–18–3.

COUNT III
Monopolization in Violation of W. Va. Code § 47–18–4
(Against CRH)

208. The State incorporates by reference and thereby re-alleges the preceding paragraphs as if fully set forth herein.

209. At all times relevant herein, CRH did knowingly and unlawfully monopolize, maintain its monopoly, or attempt to monopolize a part of the trade or commerce in the manufacture and sale of asphalt of DOH approved asphalt concrete in the relevant geographic markets in West Virginia, in violation of W. Va. Code § 47–18–4.

210. It was a part of the unlawful monopoly and the purpose thereof to accomplish the following:

(a) To create and maintain a monopoly in the sale of DOH approved asphalt in West Virginia;

(b) To control and affect the price of DOH approved asphalt;

(c) To establish and maintain unreasonably high, excessive, supra-competitive prices for DOH approved asphalt in West Virginia; and

(d) To prevent, suppress and eliminate competition in the manufacture and sale of DOH approved asphalt in West Virginia.

211. As part of the unlawful monopoly and in furtherance and maintenance thereof, CRH did:

(a) Acquire competitors in the asphalt industry in or near West Virginia;

(b) Acquire competing asphalt plants in or near West Virginia;

(c) Entered into joint ventures with competitors in the DOH approved asphalt manufacturing industry within West Virginia;

(d) Enter into joint ventures with competitors in the DOH approved asphalt paving industry in West Virginia; and

(e) Threaten potential competitors and entrants into the DOH approved asphalt manufacturing and sale market.

212. As a result of the foregoing, the State has been damaged and will continue to be damaged because it is compelled to purchase DOH approved asphalt at non-competitive prices because CRH has been able to unlawfully maintain supra-competitive prices for DOH approved asphalt, all in violation of W. Va. Code § 47–18–4.

COUNT IV
Monopolization in Violation of W. Va. Code § 47–18–4
(Against CRH)

213. The State incorporates by reference and thereby re-alleges the preceding paragraphs as if fully set forth herein.

214. At all times relevant herein, CRH did knowingly and unlawfully monopolize, maintain its monopoly, or attempt to monopolize the market for DOH approved asphalt paving services in the relevant geographic markets in West Virginia, in violation of W. Va. Code § 47–18–4.

215. It was a part of the unlawful monopoly and the purpose thereof to accomplish the following:

(a) To create and maintain a monopoly in market for DOH approved asphalt paving services in West Virginia;

(b) To control and affect the price of DOH approved asphalt paving services in West Virginia;

(c) To establish and maintain unreasonably high, excessive, supra-competitive prices for DOH approved asphalt paving in West Virginia; and

(d) To prevent, suppress and eliminate competition in the market for DOH approved asphalt paving in West Virginia.

216. As part of the unlawful monopoly and in furtherance and maintenance thereof, CRH did:

(a) Acquire competitors in the asphalt industry in or near West Virginia;

(b) Acquire competing asphalt pavers in or near West Virginia;

(c) Entered into joint ventures with competitors in the asphalt manufacturing and paving industry within West Virginia; and

(d) Threaten potential competitors and entrants into the market for DOH approved asphalt paving services in West Virginia.

217. As a result of the foregoing, the State has been damaged and will continue to be damaged because it is compelled to purchase DOH approved asphalt paving services at non-competitive prices because CRH has been able to maintain supra-competitive prices for DOH approved asphalt paving services in the relevant geographic markets in West Virginia, all in violation of W. Va. Code § 47-18-4.

COUNT V
Attempt to Monopolize in Violation of W. Va. Code § 47–18–4
(Against CRH)

218. The State incorporates by reference and thereby re-alleges the preceding paragraphs as if fully set forth herein.

219. CRH acquired a controlling interest in an aggregate producer, Boxley Aggregates of WV, Inc. in 2002 by forming a joint venture between Boxley Materials Company and and Southern WV Paving named Boxley Aggregates of West Virginia, LLC. CRH changed the name of the joint venture to Appalachian Aggregates, LLC in 2016 ("CRH Aggregates").

220. CRH Aggregates operates three quarries.

221. Four other quarries produce aggregate suitable for DOH approved asphalt for DOH asphalt paving projects in the South and Southwest Asphalt Markets.

222. Three of the quarries are owned by Pounding Mill Quarry Corporation. The fourth is owned by a company unrelated to CRH or Pounding Mill.

223. Two of the CRH quarries produce limestone suitable for use in DOH approved asphalt for DOH asphalt paving projects. One of these two quarries is close enough to the South Asphalt Market to competitively supply aggregate to DOH approved hot-mix plants.

224. The third CRH quarry produces sandstone which is not suitable for DOH approved asphalt paving projects.

225. Upon information and belief, CRH is attempting to acquire three more quarries serving the Southwest and South Asphalt Markets, the Pounding Mill quarries, which would give it ownership or control over four of the five limestone quarries capable of supplying DOH approved aggregate to hot-mix plants serving the South and Southwest Asphalt Markets.

226. After the acquisition, CRH would possess sufficient market power to increase the price of DOH approved aggregate and maintain its market power for DOH approved asphalt in the Southwest and South Asphalt Markets.

227. After the acquisition, CRH could further refuse to supply DOH approved aggregate and asphalt to competing asphalt manufacturers and asphalt pavers.

228. Ultimately, the acquisition would nearly guarantee the foreclosure of new entrants to supply DOH approved aggregate or asphalt in the South and Southwest Asphalt markets, and allow CRH to exercise and maintain its market power.

229. If CRH acquires the Pounding Mill quarries, it will own or control at least 4 of 5 quarries that can produce DOH approved aggregate for use in DOH approved asphalt concrete in the South and Southwest Asphalt Markets.

230. The acquisition of the three quarries by CRH would create a dominant aggregate company in the Southwest and South Asphalt Markets.

231. The acquisition would reduce the number of significant competitors operating aggregate facilities in these markets from three to two, for DOH paving projects, and from two to one for DOH paving projects for the West Virginia Parkways Authority which operates the West Virginia Turnpike.

232. This would allow CRH to cement its hold on DOH asphalt paving projects in the Southwest and South Asphalt Markets.

233. Because of the nature of aggregate and the costs for transportation, it is unlikely that any new quarry producing aggregate suitable for DOH asphalt paving projects will be commenced in or in close proximity to the South or Southwest Asphalt Markets.

234. With control of four of of the five approved sources for DOH approved aggregate, CRH will be able to exercise market power to control the prices of aggregate and exclude

competition in the market for DOH approved aggregate in the South and Southwest Asphalt Markets in violation of W. Va. Code § 47–18–4.

235. With control of the DOH approved aggregate market, CRH will further maintain and cement its monopoly over DOH approved asphalt and asphalt paving projects in the South and Southwest Asphalt Markets in violation of West Virginia Code § 47–18–4.

236. CRH must be enjoined from acquiring the Pounding Mill quarries to prevent the unlawful monopolization of DOH approved aggregate in the South and Southwest Asphalt Markets pursuant to W.Va. Code § 47–18–8.

COUNT VI
Unjust Enrichment
(Against All Defendants)

237. The State incorporates by reference and thereby re-alleges the preceding paragraphs as if fully set forth herein.

238. Defendants' conduct was undertaken with the specific purpose of increasing prices for asphalt and asphalt paving services and maintaining prices for each at supra-competitive levels.

239. As a proximate result of Defendants' restraint of trade and monopolization they have been unjustly enriched by their willful violations of West Virginia laws.

240. The State conferred a benefit upon Defendants by paying supra-competitive prices for asphalt and asphalt paving services in the relevant geographic markets.

241. Defendants' conduct conferred a benefit upon themselves at the expense of the State. Defendants were aware of the benefits conferred by the State on them, and those conferred by Defendants upon themselves. Those benefits came at the expense of the State. Defendants have retained this benefit without compensating the State.

242. It would be inequitable to allow Defendants to retain those benefits considering Defendants' behavior in creating the environment that allowed them to obtain those benefits.

PRAYER FOR RELIEF

WHEREFORE, , Plaintiffs, State of West Virginia, by and through its Attorney General, Patrick Morrisey, and the Department of Transportation Division of Highways pray that this Court grant them the following relief on behalf of the State, its agencies and its citizens:

1. That the Court adjudge and decree that CRH, plc, Old Castle, Inc., Old Castle Materials, Inc., West Virginia Paving, Inc., Southern West Virginia Paving, Inc., Southern West Virginia Asphalt, Inc., Camden Materials, Inc. ("CRH Defendants") Defendants have monopolized trade and commerce in the market for DOH approved asphalt in the South, Southwest and West Central Asphalt Markets, in violation of W.Va. Code § 47–18–4;

2. That the Court adjudge and decree that CRH Defendants have maintained their monopoly in the market for DOH approved asphalt in the South, Southwest and West Central Asphalt Markets, in violation of W.Va. Code § 47–18–4;

4. That the Court adjudge and decree that CRH Defendants have attempted to monopolize the market for DOH approved asphalt in the South, Southwest and West Central Asphalt Markets, in violation of W.Va. Code § 47–18–4;

5. That the Court adjudge and decree that CRH Defendants have monopolized trade and commerce in the market for DOH approved asphalt paving services in the South, Southwest and West Central Asphalt Markets, in violation of W.Va. Code § 47–18–4;

6. That the Court adjudge and decree that CRH Defendants have maintained their monopoly in the market for DOH approved asphalt paving services in the South, Southwest and West Central Asphalt Markets, in violation of W.Va. Code § 47–18–4;

7. That the Court adjudge and decree that CRH Defendants have attempted to monopolize the market for DOH approved asphalt paving services in the South, Southwest and West Central Asphalt Markets, in violation of W.Va. Code § 47–18–4;

8. That the Court adjudge and decree that CRH Defendants and Kelly Paving have conspired to restrain trade in the market for DOH approved asphalt in the West Central and North Asphalt Markets in violation of W.Va. Code § 47–18–3;

9. That the Court adjudge and decree that CRH Defendants and Kelly Paving have conspired to restrain trade in the market for DOH approved asphalt paving

services in the West Central and North Asphalt Markets in violation of W.Va. Code § 47–18–3;

10. That the Court adjudge and decree that CRH Defendants and American Asphalt & Aggregate, Inc., American Asphalt of West Virginia, LLC, Blacktop Industries and Equipment Company ("Dean Defendants') have conspired to restrain trade in the market for DOH approved asphalt in the West Central and Southwest Asphalt Market in violation of W.Va. Code § 47–18–3;

11. That the Court adjudge and decree that CRH Defendants and Dean Defendants have conspired to restrain trade in the market for DOH approved asphalt paving services in the West Central and Southwest Asphalt Markets in violation of W.Va. Code § 47–18–3;

12. That the Court order that all Defendants be permanently enjoined from any activity in violation of the West Virginia Antitrust Act;

13. Enter an Order pursuant to W. Va. Code § 47–18–8 enjoining and restraining all Defendants and their agents, employees, heirs, successors, assigns, officers, and directors from acquiring, maintaining, increasing, or using any market power to suppress, eliminate, or exclude competition or to fix, control, maintain, increase, decrease, or stabilize prices, rates, or fees for any commodity or service, or otherwise attempting (either independently or jointly with any other person) or conspiring with any other person to achieve the same result;

14. Enter an Order restraining and preventing CRH Defendants or any of their affiliates from acquiring any interest in the Pounding Mill quarries;

15. That the Court enter judgment against the Defendants, jointly and severally, for three times the amount of damages suffered by the State as a result of Defendants' violations of the West Virginia Antitrust Act. W. Va. Code §§ 47–18–1 *et seq.*;

16. Enter an Order in favor of the State and against all Defendants granting all equitable relief including but not limited to disgorgement and restitution, and divestiture of all assets necessary to restore competition to the DOH approved asphalt manufacturing and sale, and asphalt paving markets in the relevant geographic markets in West Virginia;

17. Enter an Order pursuant to W. Va. Code § 47–18–8 requiring all Defendants to each pay maximum penalties provided under the West Virginia Antitrust Act;

18. Enter an Order pursuant to W. Va. Code §§ 47–18–8 and –9 requiring all Defendants to pay all of the State's costs relating to the investigation, prosecution, and, if necessary, the appeal of this action, including attorneys' fees and the costs of testifying and consulting experts; and

19. Grant the State such other and further relief that the Court deems necessary or appropriate.

JURY DEMAND

Plaintiffs demand a trial by jury.

Respectfully submitted:

STATE OF WEST VIRGINIA, ex rel.
PATRICK MORRISEY,
ATTORNEY GENERAL
and
PAUL A. MATTOX, JR. IN HIS OFFICIAL
CAPACITYAS SECRERETARY OF
TRANSPORTATION AND
COMMISSIONER OF HIGHWAYS,
WEST VIRGINIA
DEPARTMENT OF TRANSPORTATION

By Counsel

Edward M. Wenger (WV Bar No. 13058)
General Counsel
Steven A. Travis
Assistant Attorney General (WV Bar No. 10872)
State Capitol, Bldg. 1, Room E-26
1900 Kanawha Blvd. East
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(304) 558-2021 (telephone)
(304) 558-0140 (facsimile)

Douglas L. Davis (WV Bar No. 5502)
Assistant Attorney General
Consumer Protection/Antitrust Division
Post Office Box 1789
Charleston, WV 25326-1789
(304) 558-8986 (telephone)
(304) 558-0184 (facsimile)

EXHIBIT A

Aggregate Sources Rated "A-1" by WVDOT

10-1-2016

The following sources have been rated "A-1" in accordance with MP 700.00.52. This list is published monthly, and if necessary, amended as additional information becomes available.

Company	Source
AAC1.01.704 - Allegheny Aggregates	Short Gap, WV
BAC1.01.704 - Appalachian Aggregates	Beckley, WV
BAC1.02.704 - Appalachian Aggregates	Lewisburg, WV
BAC1.03.704 - Appalachian Aggregates	Mill Point, WV
CLC1.03.704 - Carmeuse Lime	Maysville, KY
FMC1.01.704 - Fairfax Materials	Arthur, WV
FMC1.02.704 - Fairfax Materials	Scherr, WV
GIC1.01.704 - Greer Industries	Germany Valley, WV
IQC1.01.704 - Inwood Quarry	Inwood, WV
JFA2.01.704 - J F Allen Company	Mashey Gap Quarry, WV
JFA2.02.704 - J F Allen Company	Elkins, WV
MMA1.02.704 - Martin Marietta Aggregates	Petroleum, WV
MMA1.08.704 - Martin Marietta Aggregates	Parkersburg, WV
MSP1.01.704 - Meadows Stone & Paving	Monterville, WV
MCS1.01.704 - Mercer Crushed Stone	Princeton, WV
PMQ1.01.704 - Pounding Mills Quarry	Bluefield, WV
PMQ1.02.704 - Pounding Mills Quarry	Pounding Mills, WV
RBS1.01.704 - RBS (Greystone Quarry)	Lewisburg, WV
SWV1.01.704 - Southern WV Asphalt	Elkins, WV

For additional information and instructions concerning this list, see MP 700.00.52.

EXHIBIT B

West Virginia Division of Highways

Approved (Inspected) Asphaltic Concrete Plants

2014

Standard Specifications Section 401.9 AASHTO M156

DIST#	Ultimate_Owner	Operating_Subsidiary	City	State	Bill Code	Latest Inspection
1	Old Castle Materials/Mid Atlantic Division	West Virginia Paving	Poca	WV	WVP1.03.400	4/9/2014
1	Old Castle Materials/American Asphalt of WV	American Asphalt of West Virginia	St. Albans	WV	AAA1.01.400	3/14/2014
1	Old Castle Materials/Central Division	Shelly Materials	Kanawha	OH	SMC1.01.400	4/1/2014
2	Old Castle Materials/Mid Atlantic Division	Southern WV Asphalt	Huntington	WV	SWV1.02.400	4/10/2014
2	Old Castle Materials/Mid Atlantic Division	Southern WV Asphalt	Whitman	WV	SWV1.03.400	4/3/2014
2	Old Castle Materials/American Asphalt of WV	American Asphalt of West Virginia	Kenova	WV	AAA1.02.400	3/13/2014
2		Mountain Enterprises	Ashland	KY	MEC1.01.400	3/25/2014
3	Old Castle Materials/Mid Atlantic Division	Southern WV Asphalt	Ripley	WV	SWV1.11.400	4/2/2014
3	Old Castle Materials/Mid Atlantic Division	Carmeln Materials	Parkersburg	WV	CMC2.01.400	4/7/2014
3	Shelly & Sands, Inc.	Kelly Paving	St. Marys/Elms Run	WV	KPC1.01.400	4/14/2014
4	Greer Industries, Inc.	Clarksburg Asphalt	Bridgeport	WV	CAC1.01.400	3/14/2014
4	Greer Industries, Inc.	Greer Asphalt	Greer	WV	GAS1.01.400	3/18/2014
4	J. F. Allen Company		Bridgeport/Salfwall	WV	JFA1.01.400	4/14/2014
5	Jefferson Asphalt Products, Co., Inc.		Inwood	WV	JAP1.02.400	3/18/2014
5	Jefferson Asphalt Products, Co., Inc.		White Quarry	WV	JAP1.03.400	3/18/2014
5	Old Castle Materials/Mid Atlantic Division	Southern WV Asphalt	Scherr	WV	SWV1.01.400	4/2/2014
5	Old Castle Materials/Mid Atlantic Division	Mt. Construction & Paving	Cleanbrook	VA	WLC1.02.400	4/21/2014
5	Old Castle Materials/Mid Atlantic Division	Mt. Construction & Paving	Strasburg	VA	WLC1.01.400	4/4/2014
5	New Enterprise Lime & Stone		Everett	PA	NES1.01.400	3/21/2014
5	New Enterprise Lime & Stone	Valley Quarries #1	Chambersburg	PA	VQC1.01.400	3/21/2014
5	New Enterprise Lime & Stone	Valley Quarries #2	Chambersburg	PA	VQC1.01.400	3/21/2014
5	PBW Excavating		Wertenbaug	PA	PWE1.01.400	4/17/2014
6	Klug Brothers, Inc.		Moundsville	WV	KBC1.01.400	4/21/2014
6	Klug Brothers, Inc.		New Martinsville	WV	KBC1.02.400	4/21/2014
6	Shelly & Sands, Inc.	Kelly Paving	Vienna	WV	KPC1.02.400	4/22/2014
6	Shelly & Sands, Inc.	Kelly Paving	Barnwood	WV	KPC1.04.400	4/16/2014
6	Lane Construction		Bridgeville	PA	LCC1.01.400	3/14/2014
6	Lane Construction		McKees Rocks	PA	LCC1.02.400	3/14/2014
6	Nolan Line & Stone	Lash Paving, Inc.	Marine Ferry	OH	LPC1.02.400	4/22/2014
7	J. F. Allen Company		Buchanon/Lorentz	WV	JFA1.02.400	3/19/2014
7	Meadows Stone & Paving, Inc.		Coalsway	WV	MMC1.01.400	3/28/2014
8	J. F. Allen Company		Elkins	WV	JFA1.03.400	4/2/2014
8	Meadows Stone & Paving, Inc.		Valley Head	WV	MMC1.02.400	3/31/2014
8	Old Castle Materials/Mid Atlantic Division	Southern WV Asphalt	Elkins	WV	SWV1.01.400	4/1/2014
8	Old Castle Materials/Mid Atlantic Division	Southern WV Asphalt	Hillsboro/Midpoint	WV	SWV1.06.400	4/10/2014
8	Greenbrier Excavating		Lewisburg	WV	GEC1.01.400	3/6/2014
8	Old Castle Materials/Mid Atlantic Division	Southern WV Asphalt	Lewisburg/Ida	WV	SWV1.07.400	4/10/2014
8	Old Castle Materials/Mid Atlantic Division	Southern WV Asphalt	Summersville	WV	SWV1.08.400	3/13/2014
10	Old Castle Materials/Mid Atlantic Division	Southern WV Asphalt	Beaver	WV	SWV1.10.400	4/1/2014
10	Old Castle Materials/Mid Atlantic Division	Southern WV Asphalt	Princeton/Ingleside	WV	SWV1.09.400	4/11/2014

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA, ex rel, PATRICK MORRISEY, ATTORNEY GENERAL, and THOMAS J. SMITH IN HIS OFFICIAL CAPACITY AS SECRETARY OF TRANSPORTATION AND COMMISSIONER OF HIGHWAYS, WEST VIRGINIA DEPARTMENT OF TRANSPORTATION,

Plaintiffs,

v. Civil Action No. 17-C-41

CRH, PLC; OLDCASTLE, INC.; OLDCASTLE MATERIALS, INC.; WEST VIRGINIA PAVING, INC.; SOUTHERN WEST VIRGINIA PAVING, INC.; SOUTHERN WEST VIRGINIA ASPHALT, INC.; KELLY PAVING, INC.; CAMDEN MATERIALS, LLC; AMERICAN ASPHALT & AGGREGATE, INC.; AMERICAN ASPHALT OF WEST VIRGINIA, LLC; BLACKTOP INDUSTRIES AND EQUIPMENT COMPANY,

Defendants.

The videotaped deposition of TERRY PARKS, taken by the Plaintiffs under the West Virginia Rules of Civil Procedure in the above-entitled action, pursuant to written notice, before Teresa L. Harvey, a Registered Diplomate Reporter and Notary Public within and for the State of West Virginia, held at the Country Inn & Suites, 111 Halls Ridge Road, Princeton, West Virginia, on the 14th day of March, 2018.

REALTIME REPORTERS, LLC
Teresa L. Harvey, RDR, CRR
713 Lee Street
Charleston, WV 25301
304-344-8463

APPEARANCES:

APPEARING ON BEHALF OF THE PLAINTIFFS:

J. Zak Ritchie, Esquire
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209 Capitol Street
Charleston, WV 25301

APPEARING ON BEHALF OF THE DEFENDANTS:

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(Counsel for CRH, plc; Oldcastle, Inc.; Oldcastle Materials, Inc.; West Virginia Paving, Inc.; Southern West Virgina Paving, Inc.; Southern West Virginia Asphalt, Inc.; and Camden Materials, LLC)

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1125 Virginia Street, East
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(Counsel for American Asphalt and Aggregate, Inc; American Asphalt of West Virginia, LLC; and Blacktop Industries and Equipment Company)

I N D E X

Witness: Terry Parks

[No exhibits marked during this deposition.]

PROCEEDINGS

VIDEOGRAPHER: This is the videotaped deposition of Terry Parks taken by the plaintiffs in the matter of the State of West Virginia, et al. versus CRH, plc, Oldcastle, Inc., et al., being Civil Action No. 17-C-41, in the Circuit Court of Kanawha County, West Virginia, held at the Country Inn and Suites in Princeton, West Virginia, on this 14th day of March, 2018.

My name is Chris Leigh and I'm the legal video specialist. The court reporter is Teresa Harvey.

The time is approximately 1:58 p.m.

Would the court reporter please swear the witness.

[Witness sworn.]

TERRY PARKS

was called as a witness by Plaintiffs, pursuant to written notice, and having been first duly sworn, testified as follows:

EXAMINATION

BY MR. RITCHIE:

Q. Terry, again, my name is Zak Ritchie. We just met for the first time out in the lobby, and I represent the plaintiffs, along with several of my colleagues from the Bailey & Glasser law firm in Charleston.

EXHIBIT
tabbies
B

Page 37

You can actually go down and look at those records.
Q. All right. Very good. I'll do that.
Have you been interviewed by anyone about what -- you know, what transpired about -- you know, anything with respect to West Virginia Paving?
A. No. No. I talked to these guys a couple times when they first come and started talking to me. Once I give them -- I talked to them about the information I have give you-all today, and that's the only thing we've discussed with them.
Q. Did you talk to the United States Department of Justice --
A. I actually talked to the Department of Justice about the quarry buyout.
Q. Okay. When was that and what was the context of that?
A. That was up till last year, just where we were getting threatened to not be able to buy stone if they got the quarries.
Q. Okay. You said you were threatened. Who threatened you?
A. Chris Hollifield has told me two or three times that if they got the quarries that they were going to cut me off on stone.

Page 38

Q. Okay. If they got which quarries?
A. The Pounding Mill quarries.
Q. Okay. Have you actually had any problems getting stone?
A. Not up to this point, no, sir.
Q. Okay.
A. They haven't acquired the quarries yet. I think it comes effective April 1st.
Q. What is your understanding about that acquisition?
A. Well, from my understanding from the DOJ, the DOJ told me last year that the deal had been made. They had to sell the Rocky Gap Quarry on the Virginia side. They were going to sell that quarry to an outside person so we would be guaranteed to get stone.
Q. Okay.
A. Told us if we had any problems just to -- just to contact them and they would make sure that we were able to get stone is what they're saying.
Q. All right. You said that you bought the older plant down there at Rocky Gap --
A. Yes, sir.
Q. -- for, like, $30,000?
A. Uh-huh.

Page 39

Q. Where did you buy the plant that you now have?
A. I bought it in St. Louis, Missouri.
Q. How much did you pay for that?
A. I'm thinking $175,000 is what the purchase price was on it.
Q. Okay. Did you have to finance any of that?
A. Yes. It's still financed.
Q. Okay. Did you finance the whole purchase price?
A. Yes.
Q. Okay. Did you have any additional costs that you had to put in moving it, putting it up, and is any of that financed?
A. Yes, there was some of it financed. We ended up like $1.2 million in the whole plant set.
Q. Does that include the property that you bought?
A. Yes.
Q. Where do you get the components of your asphalt?
A. The stone comes from Pounding Mill and the liquid comes from Associated Asphalt in Roanoke, Virginia.
Q. Is that pretty much your only source?

Page 40

A. Yes.
Q. You don't go to Ashland to get it?
A. We -- we get tack from Ashland is the only thing we get from Ashland is just our tack. That's the tar you put down on the road before you pave.
Q. Okay. Do you do work for the Department of Transportation -- West Virginia Department of Transportation?
A. Yes, sir.
Q. When did you start doing that work?
A. Last year.
Q. How many bids do you think you've won with the Department of Transportation?
A. Last year probably five or six. This year we won the P-card bid and the lay-down bids. We've won two this year.
Q. Okay. So, have things been going fairly well?
A. They've been decent, but the -- how should I put this? The overall money, where we're down so far on pricing, you know, we're at a bare minimum trying to get by, just trying to make a living, because the prices where West Virginia Paving, where we've butting heads trying to -- just trying to survive.
You get what I'm saying? I mean, our -- our profit

EXHIBIT B
TO RESPONSE

DECLARATION OF TERRY PARKS
AAA PAVING & SEALING, INC.

1. My name is Terry Parks and I am the Vice President of AAA Paving & Sealing, Inc. ("AAA Paving"). AAA Paving operates out of one asphalt-concrete plant (located at 560 Turnpike Industrial Park Road, Princeton, West Virginia) that serves industrial, commercial, and residential customers in the southern area of West Virginia and the southwest area of Virginia.

2. For many of its customers, AAA Paving must purchase aggregate that meets the specifications set by the West Virginia Department of Transportation ("WVDOT aggregate").

3. The distance from AAA Paving to a quarry is an important factor in my decision where to purchase WVDOT aggregate.

4. Historically, Pounding Mill supplied nearly all of AAA Paving's WVDOT aggregate from its Mercer Quarry (located at 1111 Blake Hollow Road, Princeton, West Virginia). The Mercer Quarry is approximately 6.5 miles from AAA Paving's asphalt-concrete plant. Pounding Mill also owned all of the other quarries near AAA Paving, including the Rocky Gap quarry, which is located at 707 Quarry Drive, Rocky Gap, Virginia. The nearest quarry that was not owned by Pounding Mill was located in Lewisburg, West Virginia, about 60 miles away from AAA Paving.

5. I understand that in July 2018, CRH acquired Pounding Mill, including the Mercer Quarry. I also understand that the Department of Justice required that Pounding Mill's Rocky Gap Quarry be sold to an independent purchaser—Salem Stone—as a condition of allowing that acquisition.

6. The sale of the Rocky Gap Quarry to Salem Stone gave AAA Paving a much closer and more cost-competitive second aggregate supplier than it had before CRH acquired Pounding Mill. Before that acquisition, the Mercer Quarry and the Rocky Gap Quarry were both

owned by Pounding Mill, so they did not compete. Instead, the next best alternative to the Mercer Quarry not owned by Pounding Mill was in Lewisburg, West Virginia, about 60 miles away from AAA Paving's asphalt-concrete plant. As a result of the sale of the Rocky Gap Quarry, the Rocky Gap Quarry now is AAA Paving's next best alternative to the Mercer Quarry. The Rocky Gap Quarry is only 7.5 miles farther away from AAA Paving than the Mercer Quarry. This means that AAA Paving's next best alternative to the Mercer Quarry is now 14 miles away from AAA Paving, while before the acquisition it was about 60 miles away.

7. Since CRH acquired Pounding Mill in July 2018, AAA Paving has been purchasing WVDOT aggregate from the Mercer Quarry, now owned by CRH. AAA Paving's prices for WVDOT aggregate from the Mercer Quarry have not increased since CRH acquired the Mercer Quarry. CRH has never refused to supply AAA Paving with WVDOT aggregate. AAA Paving's costs for WVDOT aggregate have not increased since CRH acquired the Mercer Quarry.

8. The Rocky Gap Quarry is a viable alternative to the Mercer Quarry for AAA Paving's aggregate requirements. To obtain aggregate from the Rocky Gap Quarry, AAA Paving would need to truck the aggregate an additional 7.5 miles beyond the distance from AAA Paving's plant to the Mercer Quarry. I do not anticipate that that additional distance would significantly raise my costs.

9. Salem Stone recently reached out to let me know that it is interested in selling aggregate to AAA Paving once it completes preparing the equipment at the Rocky Gap Quarry to produce WVDOT aggregate. AAA Paving has not yet purchased any aggregate from the Rocky Gap Quarry.

10. In the summer of 2018, CRH provided AAA Paving discounted prices (like account credits) for aggregate. These discounts were provided when a major road construction project on I-77 in West Virginia delayed the movement of AAA Paving's trucks in and out of the Mercer Quarry. Because of these delays, CRH offered to supply AAA Paving with aggregate from its more distant quarry in Bluefield, Virginia. This supply was offered at discounted prices during the construction period, which would make up for the additional cost of trucking.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 26, 2018.

Terry Parks
Vice President
AAA Paving & Sealing, Inc.

[FR Doc. 2018–25593 Filed 11–23–18; 8:45 am]
BILLING CODE 4410–11–C

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

[OMB Number 1125–0006]

Agency Information Collection Activities; Proposed Collection; Comments Requested; Reinstatement, With Change, of a Currently Approved Collection

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: 30 Day Notice.

SUMMARY: The Department of Justice, Executive Office for Immigration Review, is 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.

DATES: The Department of Justice encourages public comment and will accept input until December 26, 2018.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection

instrument with instructions or additional information, please contact Lauren Alder Reid, Chief, Immigration Law Division, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2500, Falls Church, VA 22041, telephone: (703) 305–0289. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

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 Executive Office for Immigration Review, 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:* Reinstatement, with change, of a currently approved collection.

2. *The Title of the Form/Collection:* Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form EOIR–28. The applicable component within the Department of Justice is the Executive Office for Immigration Review.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Attorneys and qualified representatives notifying the Immigration Court that they are representing an alien in immigration proceedings. Other: None. Abstract: This information collection is necessary to allow an attorney or representative to notify the Immigration Court that he or she is representing an alien before the Immigration Court.

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 454,449 respondents will complete the form annually; each response will be completed in approximately 6 minutes.

6. *An estimate of the total public burden (in hours) associated with the collection:* 45,445 hours.

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 20, 2018.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2018–25621 Filed 11–23–18; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

[OMB Number 1125–0016]

Agency Information Collection Activities; Proposed Collection; Comments Requested; Reinstatement, With Change, of a Currently Approved Collection

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice, Executive Office for Immigration Review, is 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.

DATES: The Department of Justice encourages public comment and will accept input until December 26, 2018.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Lauren Alder Reid, Chief, Immigration Law Division, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2500, Falls Church, VA 22041, telephone: (703) 305–0289. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

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 Executive Office for Immigration Review, 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:* Reinstatement, with change, of a currently approved collection.

2. *The Title of the Form/Collection:* Unfair Immigration-Related Employment Practices Complaint Form.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form EOIR–58. The applicable component within the Department of Justice is the Office of the Chief Administrative Hearing Officer (OCAHO), Executive Office for Immigration Review.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Individuals who wish to file a

complaint alleging unfair immigration-related employment practices under section 274B of the Immigration and Nationality Act (INA). Other: None. Abstract: Section 274B of the INA prohibits: Employment discrimination on the basis of citizenship status or national origin; retaliation or intimidation by an employer against an individual seeking to exercise his or her right under this section; and ''document abuse'' or overdocumentation by the employer, which occurs when the employer asks an applicant or employee for more or different documents than required for employment eligibility verification under INA section 274A, with the intent of discriminating against the employee in violation of section 274B. Individuals who believe that they have suffered discrimination in violation of section 274B may file a charge with the Department of Justice, Immigrant and Employee Rights Section (IER). The IER then has 120 days to determine whether to file a complaint with OCAHO on behalf of the individual charging party. If the IER chooses not to file a complaint, the individual may then file his or her own complaint directly with OCAHO. This information collection may be used by an individual to file his or her own complaint with OCAHO. The Form EOIR–58 will elicit, in a uniform manner, all of the required information for OCAHO to assign a section 274B complaint to an Administrative Law Judge for adjudication.

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 23 respondents will complete the form annually; each response will be completed in approximately 30 minutes.

6. *An estimate of the total public burden (in hours) associated with the collection:* 11.5 hours.

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 20, 2018.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2018–25622 Filed 11–23–18; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

[OMB Number 1125–0009]

Agency Information Collection Activities; Proposed Collection; Comments Requested; Reinstatement, Without Change, of a Currently Approved Collection

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice, Executive Office for Immigration Review, is 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.

DATES: The Department of Justice encourages public comment and will accept input until December 26, 2018.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Lauren Alder Reid, Chief, Immigration Law Division, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2500, Falls Church, VA 22041, telephone: (703) 305–0289. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

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 Executive Office for Immigration Review, 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:* Reinstatement, without change, of a currently approved collection.

2. *The Title of the Form/Collection:* Application for Suspension of Deportation.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form EOIR–40. The applicable component within the Department of Justice is the Executive Office for Immigration Review.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual aliens determined to be deportable from the United States. Other: None. Abstract: This information collection is necessary to determine the statutory eligibility of individual aliens, who have been determined to be deportable from the United States, for suspension of their deportation pursuant to former section 244 of the Immigration and Nationality Act and 8 CFR 1240.55 (2011), as well as provide information relevant to a favorable exercise of discretion.

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 133 respondents will complete the form annually; each response will be completed in approximately 5 hours and 45 minutes.

6. *An estimate of the total public burden (in hours) associated with the collection*: 765 hours.

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 20, 2018.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2018–25620 Filed 11–23–18; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF JUSTICE

[OMB Number 1110–0068]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Currently Approved Collection; Records Modification Form (FD–1115)

AGENCY: Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Criminal Justice Information Services (CJIS) Division 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.

DATES: Comments are encouraged and will be accepted for 30 days until December 26, 2018.

FOR FURTHER INFORMATION CONTACT: If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gerry Lynn Brovey, Supervisory Information Liaison Specialist, FBI, CJIS, Resources Management Section, Administrative Unit, Module C–2, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306 (facsimile: 304–625–5093) or email *glbrovey@fbi.gov.* Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted via email to *OIRA_submission@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: This process is conducted in accordance with 5 CFR 1320.10. 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;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Records Modification Form.

(3) *Agency form number:* FD–1115.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: This form is utilized by criminal justice and affiliated judicial agencies to request appropriate modification of criminal history information from an individual's record.

(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 43,584 respondents are authorized to complete the form which would require approximately 10 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 19,882 total annual 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, Suite 3E.405B, Washington, DC 20530.

Dated: November 20, 2018.

Melody Braswell,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2018–25632 Filed 11–23–18; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0082]

Proposed Extension of Information Collection; Records of Preshift and Onshift Inspections of Slope and Shaft Areas of Slope and Shaft Sinking Operations at Coal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Records of Preshift and Onshift Inspections of Slope and Shaft Areas of Slope and Shaft Sinking Operations at Coal Mines.

DATES: All comments must be received on or before January 25, 2019.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below.

• *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments for docket number MSHA–2018–0038.

• *Regular Mail:* Send comments to USDOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452.

• *Hand Delivery:* USDOL-Mine Safety and Health Administration, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator.

FOR FURTHER INFORMATION CONTACT: Sheila McConnell, Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); (202) 693–9440 (voice); or (202) 693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

The sinking of slopes and shafts is a particularly hazardous operation where conditions change drastically in short periods of time. Explosive methane and other harmful gases can be expected to infiltrate the work environment at any time. The working environment is typically a confined area in close proximity to moving equipment. Accordingly, 30 CFR 77.1901 requires operators to conduct examinations of slope and shaft areas for hazardous conditions, including tests for methane and oxygen deficiency, within 90 minutes before each shift, once during each shift, and before and after blasting. The surface area surrounding each slope and shaft is also required to be inspected for hazards.

The standard also requires that a record be kept of the results of the inspections. The record includes a description of any hazardous condition found and the corrective action taken to abate it. The record is necessary to ensure that the inspections and tests are conducted in a timely fashion and that corrective action is taken when hazardous conditions are identified, thereby ensuring a safe working environment for the slope and shaft sinking employees. The record is maintained at the mine site for the duration of the operation.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Records of Preshift and Onshift Inspections of Slope and Shaft Areas of Slope and Shaft Sinking Operations at Coal Mines. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

The information collection request will be available on *http://www.regulations.gov.* MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on *www.regulations.gov* and *www.reginfo.gov.*

The public may also examine publicly available documents at USDOL-Mine Safety and Health Administration, 201 12th South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

This request for collection of information contains provisions for Records of Preshift and Onshift Inspections of Slope and Shaft Areas of Slope and Shaft Sinking Operations at Coal Mines. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0082.

Affected Public: Business or other for-profit.

Number of Respondents: 19.

Frequency: On occasion.

Number of Responses: 8,360.

Annual Burden Hours: 10,450 hours.

Annual Respondent or Recordkeeper Cost: $0.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Roslyn B. Fontaine,

Certifying Officer.

[FR Doc. 2018–25633 Filed 11–23–18; 8:45 am]

BILLING CODE 4510–43–P

OFFICE OF MANAGEMENT AND BUDGET

Request for Comments on Update to Data Center Optimization Initiative (DCOI)

AGENCY: Office of Management and Budget.

ACTION: Notice of public comment period.

SUMMARY: The Office of Management and Budget (OMB) is seeking public comment on a draft memorandum titled ''*Update to Data Center Optimization Initiative (DCOI).*''

DATES: Comments must be received on or before December 26, 2018.

ADDRESSES: Interested parties should provide comments at the following link: *https://datacenters.cio.gov/.* The Office of Management and Budget is located at 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Bill Hunt at *ofcio@omb.eop.gov* or the Office of the Federal Chief Information Officer at 202–395–3080.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) is proposing an update to M–16–19 Data Center Optimization Initiative. The Federal Information Technology Acquisition Reform Act (FITARA) passed in 2014, and required the Federal Government to consolidate and optimize agencies' data centers until October 1, 2018. The Office of Management and Budget (OMB) responded by issuing M–16–19 Data Center Optimization Initiative (DCOI), which set priorities for data center closures and efficiency improvements through the end of Fiscal Year 2018. The FITARA Enhancement Act of 2017 extended the data center requirements of FITARA until October 1, 2020. As a result, OMB is updating and extending the Data Center Optimization Initiative for another two years.

This Memorandum contains requirements for the consolidation and optimization of Federal data centers in accordance with FITARA. It establishes consolidation and optimization targets and metrics for Federal agencies, as well as requirements for reporting on their progress. This policy will be available for review and public comment at *https://datacenters.cio.gov/.*

Suzette Kent,

U.S. Federal Chief Information Officer.

[FR Doc. 2018–25573 Filed 11–23–18; 8:45 am]

BILLING CODE 3110–05–P

MORRIS K. UDALL AND STEWART L. UDALL FOUNDATION

Sunshine Act Meetings

TIME AND DATE: 9 a.m. to 3:25 p.m., Tuesday, December 11, 2018.

PLACE: The offices of the Morris K. Udall and Stewart L. Udall Foundation, 130 South Scott Avenue, Tucson, AZ 85701.

STATUS: This meeting of the Board of Trustees will be open to the public.

MATTERS TO BE CONSIDERED: (1) Call to Order & Chair's Remarks; (2) Executive Director's Remarks; (3) Consent Agenda Approval (Minutes of the April 11, 2018, Board of Trustees Meeting; Board Reports submitted for Education Programs, Finance and Management, Udall Center for Studies in Public Policy-Native Nations Institute-Udall Archives and their Workplan, and U.S. Institute for Environmental Conflict Resolution; resolutions regarding Allocation of Funds to the Udall Center for Studies in Public Policy and Transfer of Funds to the Native Nations Institute for Leadership, Management, and Policy; and Board takes notice of any new and updated personnel policies and internal control methodologies); (4) U.S. Institute for Environmental Conflict Resolution Project Highlight; (5) Native American Congressional Internship Program and Funding Updates; (6) Trustee Ethics Training; (7) Stephanie Zimmt-Mack Tribute; (8) Udall Center for Studies in Public Policy data science and environmental policy research project; (9) Udall Scholarship Selection Process; and (10) Finance and Internal Controls.

CONTACT PERSON FOR MORE INFORMATION: Philip J. Lemanski, Executive Director, 130 South Scott Avenue, Tucson, AZ 85701, (520) 901–8500.

Dated: November 21, 2018.

Elizabeth E. Monroe,

Executive Assistant, Morris K. Udall and Stewart L. Udall Foundation, and Federal Register Liaison Officer.

[FR Doc. 2018–25897 Filed 11–21–18; 4:15 pm]

BILLING CODE 6820–FN–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (18–094)]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the NASA Advisory Council (NAC).

DATES: Monday, December 10, 2018, from 1:30–6:00 p.m.; and Tuesday, December 11, 2018, from 9–12 p.m., Eastern Time.

ADDRESSES: NASA Headquarters, Program Review Center, Room 9H40, 300 E Street SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marla King, NAC Administrative Officer, NASA Headquarters, Washington, DC 20546, (202) 358–1148 or *marla.k.king@nasa.gov.*

SUPPLEMENTARY INFORMATION: This meeting will be open to the public up to the capacity of the meeting room. This meeting 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 number 1–517–308–9086 or toll free number 1–888–989–0726, passcode 3899540, followed by the # sign, on both days to participate in this meeting by telephone. NOTE: If dialing in, please ''mute'' your phone. To join via WebEx, the link is *https://nasaenterprise.webex.com/.* The meeting number on Monday, December 10 is 905 980 258 and the meeting password is NACDec2018! (case sensitive). The meeting number on Tuesday, December 11 is 901 189 192 and the meeting password is NACDec2018! (case sensitive).

The agenda for the meeting will include reports from the following:

—Aeronautics Committee
—Human Exploration and Operations Committee
—Regulatory and Policy Committee
—Science Committee
—STEM Engagement Committee
—Technology, Innovation and Engineering Committee

Attendees will be requested to sign a register and to comply with NASA Headquarters security requirements, including the presentation of a valid picture ID to NASA Security before access to NASA Headquarters. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 days prior to the meeting: Full name; gender; date/place of birth; citizenship; passport information (number, country, telephone); visa information (number, type, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, U.S. citizens and Permanent Residents (green card holders) are requested to provide full name and citizenship status no less than 3 working days prior to the meeting. Information should be sent to Ms. Marla K. King via email at *marla.k.king@nasa.gov.* It is imperative that the meeting be held on these dates to the scheduling priorities of the key participants.

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2018–25565 Filed 11–23–18; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (18–095)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Information Collection.

SUMMARY: The National Aeronautics and Space Administration, 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.

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Laurette Brown, National Aeronautics and Space Administration, Mail Code IT–C2, Kennedy Space Center, FL 32899.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Laurette L. Brown, KSC Paperwork Reduction Act Clearance Coordinator, John F. Kennedy Space Center, Mail Code IT–C2, Kennedy Space Center, FL 32899 or email *Laurette.L.Brown@NASA.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The NASA Kennedy Space Center (KSC) manages and facilitates the center-specific Job Shadowing Program (JSP). The program targets high school and undergraduate students and offers an opportunity to experience the practical application of STEM, business, and other disciplines aligned to NASA's long-term workforce needs, in a NASA-unique workplace setting. Program participants receive insight into NASA and KSC's history, current activities, and other student opportunities through briefings, tours, and career panels. Each participant is then matched with a subject matter expert to gain direct exposure to the implementation of their

respective fields of interest and related career paths.

II. Methods of Collection

The information will be collected via an electronic process.

III. Data

Title: Job Shadowing Program.
OMB Number: 2700–0135.
Type of review: Renewal of a currently approved collection.
Affected Public: High school and college students, and faculty.
Average Expected Annual Number of Activities: 4.
Average number of Respondents per Activity: 20.
Annual Responses: 80.
Frequency of Responses: Quarterly.
Average minutes per Response: 30.
Burden Hours: 26.

IV. Request for Comments

Comments are invited on:
(1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility;
(2) the accuracy of NASA's estimate of the burden (including hours and cost) 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 automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Laurette Brown,

KSC PRA Clearance Coordinator.

[FR Doc. 2018–25667 Filed 11–23–18; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Notice of Proposed Information Collection Request: Museum Application Program (MAP) Application

AGENCY: Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

ACTION: Notice; request for comments on this collection of information.

SUMMARY: The Institute of Museum and Library Services (IMLS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act. This pre-clearance consultation program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before January 21, 2019.

IMLS is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

ADDRESSES: Send comments to: Dr. Sandra Webb, Director, Office of Grants Policy and Management, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Dr. Webb can be reached by Telephone: 202–653–4718, Fax: 202–653–4608, or by email at *swebb@imls.gov,* or by teletype (TTY/TDD) for persons with hearing difficulty at 202–653–4614.

FOR FURTHER INFORMATION CONTACT: Paula Gangopadhyay, Deputy Director, Office of Museum Services, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. She can be reached by Telephone: 202–653–4717, Fax: 202–653–4608, or by email at *pgangopadhyay@imls.gov,* or by teletype (TTY/TDD) for persons with hearing difficulty at 202–653–4614.

SUPPLEMENTARY INFORMATION:

I. Background

The Institute of Museum and Library Services is the primary source of federal support for the nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. Our vision is a nation where museums and libraries work together to transform the lives of individuals and communities. To learn more, visit *www.imls.gov.*

II. Current Actions

The Museum Assessment Program (MAP) is a technical assistance program that can help a museum attain excellence in operations and planning, through a confidential process of self-study and peer review. For over 30 years, MAP has helped over 5,000 small and mid-sized museums of all types through a confidential, consultative process of self-study and a site visit from an expert peer reviewer over one year. MAP helps museums strengthen operations, plan for the future and meet standards. MAP is currently administered by the American Alliance of Museums (Alliance) and supported through a cooperative agreement with the Institute of Museum and Library Services (IMLS).

This action is to create the forms and instructions for the program application for the Museum Assessment Program for the next three years.

Agency: Institute of Museum and Library Services.
Title: Museum Assessment Program Application.
OMB Number: 3137–0101.
Frequency: Once a year.
Affected Public: Museum staff.
Number of Respondents: 124.
Estimated Average Burden per Response: 7 hours.
Estimated Total Annual Burden: 868 hours.
Total Annualized capital/startup costs: n/a.
Total Annual costs: $23,784.
Public Comments Invited: Comments submitted in response to this notice will be summarized and/or included in the request for OMB's clearance of this information collection.

Dated: November 19, 2018.

Kim Miller,

Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2018–25567 Filed 11–23–18; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Notice of Proposed Information Collection Request: IMLS Native American Library Basic Grant Program—Final Performance Report Form

AGENCY: Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

ACTION: Notice; request for comments on this collection of information.

SUMMARY: The Institute of Museum and Library Services (IMLS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act. This pre-clearance consultation program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. By this notice, IMLS is soliciting comments concerning the use of the IMLS Native American Basic Library Grant Program Final Performance Report Form for the next three years.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before January 21, 2019.

IMLS is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

ADDRESSES: Send comments to: Dr. Sandra Webb, Director, Office of Grants Policy and Management, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Dr. Webb can be reached by Telephone: 202–653–4718, Fax: 202–653–4608, or by email at *swebb@imls.gov,* or by teletype (TTY/TDD) for persons with hearing difficulty at 202–653–4614.

FOR FURTHER INFORMATION CONTACT: Kelcy Shepherd, Associate Deputy Director for Discretionary Programs, Office of Library Services, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. She can be reached by Telephone: 202–653–4716 Fax: 202–653–4608, or by email at *kshepherd@imls.gov,* or by teletype (TTY/TDD) for persons with hearing difficulty at 202–653–4614.

SUPPLEMENTARY INFORMATION:

I. Background

The Institute of Museum and Library Services is the primary source of federal support for the nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. Our vision is a nation where museums and libraries work together to transform the lives of individuals and communities. To learn more, visit *www.imls.gov.*

II. Current Actions

Native American Basic Grants support existing library operations and maintain core library services, particularly as they relate to the following goals in the Museum and Library Services Act (20 U.S.C. 9141). Indian tribes are eligible to apply for funding under the Native American Library Services Enhancement Grant program. Entities such as libraries, schools, tribal colleges, or departments of education are not eligible applicants, although they may be involved in the administration of this program and their staff may serve as project directors in partnership with an eligible applicant.

For purposes of funding under this program, ''Indian tribe'' means any tribe, band, nation, or other organized group or community, including any Alaska native village, regional corporation, or village corporation (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*)), which is recognized by the Secretary of the Interior as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. A list of eligible entities is available from the Bureau of Indian Affairs. To be eligible for this program you must be able to document an existing library that meets, at a minimum, three basic criteria: (1) Regularly scheduled hours, (2) staff, and (3) materials available for library users.

This action is to create the form and instructions for the Final Performance Report Form for the grant program for the next three years.

Agency: Institute of Museum and Library Services.

Title: IMLS Native American Library Basic Grant Program—Final Performance Report Form.

OMB Number: 3137–0098.

Frequency: Once a year.

Affected Public: Library staff.

Number of Respondents: TBD.

Estimated Average Burden per Response: TBD.

Estimated Total Annual Burden: TBD.

Total Annualized Capital/Startup Costs: n/a.

Total Annual Costs: TBD.

Public Comments Invited: Comments submitted in response to this notice will be summarized and/or included in the request for OMB's clearance of this information collection.

Dated: November 19, 2018.

Kim Miller,

Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2018–25568 Filed 11–23–18; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit issued.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; 703–292–8030; email: *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: On September 12, 2018, the National Science Foundation published a notice in the **Federal Register** of a permit application received. The permit was issued on October 29, 2018 to:

Bill Davis, Permit No. 2019–005

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2018–25646 Filed 11–23–18; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; 703–292–8030; email: *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: On September 20, 2018, the National Science Foundation published a notice in the **Federal Register** of permit applications received. The permits were issued on October 26 and 29, 2018 to:

1. Caitlin Saks, Permit No. 2019–008
2. Natasja van Gestel, Permit No. 2019–007

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2018–25643 Filed 11–23–18; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; 703–292–8030; email: *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: On October 2, 2018, the National Science Foundation published a notice in the **Federal Register** of permit applications received. The permits were issued on November 13, 2018 to:

1. John Kennedy, Permit No. 2019–011
2. Conrad Combrink, Silversea Cruises, Inc., Permit No. 2019–012

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2018–25645 Filed 11–23–18; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Modification Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit modification issued.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; 703–292–8030; email: *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: On September 28, 2018 the National Science Foundation published a notice in the **Federal Register** of a permit modification request received. The permit modification was issued on November 6, 2018 to: Laura K.O. Smith, Owner/Operator, Quixote Expeditions Permit No. 2016–020.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2018–25642 Filed 11–23–18; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–382; NRC–2016–0078]

Entergy Operations, Inc.; Waterford Steam Electric Station, Unit 3

AGENCY: Nuclear Regulatory Commission.

ACTION: Final supplemental environmental impact statement; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a final plant-specific Supplement 59 to the Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants, NUREG–1437, regarding the renewal of operating license NPF–38 for an additional 20 years of operation for Waterford Steam Electric Station, Unit 3 (WF3). The WF3 is located near Killona, St. Charles Parish, Lousiana.

DATES: The supplemental environmental impact statement referenced in this document is available on November 23, 2018.

ADDRESSES: Please refer to Docket ID NRC–2016–0078 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0078. Address questions about NRC dockets to Jennifer Borges; telephone: 301 287–9127: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The final Supplement 59 to the GEIS is available in ADAMS under Accession No. ML18323A103.
- *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: Elaine Keegan, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–8517, email: *Elaine.Keegan@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with § 51.118 of title 10 of the *Code of Federal Regulations,* the

NRC is issuing the final Supplement 59 to the GEIS regarding the renewal of Entergy Operations, Inc. operating license NPF–38 for an additional 20 years of operation for WF3. Draft Supplement 59 to the GEIS was noticed by the NRC in the **Federal Register** on August 23, 2018 (83 FR 42713), and noticed by the Environmental Protection Agency on August 24, 2018 (83 FR 42892). The public comment period on draft Supplement 59 to the GEIS ended on October 9, 2018, and the comments received are addressed in final Supplement 59 to the GEIS.

II. Discussion

As discussed in Chapter 5 of the final Supplement 59 to the GEIS, the NRC determined that the adverse environmental impacts of license renewal for WF3 are not so great that preserving the option of license renewal for energy-planning decisionmakers would be unreasonable. This recommendation is based on: (1) The analysis and findings in the GEIS; (2) information provided in the environmental report and other documents submitted by Entergy Operations Inc.; (3) consultation with Federal, State, local, and Tribal agencies; (4) the NRC staff's independent environmental review; and (5) consideration of public comments received during the scoping process and on the draft supplemental environmental impact statement.

Dated at Rockville, Maryland, this 20th day of November, 2018.

For the Nuclear Regulatory Commission.

Emmanuel C. Sayoc,

Acting Chief, License Renewal Projects Branch, Division of Materials and License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2018–25695 Filed 11–23–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–285; NRC–2018–0268]

Omaha Public Power District, Fort Calhoun Station, Unit No. 1, Partial Site Release

AGENCY: Nuclear Regulatory Commission.

ACTION: Partial site release; public meeting and request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering two requests from the Omaha Public Power District (OPPD) to approve the release of land areas, under the control of the NRC power reactor license for the Fort Calhoun Station, Unit No. 1 (FCS), License No. DPR–40, of portions of their owned-controlled property and an easement-controlled land area for unrestricted use. The NRC will review the requests and the result of NRC confirmatory surveys of the properties proposed for release. Approval of the request would allow OPPD to sell the released portion of the owner-controlled property, to the north and west of the plant in Nebraska, and to release the easement on the other property, to the north and east of the plant, in Iowa. The NRC is soliciting public comment on the requested actions and invites stakeholders and interested persons to participate. The NRC plans to hold a public meeting to promote full understanding of the requested actions and to facilitate public comment.

DATES: Submit comments by December 26, 2018. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date. A public meeting will be held on November 28, 2018.

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

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0268. 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: Jack Parrott, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6634; email: *Jack.Parrott@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0268. 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–2018–0268.
- *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 ''Fort Calhoun Station, Unit 1—Request for Partial Site Release'' and ''Fort Calhoun Station, Unit 1—Request for Partial Site Release Phase 2'' are available in ADAMS under Nos. ML18215A187 and ML18316A036, respectively.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2018–0268. 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. Background

The NRC has received two requests for approval of partial site releases from the Omaha Public Power District (OPPD or licensee), by letters dated June 29, 2018 (ADAMS Accession No. ML18215A187) and November 12, 2018 (ADAMS Accession No. ML18316A036). The requests seek approval for release for unrestricted use of a portion of the Fort Calhoun Station, Unit No. 1 (FCS) site located at 9610 Power Lane, Blair, Nebraska. The first proposed release area is a 120-acre portion on the north

and west side of the licensee-controlled facility property, wholly within the State of Nebraska. The second proposed release area involves a 475-acre parcel of land north and east of the site, located on the banks of the Missouri River on the Iowa side of the Iowa-Nebraska border, on which the licensee currently has an easement and that is part of the exclusion area of the plant.

The FCS license (NRC License No. DPR–40, Docket No. 50–285) is for a power reactor under part 50, ''Domestic Licensing of Production and Utilization Facilities,'' of title 10 of the *Code of Federal Regulations* (10 CFR). The facility was certified as permanently shut down, per NRC regulations in 10 CFR 50.82(a), by letter dated November 13, 2016. FCS is currently in ''SAFSTOR'' decommissioning mode awaiting the termination of the power reactor license.

The licensee requests release from the NRC license, for unrestricted use, of two portions of the site under 10 CFR 50.83, ''Release of Part of a Power Reactor Facility or Site for Unrestricted Use.'' The licensee is declaring these portions of the site to be ''non-impacted'' as defined in 10 CFR 50.2. Approval of the request would, for example, allow OPPD to sell a released portion to a non-OPPD controlled entity.

As described in 10 CFR 50.83(c), the NRC will determine whether the licensee has adequately evaluated the effect of releasing the properties per the requirements of 10 CFR 50.83(a)(1), determine whether the licensee's classification of any released areas as ''non-impacted'' is adequately justified, and if the NRC determines that the licensee's submittal is adequate, the NRC will inform the licensee in writing that the release is approved.

III. Public Meeting

The NRC will conduct a public meeting to discuss OPPD's request for approval of the partial site release. The meeting will be held on Wednesday, November 28, 2018, from 7:00 p.m. until 8:30 p.m., Central Standard Time, at the Residence Inn Omaha Downtown/Old Market Area, 106 South 15th St., Omaha, NE 68102.

This is a Category 3 public meeting where stakeholders are invited to fully engage NRC staff to provide a range of views, information, concerns and suggestions with regard to regulatory issues. After the licensee and NRC staff presentation portion of the meeting, the public is allowed to speak and ask questions. Comments can be provided orally or in writing to the NRC staff present at the meeting.

Stakeholders should monitor the NRC's public meeting website for information about the public meeting at: *http://www.nrc.gov/public-involve/public-meetings/index.cfm.* The agenda will be posted no later than 10 days prior to the meeting.

Dated at Rockville, Maryland, this 20th day of November, 2018.

For the Nuclear Regulatory Commission.

Andrea Kock,

Acting Director, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2018–25666 Filed 11–23–18; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2019–22]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* November 27, 2018.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2019–22; *Filing Title:* Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 8 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* November 19, 2018; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Lawrence Fenster*; Comments Due:* November 27, 2018.

This Notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2018–25664 Filed 11–23–18; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

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:
Schedule 14D–1F, SEC File No. 270–338, OMB Control No. 3235–0376.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') 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 for extension and approval.

Schedule 14D–1F (17 CFR 240.14d–102) is a form that may be used by any person (the ''bidder'') making a cash tender or exchange offer for securities of any issuer (the ''target'') incorporated or organized under the laws of Canada or any Canadian province or territory that is a foreign private issuer, where less than 40% of the outstanding class of the target's securities that is the subject of the offer is held by U.S. holders. Schedule 14D–1F is designed to facilitate cross-border transactions in the securities of Canadian issuers. The information required to be filed with the Commission provides security holders with material information regarding the bidder as well as the transaction so that they may make informed investment decisions. Schedule 14D–1F takes approximately 2 hours per response to prepare and is filed by approximately 2 respondents annually for a total reporting burden of 4 hours (2 hours per response × 2 responses).

Written comments are invited on: (a) Whether this 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 agency's estimate of the burden imposed by 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.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

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 20, 2018.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–25684 Filed 11–23–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84622; File No. SR–NASDAQ–2018–089]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Correct a Typographical Error in Rule 4702(b)(7)(A)

November 19, 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 8, 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 correct a typographical error in Rule 4702(b)(7)(A). 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 purpose of this filing is to correct a typographical error in Rule 4702(b)(7)(A). That provision describes the ''Market Maker Peg Order'' order type,[3] including by providing examples of how the order type operates in practice. One of these examples, which contains the typographical error in question, illustrates the principle that once a Market Maker Peg Order has posted to the Nasdaq Book, it will be repriced if needed as the Reference Price[4] changes. In particular, the principle states that when, as a result of a change to the Reference Price, the difference between the displayed price of a Market Maker Peg Order and the Reference Price reaches the Defined Limit,[5] then a Market Maker Peg Order

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Rule 4702(b)(7) defines a Market Maker Peg Order as follows:

A ''Market Maker Peg Order'' is an Order Type designed to allow a Market Maker to maintain a continuous two-sided quotation at a displayed price that is compliant with the quotation requirements for Market Makers set forth in Rule 4613(a)(2). The displayed price of the Market Maker Peg Order is set with reference to a ''Reference Price'' in order to keep the displayed price of the Market Maker Peg Order within a bounded price range. A Market Maker Peg Order may be entered through RASH, FIX or QIX only. A Market Maker Peg Order must be entered with a limit price beyond which the Order may not be priced. The Reference Price for a Market Maker Peg Order to buy (sell) is the then-current National Best Bid (National Best Offer) (including Nasdaq), or if no such National Best Bid or National Best Offer, the most recent reported last-sale eligible trade from the responsible single plan processor for that day, or if none, the previous closing price of the security as adjusted to reflect any corporate actions (*e.g.,* dividends or stock splits) in the security.

[4] *See id.* Rule 4613 states that the ''Designated Percentage'' shall be as follows: ''8% for securities subject to Rule 4120(a)(11)(A), 28% for securities subject to Rule 4120(a)(11)(B), and 30% for securities subject to Rule 4120(a)(11)(C), except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, when Rule 4120(a)(11) is not in effect, the Designated Percentage shall be 20% for securities subject to Rule 4120(a)(11)(A), 28% for securities subject to Rule 4120(a)(11)(B), and 30% for securities subject to Rule 4120(a)(11)(C). The Designated Percentage for rights and warrants shall be 30%.''

[5] The ''Defined Limit'' is defined in Rule 4613 as ''9.5% for securities subject to Rule 4120(a)(11)(A), 29.5% for securities subject to Rule 4120(a)(11)(B),

to buy (sell) will be repriced to the Designated Percentage [6] away from the Reference Price. The stated example of this principle in Rule 4702(b)(7)(A) presently states as follows:

In the foregoing example, if the Defined Limit is 9.5% and the National Best Bid increased to $10.17, such that the displayed price of the Market Maker Peg Order would be more than 9.5% away, the Order will be repriced to $9.35, or 8% away from the National Best Bid. Note that prices will be rounded in a manner to ensure that they are calculated and displayed at a level that is consistent with the Designated Percentage and the permissible minimum increment of $0.01 or $0.0001, as applicable. If the limit price of the Order is outside the Defined Limit, the Order will be sent back to the Participant.

The error in this example is that ''$9.35'' should be ''$9.36.'' The Exchange proposes to correct that inadvertent error in this proposal. The correction is necessary to ensure that the price in the example ($9.3564) is rounded up to the applicable minimum increment of $0.01 and remains consistent with the Designated Percentage.

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. The proposal would correct a typographical error that otherwise renders inaccurate an example of the application of Rule 4702(b)(7)(A). The Exchange believes that it is consistent with the interest of the public, investors, and the market for the Exchange to take steps to ensure that its Rulebook is accurate.

and 31.5% for securities subject to Rule 4120(a)(11)(C), except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, when Rule 4120(a)(11) is not in effect, the Defined Limit shall be 21.5% for securities subject to Rule 4120(a)(11)(A), 29.5% for securities subject to Rule 4120(a)(11)(B), and 31.5% for securities subject to Rule 4120(a)(11)(C).''

[6] Rule 4702(b)(7) states that ''[u]pon entry, the displayed price of a Market Maker Peg Order to buy (sell) is automatically set by the System at the Designated Percentage (as defined in Rule 4613) away from the Reference Price in order to comply with the quotation requirements for Market Makers set forth in Rule 4613(a)(2).''

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is non-substantive and it will have no impact on competition because it simply corrects a typographical error in the Rule text to render the text more accurate.

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 Act [9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [11] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the Exchange can immediately correct the typographical error in Rule 4702(b)(7)(A) and avoid any potential confusion as to the operation of the Market Maker Peg Order. For this reason, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2018–089 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–2018–089. 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

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–2018–089 and should be submitted on or before December 17, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–25599 Filed 11–23–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84620; File No. SR–Phlx–2018–71]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add Definitions to Rule 1000 and Amend Risk Protections

November 19, 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 6, 2018, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add definitions to Rule 1000, titled ''Applicability, Definitions and References,'' amend Rule 1090, titled ''Clerks'' and amend Rule 1099, titled, ''Risk Protections.''

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule change is to adopt certain definitions within Rule 1000(b), amend Rule 1090, titled ''Clerks'' and amend Rule 1099, titled, ''Risk Protections.'' Each change is described in more detail below.

Definitions

The Exchange proposes to amend Rule 1000(b) to add three new definitions into its Rulebook. These definitions are utilized in technical documents issued by the Exchange and will provide an ease of reference for understanding these terms. Specifically, Rule 1000(b)(51) would define an account number as a number assigned to a member organization. Member organizations may have more than one account number. Rule 1000(b)(52) would define a badge as an account number, which may contain letters and/or numbers, assigned to Specialists and Registered Options Traders. A Specialist or Registered Options Trader account may be associated with multiple badges. Finally, Rule 1000(b)(53) would define a mnemonic as an acronym comprised of letters and/or numbers assigned to member organizations. A member organization account may be associated with multiple mnemonics.

Risk Protections

Order Price Protection

The Exchange proposes to amend Rule 1099(a)(1) relating to the Order Price Protection or ''OPP.'' The Exchange proposes to remove the example within Rule 1099(a)(1)(B)(i) which states, '' For example, if the Reference BBO on the offer side is $1.10, an order to buy options for more than $1.65 would be rejected. Similarly, if the Reference BBO on the bid side is $1.10, an order to sell options for less than $0.55 will be rejected.'' The Exchange also proposes to remove the example within Rule 1099(a)(1)(B)(ii) which states, ''For example, if the Reference BBO on the offer side is $1.00, an order to buy options for more than $2.00 would be rejected. However, if the Reference BBO of the bid side of an incoming order to sell is less than or equal to $1.00, the OPP limits set forth above will result in all incoming sell orders being accepted regardless of their limit. To illustrate, if the Reference BBO on the bid side is equal to $1.00, the OPP limits provide protection such that all orders to sell with a limit less than $0.00 would be rejected.'' The Exchange notes that while the examples remain accurate, the Exchange proposes to remove the text to conform the rule text to other risk protections. The Exchange does not believe it is necessary to have these examples within the rule text.

Market Order Spread Protection

The Exchange proposes to add language to the Market Order Spread Protection Rule in 1099(a)(2). First, Phlx proposes to add the word ''trading'' before the word ''halt'' within Rule in 1099(a)(2) for consistency. In the OPP rule, text halts are referred to as ''trading halts.'' This will avoid confusion as to the use of this term. Second, at the time Phlx filed to amend Market Order Spread Protection on Phlx, it noted in that rule change that this mandatory risk protection protects Market Orders[3] from being executed in very wide markets.[4] Specifically, it noted within footnote 11 that the Exchange may establish differences other than the referenced threshold for one or more series or classes of options.[5] At this time, the Exchange proposes to memorialize this capability within Rule 1099(a)(2) by stating, ''The Exchange may establish different thresholds for one or more series or classes of options.'' The Exchange believes that adding this provision to the rule will provide an easy reference as to the Exchange's capability to establish different thresholds per options series or class.

Anti-Internalization

The Exchange proposes to replace the word ''Exchange badge'' with ''market participant identifier'' to more specifically describe this functionality.

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Market Orders are orders to buy or sell at the best price available at the time of execution.

[4] Securities Exchange Act Release No. 83141 (May 1, 2018), 83 FR 20123 (May 7, 2018) (SR–Phlx–2018–32).

[5] *Id.*

Also the Exchange is adding ''. . . quotes and orders entered on the opposite side of the market by the same Specialist or Registered Options Trader using the same identifier'' and is again replacing ''badge'' with ''identifier.'' The Exchange is identifying Specialists and Registered Options Traders in the System and preventing quotes and orders from the same Specialists or Registered Options Traders from executing. Finally the Exchange proposes to add the word ''order'' after complex in the last sentence of the Anti-Internalization paragraph for clarity.

Clerks

In order to avoid any confusion because the Exchange defined the term ''badge,'' the Exchange proposes to amend Rule 1090, which applies to Clerks on the Exchange's trading floor. This use of the word badge was meant to indicate a physical identifier that is worn on the trading floor to identify members. Therefore, the Exchange is replacing the term ''badge'' with ''identification'' in Rule 1090.

Automated Removal of Quotes

Finally, the Exchange proposes to amend the title of Rule 1099(c)(2) from ''Automated Removal of Quotes'' to ''Quotation Adjustments'' to conform the title across Nasdaq markets.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by bringing greater transparency to its rules. Amendments to remove examples from the OPP rule text and add ''trading'' before the word ''halt'' within the Market Order Spread Protection rule text will bring conformity to Rule 1090. The Exchange's proposal to add definitions to Rule 1000(b) will bring greater clarity to the Anti-Internalization functionality and to the Rulebook. The Exchange's proposal to amend Rule 1090 to clarify its identification requirements for Clerks will also provide more clarity to that rule.

The Exchange's proposal to memorialize the ability of the Exchange to establish different Market Order Spread Protection thresholds per options series or class will also bring greater clarity to the rule. Today, the Exchange has this ability, it is simply adding that text to the rule.

Finally, the Exchange's proposal to amend the title of Rule 1099(c)(2) from ''Automated Removal of Quotes'' to ''Quotation Adjustments'' should better describe the rule and conform the title to other Nasdaq affiliate markets.

The proposals noted herein are consistent with the Act because they provide more detail and transparency to the Exchange's rules noted herein to the benefit of market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed amendments do not impose an undue burden on competition because the definitions and amendments to conform the rule text will provide greater clarity as to the meaning of those terms. Memorializing the ability of the Exchange to establish different Market Order Spread Protection thresholds per options series or class will also bring greater clarity to the rule. Finally, the Exchange's proposal to amend the title of Rule 1099(c)(2) from ''Automated Removal of Quotes'' to ''Quotation Adjustments'' is non-substantive.

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 Act[8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[10] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange believes that waiver of the operative delay would allow the Exchange to immediately update its rules to bring greater clarity and transparency to the Anti-Internalization functionality, identification requirements for Clerks, and the Exchange's risk protections. Therefore, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR-Phlx-2018–71 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, 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.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2018–71. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2018–71, and should be submitted on or before December 17, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–25597 Filed 11–23–18; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84621; File No. SR–NASDAQ–2018–090]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Introduce a New Midpoint Trade Now Functionality

November 19, 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 9, 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 Rule 4702 (Order Types) and Rule 4703 (Order Attributes) to introduce a new Midpoint Trade Now functionality.

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 Rule 4702 (Order Types) and Rule 4703 (Order Attributes) to introduce a new Midpoint Trade Now functionality.[3] Midpoint Trade Now will be an Order Attribute[4] that allows a resting Order that becomes locked at its non-displayed price by an incoming Midpoint Peg Post-Only Order[5] to automatically execute against that Midpoint Peg Post-Only Order as a liquidity taker. Any remaining shares of the resting Order will remain posted on the Nasdaq Book with the same priority. The Midpoint Trade Now Order Attribute may be enabled on a port level basis for all Order Types that support it and, for the Non-Displayed Order Type, also on an order-by-order basis. Midpoint Trade Now will be available for all Order entry protocols except for QIX.[6]

The Exchange is proposing to offer the Midpoint Trade Now instruction for all Orders that have the Non-Displayed Order Attribute[7] and are not otherwise subject to restrictions on execution. Accordingly, the Midpoint Trade Now instruction shall not be available for Price to Display Orders (Rule 4702(b)(2)), Market Maker Peg Orders (Rule 4702(b)(7)), Supplemental Orders (Rule 4702(b)(6)), Market On Open Orders (Rule 4702(b)(8)), Limit On Open Orders (Rule 4702(b)(9)), Opening Imbalance Only Orders (Rule 4702(b)(10)), Market On Close Orders (Rule 4702(b)(11)), Limit on Close Orders (Rule 4702(b)(12)), Imbalance Only Orders (Rule 4702(b)(13)), and Midpoint Extended Life Orders (Rule 4702(b)(14)). These order types are either: (a) Ancapable of having a non-displayed price, hence the use of the Midpoint Trade Now instruction is not applicable, or b) subject to other Nasdaq rules regarding the display and execution of those orders, thus the use of the Midpoint Trade Now instruction would be inconsistent with those other Nasdaq rules.[8] The Midpoint Trade-

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Order'' means an instruction to trade a specified number of shares in a specified System Security submitted to the Nasdaq Market Center by a Participant. An ''Order Type'' is a standardized set of instructions associated with an Order that define how it will behave with respect to pricing, execution, and/or posting to the Nasdaq Book when submitted to Nasdaq. An ''Order Attribute'' is a further set of variable instructions that may be associated with an Order to further define how it will behave with respect to pricing, execution, and/or posting to the Nasdaq Book when submitted to Nasdaq. The available Order Types and Order Attributes, and the Order Attributes that may be associated with particular Order Types, are described in Rules 4702 and 4703. One or more Order Attributes may be assigned to a single Order; provided, however, that if the use of multiple Order Attributes would provide contradictory instructions to an Order, the System will reject the Order or remove non-conforming Order Attributes. *See* Rule 4701(e).

[4] *Id.*

[5] A Midpoint Peg Post-Only Order is an Order Type with a Non-Display Order Attribute that is priced at the midpoint between the NBBO and that will execute upon entry only in circumstances where economically beneficial to the party entering the Order. *See* Rule 4702(b)(5).

[6] Nasdaq notes that, although the QIX protocol can support the removing of liquidity, QIX is designed to provide two-sided quote messages to the trading system, unlike the OUCH, RASH, FLITE and FIX protocols, which are designed to facilitate Order submission. *See* Item II.B. discussion, *infra.*

[7] There is both a Non-Display Order Attribute (Rule 4703(k)) and a Non-Display Order (Rule 4702(b)(3)).

[8] For example, a Supplemental Order is an order type with a Non-Display Order attribute that is held on the Nasdaq Book in order to provide liquidity

Now instruction will be available as a port-setting for all other Order Types, namely Price to Comply Orders (Rule 4702(b)(1)), Non-Displayed Orders (Rule 4702(b)(3)), Post Only Orders (Rule 4702(b)(4)) and Midpoint Peg Post-Only Orders (Rule 4702(b)(5)). In addition, Midpoint Trade Now will be available on an Order-by-Order basis [9] for Non-Displayed Orders.[10]

A resting Order that is entered with the Midpoint Trade Now Order Attribute will execute against locking interest automatically. As such, the availability of Midpoint Trade Now obviates the need for execution restrictions on incoming Orders because when a resting Order without the Midpoint Trade Now Order Attribute is being locked at its non-displayed price by a Midpoint Peg Post-Only Order, new incoming Orders (with or without the Midpoint Trade Now Attribute, as applicable) will be able to execute against the Midpoint Peg Post-Only Order at the locking price. Nasdaq also proposes to amend Rule 4702(b)(5)(A) to reflect this new functionality. Currently, if a Midpoint Peg Post-Only Order that posts to the Nasdaq Book is locking a preexisting Order, the Midpoint Peg Post-Only Order will execute against an incoming Order only if the price of the incoming sell (buy) Order is lower (higher) than the price of the preexisting Order. As an example, if the midpoint is at $11.03 and there is a Non-Displayed Order (or another Order with a Non-Display Order Attribute) on the Nasdaq Book to sell at $11.03, and if the incoming buy Midpoint Peg Post-Only Order locks the preexisting Non-Displayed Order at $11.03, the Midpoint Peg Post-Only Order could execute only against an incoming Order to sell priced at less than $11.03.

However, under the proposed functionality, if there is a resting sell (buy) Order on the Nasdaq Book without the Midpoint Trade Now Attribute that is locked at its non-displayed price by a buy (sell) Midpoint Peg Post-Only Order, new incoming Orders (with or without the Midpoint Trade Now Order Attribute), entered at a price equal to or lower (higher) than the non-displayed price of the locked sell (buy) Order, will be able to execute against the Midpoint Peg Post-Only Order at the locking price. The resting Order will remain on the Nasdaq Book and will retain its priority after the subsequent Order has executed against the Midpoint Peg Post-Only Order. For example, the Best Bid is $11 and the Best Offer is $11.06, and a buy Midpoint Peg Post-Only Order is locking a preexisting sell Non-Displayed Order without the Midpoint Trade Now Attribute at $11.03. The Midpoint Peg Post-Only Order could execute against incoming Orders, with or without the Midpoint Trade Now Attribute, to sell priced equal to or less than $11.03.

The proposed functionality relating to Midpoint Peg Post-Only Orders that lock a pre-existing Order, is set forth in Rule 4703(n). This new text makes the current functionality described in Rule 4702(b)(5)(A) obsolete with respect to non-display orders. Accordingly, Nasdaq is revising language in Rule 4702(b)(5)(A) that once applied to both displayed and non-displayed orders to now only apply to displayed orders.[11]

Implementation

The Exchange will implement Midpoint Trade Now in the first quarter of 2019, and will announce the implementation date via an Equity Trader Alert. The Exchange will implement the proposed clarifying change to Rule 4702(b)(5)(A) at the earliest permissible time.[12]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] 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 proposed Midpoint Trade Now functionality will allow market participants to have their Orders executed as a taker of liquidity should that Order become locked at its non-displayed price by a contra-side Midpoint Peg Post-Only Order. This functionality will therefore promote an efficient and orderly market by allowing Orders in this scenario to execute and resolve a locked market. Similarly, allowing a subsequent Order to execute against a locking Midpoint Peg Post-Only Order if the Order that is locked by the Midpoint Peg Post-Only Order has not enabled the Midpoint Trade-Now functionality will also promote an efficient and orderly market by allowing the incoming Order in that scenario to execute and resolve an instance where Orders with a non-displayed price on both the buy and sell side of the market are priced equally but not executing against each other. The Midpoint Trade Now functionality is an optional feature that is being offered at no additional charge, and is designed to reflect both the objectives of the Nasdaq market, and the order flow management practices of various market participants.

The Exchange believes that the decision to offer the new functionality on an order-by-order basis only for one Order Type—and as a port setting for others—is consistent with the Act because it reflects the varying use cases of Nasdaq's Order Types and the flexibility required by different market participants. Users of the Non-Displayed Order Type may be more or less sensitive to removing liquidity depending on market conditions and thus would prefer to decide on a case-by-case basis whether that order will trade with any available liquidity on the book. In contrast, Price to Comply Orders, Post Only Orders, and Midpoint Peg-Post Only Orders are generally entered with the expectation of joining a certain price level, executing only as an adder of liquidity.[15] Therefore, Nasdaq does not believe users of these Order Types would want or need flexibility on an order-by-order basis as it is generally inconsistent with the purpose of the Order Type. Nevertheless, Nasdaq recognizes that some market participants may prefer to execute whenever possible and thus

at the NBBO through a special execution process described in Rule 4757(a)(1)(D). Rule 4757(a)(1)(D) provides that a Supplemental Order will be matched against an order only at the National Best Bid or Offer, and only if the size of the order is less than or equal to the aggregate size of Supplemental Order interest available at the price of the order. In addition, a Supplemental Order will not execute if the NBBO is locked or crossed. *See* Rule 4757(a)(1)(D). To the extent that a Supplemental Order will only be matched at the National Best Bid or Offer, and the Midpoint Trade-Now instruction allows a locked resting order to execute at a price that is potentially better than the NBBO, the function of the Trade-Now [sic] instruction is inconsistent with the function of the Supplemental Order.

[9] If a port is set to not use Midpoint Trade Now and a Non-Displayed Order is sent with a Midpoint Trade Now specification through the port, the Order's instructions will override the port setting.

[10] While the port-level setting applies to Orders with a Non-Displayed Order Attribute, order-by-order specification is available only for the Orders with the specific Non-Displayed Order Type.

[11] As part of this proposal, Nasdaq also proposes to include references in Rule 4702(b)(5)(A) ''to buy,'' where appropriate, to further clarify this rule language.

[12] *Id.*

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] Price to Comply Orders and Post Only Orders are generally Orders with a Display Attribute, but may in certain circumstances also have a non-displayed price. For example, if the NBBO is 10.99 x 11.00, a Price to Comply Order to buy at 11.00 would be ranked at 11.00 but displayed at 10.99. If the National Best Offer subsequently moved to 11.01, and the Participant did not elect to have their order canceled back or otherwise adjusted in such circumstances, the Order would then be ranked at the new midpoint. In this case, an incoming Midpoint Peg-Post Only Order could lock the resting Price to Comply Order at its non-displayed price.

will make Midpoint Trade Now available for these Order Types as a port setting to provide blanket coverage.

Nasdaq believes that the proposed clarifying changes and revised rule text under Rule 4702(b)(5)(A) are consistent with the Act because they will help avoid investor confusion that may be caused by not making it clear that a Midpoint Peg Post-Only Order in the Rule's example is an Order to buy, and by having text that refers to functionality that will no longer apply. As noted above, Nasdaq is revising language in Rule 4702(b)(5)(A) that once applied to both displayed and non-displayed orders to now only apply to displayed orders.

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. This is an optional functionality that is being offered at no charge, and which may be used equally by similarly-situated participants. Moreover, the functionality may be replicated by other markets if deemed to be appropriate for their markets.

As noted above, Nasdaq will offer the Midpoint Trade Now functionality through the OUCH, RASH, FLITE, and FIX protocols. Nasdaq will not offer the Midpoint Trade Now functionality through the QIX protocol.[16] Nasdaq notes that, although the QIX protocol can support the removing of liquidity, QIX is designed to provide two-sided quote messages to the trading system, unlike the OUCH, RASH, FLITE and FIX protocols, which are designed to facilitate Order submission. Nasdaq also notes that QIX is an infrequently-used protocol,[17] and that this protocol cannot support the expansion of fields that adopting the Midpoint Trade Now instruction would require. Nasdaq therefore believes that its decision to offer the Midpoint Trade Now instruction through the OUCH, RASH, FLITE, and FIX protocols will not impose any burden on competition that is not necessary or appropriate.

[16] Although participants may use other protocols, such as DROP, those protocols are not related to Order entry, and so the Midpoint Trade Now functionality is not being offered for those protocols.

[17] As of September 12, 2018, of the 4,855 customer ports for the various Nasdaq protocols, only 134 of those ports are QIX protocol.

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 Act [18] and Rule 19b–4(f)(6) thereunder.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2018–090 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–2018–090. 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–2018–090 and should be submitted on or before December 17, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–25598 Filed 11–23–18; 8:45 am]

BILLING CODE 8011–01–P

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84637; File No. SR–C2–2018–023]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend Its Rules Regarding How the System Handles Market Orders in Series With No Bid or No Offer

November 20, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

notice is hereby given that on November 6, 2018, Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2'') proposes to amend its Rules regarding how the System handles market orders in series with no bid or no offer.

(additions are *italicized*; deletions are [bracketed])

* * * * *

Rules of Cboe C2 Exchange, Inc.

* * * * *

Rule 6.14. Order and Quote Price Protection Mechanisms and Risk Controls

The System's acceptance and execution of orders and quotes pursuant to the Rules, including Rules 6.11 through 6.13, are subject to the following price protection mechanisms and risk controls, as applicable.

(a) Simple Orders.

(1) Market Orders in No-Bid (Offer) Series. [If a User submits a sell (buy) market order to the System after a series is open when there is no NBB (NBO), the System cancels or rejects the market order.]

(A) If the System receives a sell market order in a series after it is open for trading with an NBB of zero:

(i) if the NBO in the series is less than or equal to $0.50, then the System converts the market order to a limit order with a limit price equal to the minimum trading increment applicable to the series and enters the order into the Book with a timestamp based on the time it enters the Book. If the order has a Time-in-Force of GTC or GTD that expires on a subsequent day, the order remains on the Book as a limit order until it executes, expires, or the User cancels it.

(ii) if the NBO in the series is greater than $0.50, then the System cancels or rejects the market order.

(B) If the System receives a buy market order in a series after it is open for trading with an NBO of zero, the System cancels or rejects the market order.

* * * * *

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 2016, the Exchange's parent company, Cboe Global Markets, Inc. (formerly named CBOE Holdings, Inc.) (''Cboe Global''), which is also the parent company of Cboe Exchange, Inc. (''Cboe Options'') and Cboe C2 Exchange, Inc., acquired the Cboe EDGA Exchange, Inc. (''EDGA''), Cboe EDGX Exchange, Inc. (''EDGX or EDGX Options''), Cboe BZX Exchange, Inc. (''BZX'' or ''BZX Options''), and Cboe BYX Exchange, Inc. (''BYX'' and, together with C2, Cboe Options, EDGX, EDGA, and BZX, the ''Cboe Affiliated Exchanges''). The Cboe Affiliated Exchanges are working to align certain system functionality, retaining only intended differences between the Cboe Affiliated Exchanges, in the context of a technology migration. Thus, the proposals set forth below are intended to add certain functionality to the Exchange's System that is more similar to functionality offered by Cboe Options in order to ultimately provide a consistent technology offering for market participants who interact with the Cboe Affiliated Exchanges. Although the Exchange intentionally offers certain features that differ from those offered by its affiliates and will continue to do so, the Exchange believes that offering similar functionality to the extent practicable will reduce potential confusion for Users.

The Exchange proposes to amend its Rules regarding how the System handles a sell market order when there is no bid against which the order may execute. A market order is an order to buy or sell at the best price available at the time of execution.[5] Currently, pursuant to Rule 6.14(a)(1), if a User submits a sell market order to the System after a series is open when there is no national best bid (''NBB''), the System cancels or rejects the market order.[6] The Exchange proposes to amend how the System handles sell market orders submitted in a series with no bid. Specifically, if the System receives a market order to sell in an option series with an NBB of zero:

(1) if the NBO in the series is less than or equal to $0.50, then the System converts the market order to a limit order with a limit price equal to the minimum trading increment applicable to the series and enters the order into the Book with a timestamp based on the time it enters the Book. If the order has a Time-in-Force of GTC or GTD that expires on a subsequent day, the order remains on the Book as a Limit Order until it executes, expires, or the User cancels it.

(2) if the NBO in the series is greater than $0.50, then the System cancels the market order.[7]

The proposed rule change serves as a protection feature for investors in certain situations, such as when a series is no-bid because the last bid traded just prior to entry of the sell market order. The purpose of this threshold is to limit the automatic booking of market orders to sell at minimum increments to only those for true zero-bid options, as options in no-bid series with an offer of greater than $0.50 are less likely to be worthless.

For example, if the System receives a sell market order in a no-bid series with a minimum increment of $0.01 and the NBO is $0.01, the System will convert the order to a limit order with a price of $0.01 and enter it on the Book. Because the order will have a timestamp based on that time of Book entry, it will have priority behind any other limit orders to sell at $0.01 that were already resting on the Book. At that point, even if the series is no-bid because, for

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Rule 1.1, definition of order.

[6] Current Rule 6.14(a)(1) also provides that if a User submits a buy market order to the System after a series is open when there is no national best offer (''NBO''), the System cancels or rejects the market order. The proposed rule change does not modify this handling, and moves this provision (with nonsubstantive changes) to proposed Rule 6.14(a)(1)(B).

[7] *See* proposed Rule 6.14(a)(1).

example, the last bid just traded and the limit order trades at $0.01, the next bid entered after the trade would not be higher than $0.01. If the order has a Time-in-Force of GTC or GTD that expires on a subsequent day, the order remains on the Book as a Limit Order until it executes, expires, or the User cancels it.[8]

However, if the System receives a sell market order in a no-bid series with a minimum increment of $0.01 and the NBO is $1.20 (because, for example, the last bid of $1.00 just traded and a new bid has not yet populated the disseminated quote), the System will cancel or reject the order. Cancellation prevents an anomalous execution price, since the next bid entered in that series is likely to be much higher than $0.01. It would be unfair to the User to let is market order trade as a limit order for $0.01 because, for example, the firm submitted the order during the brief time when there were no disseminated bids in a series trading significantly higher than the minimum increment.

The Exchange believes the threshold of $0.50 is reasonable. The Exchange notes that this threshold the same as the threshold in the Cboe Options rule,[9] and is less than the current width for the market order NBBO width protection, pursuant to which the System will reject or cancel back to the User a market order submitted to the System when the NBBO width is greater than 100% of the midpoint of the NBBO, subject to a $5 minimum and $10 maximum.[10] Notwithstanding this provision, the proposed rule change would allow for the potential execution of sell market orders in no-bid series with offers less than or equal to $0.50. If the threshold in the proposed rule change was higher, there would be increased risk of having a market order trade a minimum increment in a series that is not truly no-bid. The proposed rule change is substantially the same as Cboe Options Rule 6.13(b)(vi).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[11] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [12] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [13] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change regarding the handling of sell Market Orders in no-bid series assists with the maintenance of fair and orderly markets and protects investors and the public interest, because it provides for automated handling of orders in series that are likely truly no-bid, ultimately resulting in more efficient executions of these orders. Additionally, the proposed rule change prevents executions of sell market orders in no-bid series with higher offers at potentially extreme prices in series that are not truly no-bid. The Exchange believes this threshold appropriately reflects the interests of investors, as options in no-bid series with offers higher than $0.50 are less likely to be worthless than no-bid series with offers no higher than $0.50, and cancelling the orders will prevent execution of these orders at unfavorable prices. The Exchange also believes the $0.50 threshold promotes fair and orderly markets, because sell market orders in no-bid series with offers of $0.50 or less are likely to be individuals seeking to close out a worthless position, for which the proposed automatic handling is appropriate. The proposed change is also substantially the same as Cboe Options Rule 6.13(b)(vi).

When Cboe Options migrates to the same technology as that of the Exchange and other Cboe Affiliated Exchanges, Users of the Exchange and other Cboe Affiliated Exchanges will have access to similar functionality on all Cboe Affiliated Exchanges and similar language can be incorporated into the rules of all Cboe Affiliated Exchanges. As such, the proposed rule 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.

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 changes will impose any burden on intramarket competition, because it will apply in the same manner to all sell market orders submitted in no-offer or no-bid series, respectively. Additionally, the proposed rule change has no impact on sell market orders submitted in no-bid series with an offer of more than $0.50, which orders will continue to be handled in the same manner as they are today (*i.e.* they will be cancelled or rejected). The Exchange does not believe the proposed rule change will impose any burden on intermarket competition, as it will provide sell market orders in true no-bid series with additional execution opportunities (either on the Exchange or at away markets pursuant to linkage rules) while providing an additional protection measure for sell market orders in no-bid series that may not be truly no-bid. The Exchange believes this price protection will allow Trading Permit Holders to submit sell market orders with reduced fear of inadvertent exposure to excessive risk, which will benefit investors through increased liquidity for the execution of their orders.

The proposed rule change is substantially the same as Cboe Options Rule 6.13(b)(vi).[14]

[8] This functionality is consistent with the purpose of a GTC or GTD that expires on a subsequent trading day, which is to remain on the Book and available for execution until the User cancels it or until the time specified by the User. The Exchange notes that market orders with any other Time-in-Force would no longer be on the Book if they did not execute during the trading day.

[9] *See* Cboe Options Rule 6.13(b)(vi).

[10] *See* Rule 21.17(a); *see also* Exchange Notice, BZX and EDGX Options Exchanges Feature Pack 2—Update (December 14, 2017), available at *http://markets.cboe.com/resources/release_notes/2017/Update-2-Cboe-BZX-and-EDGX-Options-Exchanges-Feature-Pack-2.pdf,* for current settings. Pursuant to this protection, if the NBBO for a series was $0.00–$0.50, the width of the NBBO (0.50) is greater than 100% of the midpoint (0.25); however, pursuant to the minimum, a market order would be accepted pursuant to this protection because the width is less than the 5.00 minimum. The proposed rule change provides additional price protection for market orders in no-bid series.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] *Id.*

[14] The Exchange notes other options exchanges have similar rules that convert sell market orders in no-bid series to limit orders with a price of a minimum increment if the offer in the series is below a certain threshold (the thresholds differ in those rules). *See, e.g.,* Miami International Securities Exchange, LLC (''MIAX'') Rule 519(a)(1); and NASDAQ ISE, LLC (''ISE'') Rule 713(b).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(6) thereunder.[16]

A proposed rule change filed under Rule 19b–4(f)(6) [17] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii) [18] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become effective and operative on November 29, 2018. The Exchange states that waiver of the operative delay will provide Users with additional flexibility to manage and display their orders and provide additional control over their executions on the Exchange as soon as possible. The Exchange further states that waiver of the operative delay will allow the Exchange to continue to strive towards a complete technology integration of the Cboe Affiliated Exchanges, with gradual roll-outs of new functionality to ensure the stability of the System. The Exchange notes that the proposed rule change is generally intended to codify and to add certain system functionality to the Exchange's System in order to provide a consistent technology offering for the Cboe Affiliated Exchanges. The Exchange further notes that a consistent technology offering will simplify the technology implementation changes and maintenance by Trading Permit Holders of the Exchange that are also participants on Cboe Affiliated Exchanges. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative on November 29, 2018.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov. Please include File Number SR–C2–2018–023 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–C2–2018–023. 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. All submissions should refer to File Number SR–C2–2018–023 and should be submitted on or before December 17, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–25739 Filed 11–23–18; 8:45 am]

BILLING CODE 8011–01–P

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] 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).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84616; File No. SR–NYSEAMER–2018–39]

Self-Regulatory Organizations; NYSE American LLC; Notice of Designation of Longer Period for Commission Action on a Proposed Rule Change To Allow Flexible Exchange Equity Options Where the Underlying Security Is an Exchange-Traded Fund That Is Included in the Option Penny Pilot To Be Settled in Cash

November 19, 2018.

On September 20, 2018, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify the rules related to Flexible Exchange (''FLEX'') Options to allow FLEX Equity Options where the underlying security is an Exchange-Traded Fund that is included in the Option Penny Pilot to be settled in cash. The proposed rule change was published for comment in the **Federal**

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Register on October 11, 2018.[3] No comments have been received on the proposed rule change.

Section 19(b)(2) of the Act[4] provides that, within 45 days of the publication of the notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is November 25, 2018. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates January 9, 2019, as the date by which the Commission should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change (File No. SR–NYSEAMER–2018–39).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–25595 Filed 11–23–18; 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:

Form T–3; SEC File No. 270–123, OMB Control No. 3235–0105.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') 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 for approval.

Form T–3 (17 CFR 269.3) is an application for qualification of an indenture under the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*). The information provided under Form T–3 is used by the Commission to determine whether to qualify an indenture relating to an offering of debt securities that is not required to be registered under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). Form T–3 takes approximately 43 hours per response to prepare and is filed by 16 respondents. We estimate that 25% of the 43 burden hours (11 hours per response) is prepared by the filer for a total reporting burden of 176 hours (11 hours per response × 16 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by 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.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

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 20, 2018.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–25683 Filed 11–23–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33296; 812–14934]

Pacific Global ETF Trust and Cadence Capital Management LLC

November 19, 2018.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) index-based series of certain open-end management investment companies (''Funds'') to issue shares redeemable in large aggregations (''Creation Units''); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value (''NAV''); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds (''Funds of Funds'') to acquire shares of the Funds; (f) certain Funds (''Feeder Funds'') to create and redeem Creation Units in-kind in a master-feeder structure; and (g) certain Funds to issue Shares in less than Creation Unit size to investors participating in a distribution reinvestment program.

Applicants: Pacific Global ETF Trust (the ''Trust''), a Delaware statutory trust, that will be registered under the Act as an open-end management investment company with multiple series, and Cadence Capital Management LLC (the ''Initial Adviser''), a Delaware limited liability company registered as an investment adviser under the Investment Advisers Act of 1940.

Filing Dates: The application was filed on July 24, 2018 and amended on November 13, 2018.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders

[3] *See* Securities Exchange Act Release No. 84364 (October 4, 2018), 83 FR 51535 (October 11, 2018).

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 14, 2018, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090; Applicants, 265 Franklin Street, 4th Floor, Boston, MA 02110–3113.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 551–6876, or Andrea Ottomanelli Magovern, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Summary of the Application

1. Applicants request an order that would allow Funds to operate as index exchange traded funds (''ETFs'').[1] Fund shares will be purchased and redeemed at their NAV in Creation Units (other than pursuant to a distribution reinvestment program, as described in the application). All orders to purchase Creation Units and all redemption requests will be placed by or through an ''Authorized Participant,'' which will have signed a participant agreement with the Distributor. Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Certain Funds may operate as Feeder Funds in a master-feeder structure. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will hold investment positions selected to correspond closely to the performance of an Underlying Index. In the case of Self-Indexing Funds, an affiliated person, as defined in section 2(a)(3) of the Act (''Affiliated Person''), or an affiliated person of an Affiliated Person (''Second-Tier Affiliate''), of the Trust or a Fund, of the Adviser, of any sub-adviser to or promoter of a Fund, or of the Distributor will compile, create, sponsor or maintain the Underlying Index.[2]

3. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis, or issued in less than Creation Unit size to investors participating in a distribution reinvestment program. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments (''Deposit Instruments''), and shareholders redeeming their shares will receive specified instruments (''Redemption Instruments''). The Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units (other than pursuant to a dividend reinvestment program).

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c–1 under the Act as secondary market trading in shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in shares does not involve a Fund as a party and will not result in dilution of an investment in shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent shares from trading at a material discount or premium from NAV.

6. With respect to Funds that effect creations and redemptions of Creation Units in kind and that are based on certain Underlying Indexes that include foreign securities, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are Affiliated Persons, or Second Tier Affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and

[1] Applicants request that the order apply to the Initial Fund and any additional series of the Trust, and any other existing or future open-end management investment company or existing or future series thereof (each, included in the term ''Fund''), each of which will operate as an ETF, and their respective existing or future master funds, and will track a specified index comprised of domestic and/or foreign equity securities and/or domestic and/or foreign fixed income securities (each, an ''Underlying Index''). Any Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each of the foregoing and any successor thereto, an ''Adviser'') and (b) comply with the terms and conditions of the application. For purposes of the requested order, a ''successor'' is limited to an entity or entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

[2] Each Self-Indexing Fund will post on its website the identities and quantities of the investment positions that will form the basis for the Fund's calculation of its NAV at the end of the day. Applicants believe that requiring Self-Indexing Funds to maintain full portfolio transparency will help address, together with other protections, conflicts of interest with respect to such Funds.

redemptions, and Deposit Instruments and Redemption Instruments will be valued in the same manner as those investment positions currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[3] The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Applicants also request relief to permit a Feeder Fund to acquire shares of another registered investment company managed by the Adviser having substantially the same investment objectives as the Feeder Fund (''Master Fund'') beyond the limitations in section 12(d)(1)(A) and permit the Master Fund, and any principal underwriter for the Master Fund, to sell shares of the Master Fund to the Feeder Fund beyond the limitations in section 12(d)(1)(B).

10. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

[3] The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–25594 Filed 11–23–18; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84634; File No. SR–NASDAQ–2018–092]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Eliminate Expired and Obsolete Provisions in Connection With Nasdaq's Transition to an All-Inclusive Annual Fee Program, Rename Certain Existing Annual Fees as All-Inclusive Annual Listing Fees, and Make Other Related Changes

November 20, 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 13, 2018, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to eliminate expired and obsolete provisions in connection with Nasdaq's transition to an all-inclusive annual fee program for all listed companies effective January 1, 2018; clarify that Linked Securities, SEEDS, Other Securities and Exchange Traded Products are also subject to an all-inclusive annual fee applicable to such issues; and modify existing fee waiver rules related to listing transfers in light of differences between Nasdaq's all-inclusive annual fee and the listing fees of other exchanges.

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 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 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

In 2014, Nasdaq adopted an all-inclusive annual listing fee schedule to simplify, clarify and enhance transparency around the annual fee to which listed companies are subject.[3] The new annual fee schedule became operative on January 1, 2015, and applied to all companies listed after that date. Companies already listed at that time could voluntarily elect the new fee schedule, but were not then required to do so. Effective January 1, 2018, however, all listed companies became subject to the all-inclusive annual fee schedule and the standard annual fee schedule has ceased to have applicability or effect.

Accordingly, as a result of the completion as of January 1, 2018, of the transition of all listed companies from the standard annual fee schedule to the all-inclusive annual fee schedule, Nasdaq is proposing to revise the listing rules to delete obsolete and out of date references to the standard annual fee schedule, the transition to the all-inclusive annual fee schedule, and other listing fees no longer in effect. In addition, Nasdaq is proposing other clarifying and conforming adjustments necessitated by completion of the transition, including relocating and renumbering revised rules as applicable.

As of January 1, 2018, the all-inclusive annual listing fee program completely supersedes and replaces the standard annual fee, which is no longer applicable to any listed company.[4] Accordingly, Nasdaq is proposing to

[3] Securities Exchange Act Release No. 73647 (November 19, 2014), 79 FR 70232 (November 25, 2014) (SR–NASDAQ–2014–87).

[4] Entry fees are not encompassed by the All-Inclusive Annual Listings Fee. Accordingly, Nasdaq is not proposing to revise or amend the entry fees set forth in the Rule 5900 Series.

delete the obsolete language in Rules 5910(c)–(f) and 5920(c)–(e) that describes and sets forth the standard annual fee as well as language in IM–5900–1, IM–5900–4, IM–5900–5(b) and IM–5900–6 that refers to the standard annual fee and to rules about the standard annual fee that Nasdaq is proposing to delete. The all-inclusive annual listing fee program also encompasses the additional shares fee, which is also no longer applicable to any listed company. Thus, Nasdaq is proposing to delete Rules 5910(b) and 5920(b), which describe and set forth the additional shares fee. The all-inclusive annual listing fee program, however, does not encompass the annual fee for convertible debentures, which remains in effect. Therefore, Nasdaq is proposing to relocate the provision for the annual fee for convertible debentures, formerly in Rule 5920(c)(2), to new Rule 5920(b)(2)(F).

The provisions that refer to the transition from the standard annual fee to the all-inclusive annual listing fee program are also obsolete. Accordingly, to reflect completion of this transition, Nasdaq is proposing to delete references to the transition in IM–5900–6(b)(1), Rule 5901, and IM–5910–1 and IM–5920–1. With respect to the remaining provisions in IM–5910–1 and IM–5920–1, which relate to the all-inclusive annual listing fee, Nasdaq is proposing to relocate them to Rule 5910(b) and 5920(b). Therefore, as a result of these changes, the Exchange is also proposing to delete IM–5910–1 and IM–5920–1.

Certain other fees previously applicable to listed companies have been superseded by the all-inclusive annual fee program. Accordingly, Nasdaq is proposing to delete references to these listing fees, which include the record-keeping fee, substitution listing fee, request for written interpretation fee, and compliance plan review fee. These fees are referenced in Rules 5250(e), 5250(e)(3)(A) and (B), 5250(e)(4), 5602(a)–(d), 5810(c)(2)(A), 5901, 5910(e) and (f), IM–5910–1(c), 5920(d) and (e), and IM–5920–1(c). Nasdaq also proposes to relocate into Rule 5602(a) provisions currently in Rule 5602(c) and (f), which specify that applicants and certain companies in the delisting process can request a written interpretation of the Listing Rules, and delete the provision for listed companies to request an expedited response in Rule 5602(b). To reflect the proposed changes to Rule 5602, Nasdaq is proposing to renumber the paragraphs of that rule that remain applicable.

Nasdaq endeavors to respond to all requests for written interpretations of the Listing Rules in as timely a manner as possible. Thus, notwithstanding that Nasdaq is proposing to delete the provision for listed companies to request an expedited response to such requests, a Company may nonetheless request an expedited response and Nasdaq will respond as promptly as practicable.

Listed companies, however, remain subject to the fees described in Rules 5815(a)(3) and 5820(a) that apply to review by a Hearings Panel or the Nasdaq Listing and Hearing Review Council, respectively, of a Staff Delisting Determination or Public Reprimand Letter. Listed companies also remain subject to the entry fees described in Rules 5910(a) and 5920(a) relating to the listing of an additional class of securities of the listed company.[5]

In addition, Nasdaq is proposing to renumber certain of the rules regarding the authority of the Nasdaq Board of Directors or its designee, in its discretion, to defer or waive all or any part of the annual fee prescribed therein. The authority to defer or waive the annual fee, which is currently set forth in Rules 5910(c)(2), 5910(d)(5), 5920(c)(4), 5930(b)(2) and 5940(b)(3) [sic], is generally exercised only in limited cases, under circumstances that are not likely to be frequently replicated and where requiring payment of an annual fee would be inequitable.[6] To Nasdaq's knowledge, it has never used this authority to defer an annual fee. The Exchange represents it would do so only under the same circumstances as it would to waive an annual fee.

Because Nasdaq, as described above, is proposing to delete the language in Rules 5910(c)–(f) and 5920(c)–(e) that describes and sets forth the standard annual fee, which encompasses Rules 5910(c)(2), 5910(d)(5) and 5920(c)(4) that set forth the authority of the Nasdaq Board of directors or its designees to defer or waive all or any part of the annual fee, Nasdaq is proposing, without substantive changes, to renumber these rules in proposed new Rules 5910(b)(3)(G) and 5920(b)(3)(G) that apply to the all-inclusive annual listing fee.[7] To fully reflect these proposed changes, Nasdaq is proposing to eliminate cross references to these rules and other similar provisions contained in IM–5900–1 and IM–5900–4.

Nasdaq is also proposing revisions to Rules 5930(b)(1) and 5940(b)(1) and (2) and to add new Rules 5930(b)(4) and 5940(b)(5) to provide that Linked Securities, SEEDS, Other Securities and Exchange Traded Products are subject to an all-inclusive annual listing fee applicable to such issues. Currently, Linked Securities, SEEDS, and Other Securities are subject to the annual fee set forth in Rule 5930(b) and Exchange Traded Products are subject to the annual fee set forth in Rule 5940(b). Previously, Nasdaq eliminated the fees for record-keeping changes and substitution listing events charged to these entities [8] and they are not subject to the compliance plan or additional shares fees.[9] Under these circumstances, and to promote clarity, consistency and uniformity, Nasdaq is proposing to rename the annual fee for Linked Securities, SEEDS, Other Securities and Exchange Traded Products to make clear that these securities are subject to an all-inclusive annual listing fee applicable to such issues.[10]

Nasdaq also proposes to remove a January 1, 2018 effective date contained in current IM–5910–1(d)(5) and IM–5920–1(d)(5) because that date has passed and these rules are now effective and to clarify that the annual fee referred to in those rules is the all-inclusive annual listing fee.

Finally, given completion of Nasdaq's transition to the all-inclusive annual listing fee, Nasdaq is also proposing revisions to IM–5900–4 to account for differences between Nasdaq's all-

[5] Listing Rules 5910(a) and 5920(a) provide that a Company that submits an application to list any class of its securities shall pay to Nasdaq an entry fee. Equity Investment Tracking Stocks listed pursuant to Rule 5222 are subject to the entry fees described in Rules 5910(a) and 5920(a).

[6] For example, the Exchange granted a waiver to a company that was removed during the first week of January pursuant to a decision of a Nasdaq Listing Qualifications Panel, where the Panel had all the information necessary to make its decision in the prior year. The Exchange also granted a waiver to a company thet [sic] intended to voluntarily delist prior to the end of a calendar year but was delayed until early in January, where there was clear evidence of the company's intent to delist before the end of the year and there was limited trading prior to the delisting. In each of these cases, the Exchange believed it would be inequitable to subject the company to the annual fee.

[7] Nasdaq is not proposing to renumber Rules 5930(b)(2) and 5940(b)(3) [sic]. These rules remain unchanged by this proposal and the authority to defer or waive an annual fee set forth therein will continue to apply.

[8] Securities Exchange Act Release No. 78047 (June 13, 2016), 81 FR 39736 (June 17, 2016) (SR–NASDAQ–2016–077).

[9] Rule 5810(c)(2)(A) currently does not require the compliance plan fee for plans submitted for failure to meet a continued listing standard contained in the Rule 5700 Series, which includes continued listing standards for those securities charged fees under Rules 5930 and 5940.

[10] Because Linked Securities, SEEDS, Other Securities and Exchange Traded Products are now subject to an all-inclusive annual listing fee applicable to such issues, consistent with the treatment of equity securities, Nasdaq proposes to no longer subject the issuer of these securities to the written interpretation fee.

inclusive annual fee and the fees of other listing exchanges. Specifically, IM–5900–4 currently provides for the waiver of a portion of the applicable annual fee for a company whose securities: (i) Are listed on a national securities exchange but not listed on Nasdaq, if the issuer of such securities transfers their listing exclusively to Nasdaq; or (ii) are listed on the New York Stock Exchange and Nasdaq, if the issuer of such securities ceases to maintain their listing on the New York Stock Exchange and the securities instead are designated under the plan governing Nasdaq securities. This waiver is provided as a pro-rated credit in the amount of any annual listing fees paid to the prior exchange applicable to the period of time after the transfer. The purpose of this waiver is to remove a disincentive for companies to switch markets when they had already paid an annual fee in that year.[11] While Nasdaq's all-inclusive annual listing fee remains lower in most cases than the annual fee of competitor exchanges, in limited cases it can be higher than just the annual fee charged by a competitor exchange, which (unlike Nasdaq's all-inclusive annual listing fee) does not include fees that the competitor exchange separately charges for additional shares or other events such as record keeping changes or substitution listing events. To ensure uniform treatment and simplify application of this waiver given these structural differences between Nasdaq's all-inclusive annual fee and the potential range of other fees encompassed by the all-inclusive annual fee that a company may have also paid to the competitor exchange in the year of the switch in addition to the annual fee, Nasdaq proposes to modify the rule to waive the entire all-inclusive annual listing fee in the year of transfer.

Nasdaq acknowledges the possibility that the all-inclusive annual listing fee it charges may be higher in some cases than the annual fee charged by a competitor exchange and that in such cases an issuer that transfers its listing may receive a relatively greater benefit than other issuers that transfer their listings where the all-inclusive annual listing fee is lower than the annual fee charged by a competitor exchange. However, Nasdaq does not believe that this possibility is unfairly discriminatory. Nasdaq anticipates that there will be few instances where Nasdaq's all-inclusive annual listing fee is higher than the annual fee charged by a competitor exchange. Further, by simplifying these provisions, they are transparent to issuers and the public, ensure consistent application, and limit any unnecessary burdens related to the administration and implementation of these provisions. Nasdaq represents that this proposed modification will have no impact on the resources available for its regulatory programs or Nasdaq's ability to enforce its listing standards and protect investors.

2. Statutory Basis

The Exchange believes that its proposal, by eliminating obsolete or unnecessary provisions from its rule book and, thus, simplifying and adding clarity to the fees charged by the Exchange, is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[13] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities. For the same reasons, the Exchange also believes its proposal is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Except as described below with respect to the proposed changes to IM–5900–4, the proposal does not change the listing fees to which listed companies are subject. Rather, Nasdaq is making this proposal to make certain the rules fully reflect completion of the phased transition from the standard annual fee schedule to the all-inclusive annual fee schedule. Completion of this transition rendered certain existing fee provisions obsolete, unnecessary or out of date and necessitated their deletion or modification. Completion of the transition also necessitated other clarifying and conforming adjustments, including relocating or renumbering certain rules. Nasdaq believes that updating Nasdaq's rules to eliminate obsolete provisions and make related clarifications and conforming changes will simplify Nasdaq's rule book and add transparency. As noted above, except as described below with respect to the changes to IM–5900–4, it will not change the listing fees to which listed companies are subject. Thus, the proposal does not reduce the resources available for Nasdaq's regulatory program or otherwise hinder or limit the ability of Nasdaq to enforce its listing standards and protect investors.

The proposal's clarification in Rules 5930 and 5940 that Linked Securities, SEEDS, Other Securities and Exchange Traded Products are also subject to an all-inclusive annual fee applicable to such issues is similarly consistent with Section 6(b) of the Act. In this regard, by adding clarity to the rules regarding the fees applicable to these products, the proposal simplifies and adds transparency to Nasdaq's rule book, including by fully reflecting the fact that, as noted above, these products are not subject to fees for Record Keeping, Substitution Listing Events and compliance plans.[14] This proposed change does not change the listing fees to which these products are subject. Instead, it ensures the rules reflect that these products, like all other listings, are subject to an all-inclusive annual fee.

Also, because the proposal does not change the fees to which these listings are subject, the proposal does not reduce the resources available for Nasdaq's regulatory program or otherwise hinder or limit the ability of Nasdaq to enforce its listing standards and protect investors. As such, Nasdaq believes these changes are consistent with the Section 6(b)(4) of the Act in that they provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities. For the same reasons, they are also consistent with the investor protection objectives of Section 6(b)(5) of the Act.

The proposed modifications to IM–5900–4 are similarly consistent with the Act because they are designed to simplify and clarify application of the pre-existing annual fee waiver to companies that transfer their listing from a national securities exchange to Nasdaq or, if they are already listed on Nasdaq, cease to be listed on the New York Stock Exchange. This change was necessitated because the all-inclusive annual fee schedule may not, in certain cases, be directly equivalent or comparable to other listing exchanges' annual fees because it includes a range of fees, such as for listing additional shares, record keeping changes and substitution listing events, that other listing exchanges charge separately in addition to an annual listing fee. As such, while most companies under the all-inclusive annual fee schedule incur lower fees in comparison to the annual

[11] Securities Exchange Act Release No. 53696 (April 21, 2006), 71 FR 25273 (April 28, 2006) (SR–NASD–2006–47) (adopting the predecessor to IM–5900–4).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4) and (5).

[14] *See, supra,* notes 8 and 9.

fee charged by other exchanges, in some cases a company's fee under the all-inclusive annual fee schedule may be higher. In these cases, the existing waiver under the rules of a pro rata portion of the annual fee paid to the other listing exchange may not give the company full credit for other fees paid to the other exchange and may not completely remove the disincentive to transferring listing attributable to the fact that the company has already paid the annual fee for that year. Under the proposed change, all companies switching their listing will have the entire annual fee waived in the year of the switch.

As noted above, Nasdaq acknowledges the possibility that the all-inclusive annual listing fee it charges may be higher in some cases than the annual fee charged by a competitor exchange and that in such cases an issuer that transfers its listing may receive a relatively greater benefit than other issuers that transfer their listings where the all-inclusive annual listing fee is lower than the annual fee charged by a competitor exchange. However, for several reasons, Nasdaq does not believe that this possibility is unfairly discriminatory. First, Nasdaq anticipates that there will be few instances where Nasdaq's all-inclusive annual listing fee is higher than the annual fee charged by a competitor exchange. Second, as described above, the waiver is intended to remove a disincentive to transfer and Nasdaq does not believe that the possibility that the all-inclusive annual listing fee is higher than the annual fee charged by a competitor exchange would have a material impact on a decision to transfer or not. Third, by simplifying these provisions, they are transparent to issuers and the public, ensure consistent application, and limit any unnecessary burdens related to the administration and implementation of these provisions.

For these reasons, Nasdaq believes that this proposed change is consistent with Section 6(b)(4) of the Act. Nasdaq also believes this proposed change is similarly consistent with Section 6(b)(5) of the Act 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 is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Further, given the limited number of listings transfers each year, it is not expected that this waiver would materially impact the resources available for Nasdaq's regulatory program or otherwise hinder or limit the ability of Nasdaq to enforce its listing standards and protect investors. As such, Nasdaq believes these changes are consistent with the investor protection objectives of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The market for listing services is extremely competitive and listed companies may freely choose alternative venues based on the aggregate fees assessed and the value provided by each listing. As such, because this proposal does not change the listing fees to which listed companies are subject, but merely reflects the completion of the phased transition from the prior standard annual fee schedule to the all-inclusive annual listing fee schedule, the application of an all-inclusive annual listing fee schedule to Linked Securities, SEEDS, Other Securities and Exchange Traded Products, and refinement and clarification of the operation of certain existing waivers based on the introduction of the all-inclusive listing fee schedule, Nasdaq believes that this proposed rule change does not encumber the competition for listings with other listing venues, which are similarly free to set their fees. Rather, it reflects the competition among listing venues and will further enhance such competition.

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 Act [15] and Rule 19b–4(f)(6) thereunder.[16]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [17] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [18] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that its rules may fully reflect completion of the transition to the all-inclusive annual fee program, thereby providing clarity to this fee program and making the rule book simpler and more transparent. The Exchange represents that, as of January 1, 2018, all listed companies are subject to the all-inclusive annual listing fee program, which has completely superseded and replaced the standard annual fee. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2018–092 on the subject line.

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–NASDAQ–2018–092. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2018–092, and should be submitted on or before December 17, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–25736 Filed 11–23–18; 8:45 am]

BILLING CODE 8011–01–P

[20] 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: Form 18 SEC File No. 270–105, OMB Control No. 3235–0121.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') 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 for extension and approval.

Form 18 (17 CFR 249.218) is a registration form used by a foreign government or political subdivision to register securities for listing on a U.S. exchange. The information collected is intended to ensure that the information required by the Commission to be filed permits verification of compliance with securities law requirements and assures the public availability of the information. Form 18 takes approximately 8 hours per response and is filed by approximately 5 respondents for a total of 40 annual burden hours (8 hours per response x 5 responses).

Written comments are invited on: (a) Whether this 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 agency's estimate of the burden imposed by 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 collections 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 unless it displays a currently valid control number.

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 20, 2018.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–25682 Filed 11–23–18; 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:
Form T–2 SEC File No. 270–122, OMB Control No. 3235–0111

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') 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 for extension and approval.

Form T–2 (17 CFR 269.2) is a statement of eligibility of an individual trustee under the Trust Indenture Act of 1939. The information is used to determine whether the individual is qualified to serve as a trustee under the indenture. Form T–2 takes approximately 9 hours per response to prepare and is filed by 9 respondents. We estimate that 25% of the 9 burden hours (2 hours per responses) is prepared by the filer for a total reporting burden of 18 hours (2 hours per response × 9 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by 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.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment 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 20, 2018.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–25689 Filed 11–23–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84633; File No. SR–NASDAQ–2018–091]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend The Nasdaq Options Market LLC (''NOM'') Fees

November 20, 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 9, 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, 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 The Nasdaq Options Market LLC (''NOM'') fees within Chapter XV, Section 3, titled ''Nasdaq Options Market—Ports and Other Services.''

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 purpose of the proposed rule change is to define ''account number'' and utilize that term within Chapter XV, Sections 3 and 9. Each change will be described in more detail below.

New Defined Term ''Account''

The Exchange proposes to adopt a new definition within Chapter XV, Section 3 and apply this definition within Chapter XV, Sections 3 and 9. The purpose of this defined new term ''account number'' is to conform the Exchange's use of certain terms within NOM Rules. This term would be utilized in Chapter XV to describe the manner in which pricing is calculated. Recently, the Nasdaq affiliated exchanges filed rule changes to conform the usage of various terms across its 6 affiliated options markets within the various rulebooks.[3] The Exchange believes that utilizing the same defined terms, where possible, across its 6 affiliated options markets will avoid confusion for certain rules and pricing purposes. The term ''account number'' can be defined identically across Nasdaq's 6 affiliated options markets for purposes of pricing ports. The Exchange is not amending the manner in which pricing will be applied with respect to this particular change. The Exchange proposes to utilize the defined term ''account number'' in place of the term ''mnemonic,'' which was not defined in the pricing rules. The insertion of the new defined term is intended to add more specificity and clarity to the current pricing.

At this time, the Exchange proposes to define an ''account number'' within Chapter XV, Section 3 to mean a number assigned to a Participant. Participants may have more than one account number. The term ''mnemonic'' has been used frequently throughout Chapter XV without being defined. The Exchange proposes to remove the term ''mnemonic'' from Chapter XV, Section 3 and replace the term with the defined term ''account number'' for FIX and the OTTO protocols. The Exchange notes that the terms mnemonic and account number were being used interchangeably. The Exchange recently defined both terms in its rules.[4] The term account number is appropriate to describe these fees. The Exchange is not amending the manner in which it assesses those port fees, rather the Exchange simply proposes to utilize the new term to better describe its current pricing.

Also, the Exchange proposes to remove the term ''mnemonic'' from the CTI Port Fee, FIX DROP Port Fee, OTTO DROP Fee, ITTO Port Fee and Bono Port Fee. Today, these ports are assessed only one fee per port, per month and therefore adding the term ''per account number'' would be redundant and unnecessary. These ports are associated with one account number. The Exchange is not proposing to amend the manner in which these ports are assessed, rather the Exchange proposes to eliminate the ''per mnemonic'' description. The Exchange believes that the billing is clearly defined as ''per port, per month.''

Account number is also being defined in Section 9, ''Account Fee—Options.'' The Exchange is not amending the manner in which this fee is billed, rather the Exchange is defining the term account number within Section 9. The defined term account number will be utilized consistently throughout the NOM pricing, where applicable.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b 4.

[3] NOM has filed to define the terms ''account number,'' ''badge'' and ''mnemonic'' at Chapter I, Section 1(a)(69), (70) and (71) respectively. *See* SR–NASDAQ–2018–085 (not yet published) [published on November 16, 2018]. Nasdaq Phlx LLC has filed to define the terms ''account number,'' ''badge'' and ''mnemonic'' at Rule 1000(b)(51), (52) and (53) respectively. *See* SR–Phlx–2018–69 (not yet published). Nasdaq BX, Inc. has filed to define the terms ''account number,'' ''badge'' and ''mnemonic'' at Chapter I, Section 1(a)(70), (71) and (72) respectively. *See* Securities Exchange Act Release No. 84520 (November 1, 2018) (SR–BX–2018–050) (not yet published) [published on November 7, 2018]. *See* also ISE Rule 100(a)(1), (5) and (34) which defines the terms ''account number,'' ''badge'' and ''mnemonic,'' respectively. *See also* GEMX Rule 100(a)(1), (5) and (35) which defines the terms ''account number,'' ''badge'' and ''mnemonic,'' respectively. *See also* MRX Rule 100(a)(1), (5) and (36) which defines the terms ''account number,'' ''badge'' and ''mnemonic,'' respectively.

[4] A ''mnemonic'' is defined as an acronym comprised of letters and/or numbers assigned to Participants. A Participant account may be associated with multiple mnemonics. See SR–NASDAQ–2018–085 (not yet published) [published on November 16, 2018]. Mnemonics are issued to Participants to identify associated persons of Participants.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4) and (5).

among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

New Defined Term ''Account''

The Exchange's proposal to define the term ''account number'' within Chapter XV, Sections 3 and 9 and apply that term within Chapter XV, Section 3, in place of the term ''mnemonic'' as to the manner in which FIX and OTTO Port Fees are priced is reasonable because the term is defined and will be utilized consistently throughout Chapter XV, where applicable. The usage of the defined term ''account number'' will bring uniformity to the term and its usage across the 6 affiliated options markets. The proposed change to utilize the defined term will not amend the manner in which the ports are billed, rather it will also bring greater clarity to pricing in Chapter XV, Sections 3 and 9.

The Exchange's proposal to define the term ''account number'' within Chapter XV, Sections 3 and 9 and apply that term within Chapter XV, Section 3, in place of the term ''mnemonic'' for the FIX and OTTO Port Fees is equitable and not unfairly discriminatory because the Exchange proposes to apply that term uniformly in billing Participants utilizing those ports and for purposes of the Account Fee.

The Exchange's proposal to remove the term ''mnemonic'' for the pricing of the CTI Port Fee, FIX DROP Port Fee, OTTO DROP Fee, ITTO Port Fee and Bono Port Fee is reasonable because, today, these ports are assessed only one fee per port, per month and this change will bring greater clarity to the manner in which these services are billed. The term ''mnemonic'' was undefined until the Exchange filed SR–NASDAQ–2018–085.[7] The manner in which the term ''mnemonic'' was defined for purposes of NOM's Rules is not the manner that was intended for pricing these ports. To that end, the Exchange proposes to remove the term ''mnemonic'' and replace that term with ''account number,'' where applicable, to convey the intended manner in which the Exchange prices ports. Today, these ports are assessed only one fee per port, per month and therefore adding the term ''per account number'' would be redundant and unnecessary. These ports are associated with one account number. This proposal will conform the defined term across NOM Rules.[8] The Exchange is not proposing to amend the manner in which these ports are assessed, rather the Exchange proposes to eliminate the ''per mnemonic'' description and more clearly define the manner in which these services are billed as ''per port, per month.''

The Exchange's proposal to remove the term ''mnemonic'' for the pricing of the CTI Port Fee, FIX DROP Port Fee, OTTO DROP Fee, ITTO Port Fee and Bono Port Fee is equitable and not unfairly discriminatory because the Exchange will continue to uniformly assess all market participants these services in a uniform manner. The proposed change does not amend the manner in which these services are billed.

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. In terms of inter-market competition, the Exchange notes that this proposal does not amend actual fees, rather the Exchange proposes to define a new term to be used more accurately to describe the manner in which certain services within Chapter XV, Sections 3 and 9 are billed.

New Defined Term ''Account''

The Exchange's proposal to define the term ''account number'' within Chapter XV, Sections 3 and 9 and apply that term within Chapter XV, Section 3, in place of the term ''mnemonic'' with respect to the manner in which FIX and OTTO protocols are priced does not impose an undue burden on intra-market competition because the Exchange proposes to apply that term uniformly in billing Participants utilizing those ports and for purposes of the Account Fee. No changes are being made to the manner in which the Exchange bills these ports.

The Exchange's proposal to remove the term ''mnemonic'' for the pricing of the CTI Port Fee, FIX DROP Port Fee, OTTO DROP Fee, ITTO Port Fee and Bono Port Fee does not impose an undue burden on intra-market competition because the Exchange will continue to uniformly assess all market participants these services in a uniform manner. The proposed change does not amend the manner in which these services are billed.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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–NASDAQ–2018–091 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–2018–091. 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

[7] This rule change is not yet published [published on November 16, 2018].

[8] *See* Chapter I, Section 1(a)(69).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

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–2018–091 and should be submitted on or before December 17, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–25735 Filed 11–23–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84623; File No. SR–CboeEDGA–2018–018]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify Its Fee Schedule

November 19, 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 6, 2018, Cboe EDGA Exchange, Inc. (''Exchange'' or ''EDGA'') 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

Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to modify its fee schedule.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to correct an inadvertent oversight to update an amended transaction fee in a footnote. Specifically, on March 14, 2018, the Exchange filed a rule filing, SR–CboeEDGA–2018–004, which proposed, among other things, to implement a fee for its expansion of the Cboe Connect service to provide routing to single-dealer platforms through a connectivity option to be labeled C–LNK.[3] Specifically, the Exchange proposed to charge a fee of $0.0002 for each share executed by a single dealer platform for orders routed via Cboe Connect. The Exchange notes that although it reflected the rate increase in the Cboe Connect portion of the Fee Schedule, it did not add such rate to the Fee Codes and Associated Fees table or adopt a fee code for C–LNK executions. To assist Users that refer to fee codes in connection with their reconciliation of fees imposed by the Exchange, the Exchange proposes to adopt a fee code, fee code LK, and to charge a fee of $0.0002 for each share executed by a single dealer platform for orders routed via Cboe Connect's C–LNK connectivity option. No substantive changes are being made by the proposed rule change.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[4] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[5] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes the proposed rule change to update the Fee Codes and Associated Fees section of the Fee Schedule, will alleviate potential confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system and protecting investors and the public interest. As noted above, the proposed filing does not substantively change any transaction fees, but merely adds a fee code for a fee previously adopted by 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 proposed rule change does not address competitive issues, but rather, as discussed above, is merely intended to add a fee code for a fee previously adopted by the Exchange, which will alleviate potential confusion.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 82904 (March 20, 2018), 83 FR 12995 (March 26, 2018) (SR–CboeEDGA–2018–004).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and paragraph (f) of Rule 19b–4[7] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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–CboeEDGA–2018–018 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–CboeEDGA–2018–018. 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 a.m. and 3 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–CboeEDGA–2018–018 and should be submitted on or before December 17, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–25600 Filed 11–23–18; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84632; File No. SR–CboeEDGX–2018–052]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend Its Rules Regarding How the System Handles Market Orders in Series With No Bid or No Offer

November 20, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 16, 2018, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX Options'') proposes to amend its Rules regarding how the System handles Market Orders in series with no bid or no offer.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(additions are *italicized;* deletions are [bracketed])

* * * * *

Rules of Cboe EDGX Exchange, Inc.

* * * * *

Rule 21.17. Additional Price Protection Mechanisms and Risk Controls

The System's acceptance and execution of orders and quotes are subject to the price protection mechanisms and risk controls in Rule 21.16, this Rule 21.17 (related to all orders other than complex orders), Rule 21.20 (related to complex orders) and as otherwise set forth in the Rules. All numeric values established by the Exchange pursuant to this Rule will be maintained by the Exchange in publicly available specifications and/or published in a Regulatory Circular. Unless otherwise specified the price protections set forth in this Rule, including the numeric values established by the Exchange, may not be disabled or adjusted. The Exchange may share any of a User's risk settings with the Clearing Member that clears transactions on behalf of the User.

(a)–(d) No change.

(e) Market Orders in No-Bid (Offer) Series.

(1) If the System receives a sell Market Order in a series after it is open for trading with an NBB of zero:

(A) if the NBO in the series is less than or equal to $0.50, then the System converts the Market Order to a Limit Order with a limit price equal to the minimum trading increment applicable to the series and enters the order into the EDGX Options Book with a timestamp based on the time it enters the Book. If the order has a Time-in-Force of GTC or GTD that expires on a subsequent day, the order remains on the Book as a Limit Order until it executes, expires, or the User cancels it.

(B) if the NBO in the series is greater than $0.50, then the System cancels or rejects the market order.

(2) If the System receives a buy market order in a series after it is open for trading with an NBO of zero, the System cancels or rejects the market order.

* * * * *

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 2016, the Exchange's parent company, Cboe Global Markets, Inc. (formerly named CBOE Holdings, Inc.) (''Cboe Global''), which is the parent company of Cboe Exchange, Inc. (''Cboe Options'') and Cboe C2 Exchange, Inc., acquired the Exchange, Cboe EDGA Exchange, Inc. (''EDGA''), Cboe BZX Exchange, Inc. (''BZX or BZX Options''), and Cboe BYX Exchange, Inc. (''BYX'' and, together with C2, Cboe Options, EDGX, EDGA, and BZX, the ''Cboe Affiliated Exchanges''). The Cboe Affiliated Exchanges are working to align certain system functionality, retaining only intended differences between the Cboe Affiliated Exchanges, in the context of a technology migration. Thus, the proposals set forth below are intended to add certain functionality to the Exchange's System that is more similar to functionality offered by Cboe Options in order to ultimately provide a consistent technology offering for market participants who interact with the Cboe Affiliated Exchanges. Although the Exchange intentionally offers certain features that differ from those offered by its affiliates and will continue to do so, the Exchange believes that offering similar functionality to the extent practicable will reduce potential confusion for Users.

The Exchange proposes to amend its Rules regarding how the System handles a market order when there is no bid or offer, as applicable, against which the order may execute. A market order is an order to buy or sell at the best price available at the time of execution.[3] Currently, based on this definition, if the System receives a sell market order when there are no bids against which the order may execute, the System cancels the order. Similarly, if the System receives a buy market order when there are no offers against which the order may execute, the System cancels the order. The proposed rule change first codifies this handling of a buy market order when there national best offer (''NBO'') is zero, which is consistent with current functionality.[4] As noted above, this handling is consistent with the definition of a market order.[5] It provides protection for these orders to prevent execution at potentially erroneous prices when a buy order is submitted in a series with no offer.

The Exchange also proposes to amend how the System handles sell Market Orders submitted in a series with no bid. Currently, if the System receives a Market Order to sell in a no-bid series, the System cancels or rejects the order. Pursuant to the proposed rule change, if the System receives a Market Order to sell in an option series with an NBB of zero:

(1) if the NBO in the series is less than or equal to $0.50, then the System converts the Market Order to a limit order with a limit price equal to the minimum trading increment applicable to the series and enters the order into the EDGX Options Book with a timestamp based on the time it enters the Book. If the order has a Time-in-Force of GTC or GTD that expires on a subsequent day, the order remains on the Book as a Limit Order until it executes, expires, or the User cancels it.

(2) if the NBO in the series is greater than $0.50, then the System cancels the Market Order.[6]

The proposed handling of sell Market Orders in no-bid series when the NBO in the series is greater than $0.50 is consistent with current functionality.

The proposed rule change serves as a protection feature for investors in certain situations, such as when a series is no-bid because the last bid traded just prior to entry of the sell Market Order. The purpose of this threshold is to limit the automatic booking of Market Orders to sell at minimum increments to only those for true zero-bid options, as options in no-bid series with an offer of greater than $0.50 are less likely to be worthless.

For example, if the System receives a sell Market Order in a no-bid series with a minimum increment of $0.01 and the NBO is $0.01, the System will convert the order to a Limit Order with a price of $0.01 and enter it on the EDGX Options Book. Because the order will have a timestamp based on that time of Book entry, it will have priority behind any other Limit Orders to sell at $0.01 that were already resting on the Book. At that point, even if the series is no-bid because, for example, the last bid just traded and the limit order trades at $0.01, the next bid entered after the trade would not be higher than $0.01. If the order has a Time-in-Force of GTC or GTD that expires on a subsequent day, the order remains on the Book until it executes, expires, or the User cancels it.[7]

However, if the System receives a sell Market Order in a no-bid series with a minimum increment of $0.01 and the NBO is $1.20 (because, for example, the last bid of $1.00 just traded and a new bid has not yet populated the disseminated quote), the System will cancel or reject the order. Cancellation prevents an anomalous execution price, since the next bid entered in that series is likely to be much higher than $0.01. It would be unfair to the User to let is Market Order trade as a limit order for $0.01 because, for example, the firm submitted the order during the brief time when there were no disseminated bids in a series trading significantly higher than the minimum increment.

The Exchange believes the threshold of $0.50 is reasonable. The Exchange notes that this threshold is the same as the threshold in the Cboe Options rule,[8] and is less than the current width for the Market Order NBBO width protection, pursuant to which the System will reject or cancel back to the User a Market Order submitted to the System when the NBBO width is greater than 100% of the midpoint of the NBBO, subject to a $5 minimum and $10 maximum.[9] Notwithstanding this provision, the proposed rule change would allow for the potential execution

[3] *See* Rule 21.1(d)(5).

[4] *See* proposed Rule 21.17(e)(2).

[5] The proposed rule change is also consistent with Cboe Options functionality and C2 Rule 6.14(a)(1).

[6] *See* proposed Rule 21.17(e)(1).

[7] This functionality is consistent with the purpose of a GTC or GTD that expires on a subsequent trading day, which is to remain on the Book and available for execution until the User cancels it or until the time specified by the User. The Exchange notes that market orders with any other Time-in-Force would no longer be on the Book if they did not execute during the trading day.

[8] *See* Cboe Options Rule 6.13(b)(vi).

[9] *See* Rule 21.17(a); *see also* Exchange Notice, *BZX and EDGX Options Exchanges Feature Pack 2—Update* (December 14, 2017), available at *http://markets.cboe.com/resources/release_notes/2017/Update-2-Cboe-BZX-and-EDGX-Options-Exchanges-Feature-Pack-2.pdf,* for current settings. Pursuant to this protection, if the NBBO for a series was $0.00–$0.50, the width of the NBBO (0.50) is greater than 100% of the midpoint (0.25); however, pursuant to the minimum, a market order would be accepted pursuant to this protection because the width is less than the 5.00 minimum. The proposed rule change provides additional price protection for market orders in no-bid series.

of sell Market Orders in no-bid series with offers less than or equal to $0.50. If the threshold in the proposed rule change was higher, there would be increased risk of having a Market Order trade a minimum increment in a series that is not truly no-bid. The proposed rule change is substantially the same as Cboe Options Rule 6.13(b)(vi).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[10] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[11] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[12] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change regarding the handling of sell Market Orders in no-bid series assists with the maintenance of fair and orderly markets and protects investors and the public interest, because it provides for automated handling of orders in series that are likely truly no-bid, ultimately resulting in more efficient executions of these orders. Additionally, the proposed rule change prevents executions of sell Market Orders in no-bid series with higher offers at potentially extreme prices in series that are not truly no-bid. The Exchange believes this threshold appropriately reflects the interests of investors, as options in no-bid series with offers higher than $0.50 are less likely to be worthless than no-bid series with offers no higher than $0.50, and cancelling the orders will prevent execution of these orders at unfavorable prices. The Exchange also believes the $0.50 threshold promotes fair and orderly markets, because sell Market Orders in no-bid series with offers of $0.50 or less are likely to be individuals seeking to close out a worthless position, for which the proposed automatic handling is appropriate. The proposed change is also substantially the same as Cboe Options Rule 6.13(b)(vi).

The proposed handling of buy Market Orders in no-offer series benefits investors, because it codifies current order handling and thus provides investors with more transparency in the Rules with respect to how the System will handle these orders. The proposed change is also substantially the same as C2 Rule 6.14(a)(1).

When Cboe Options migrates to the same technology as that of the Exchange and other Cboe Affiliated Exchanges, Users of the Exchange and other Cboe Affiliated Exchanges will have access to similar functionality on all Cboe Affiliated Exchanges and similar language can be incorporated into the rules of all Cboe Affiliated Exchanges. As such, the proposed rule 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.

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 changes will impose any burden on intramarket competition, because it will apply in the same manner to all buy or sell Market Orders submitted in no-offer or no-bid series, respectively. Additionally, the proposed rule change has no impact on sell Market Orders submitted in no-bid series with an offer of more than $0.50 or on buy Market Orders submitted in no-offer series, which orders will continue to be handled in the same manner as they are today (*i.e.* they will be cancelled or rejected). The Exchange does not believe the proposed rule change will impose any burden on intermarket competition, as it will provide sell Market Orders in true no-bid series with additional execution opportunities (either on the Exchange or at away markets pursuant to linkage rules) while providing an additional protection measure for sell Market Orders in no-bid series that may not be truly no-bid. As noted above, the proposed rule change has no impact on the handling of all other sell Market Orders in no-bid series or on buy Market Orders in no-offer series. The Exchange believes this price protection will allow Members to sell Market Orders with reduced fear of inadvertent exposure to excessive risk, which will benefit investors through increased liquidity for the execution of their orders.

The proposed rule change related to the handling of buy Market Orders is consistent with current Exchange functionality and will have no impact on how those orders will handled, and it is substantially the same as C2 Rule 6.14(a)(1). The proposed rule change related to the handling of sell Market Orders is substantially the same as Cboe Options Rule 6.13(b)(vi).[13]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[14] and subparagraph (f)(6) of Rule 19b–4 thereunder.[15]

A proposed rule change filed under Rule 19b–4(f)(6)[16] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii)[17] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] *Id.*

[13] The Exchange notes other options exchanges have similar rules that convert sell market orders in no-bid series to limit orders with a price of a minimum increment if the offer in the series is below a certain threshold (the thresholds differ in those rules). *See, e.g.,* Miami International Securities Exchange, LLC (''MIAX'') Rule 519(a)(1); and NASDAQ ISE, LLC (''ISE'') Rule 713(b).

[14] 15 U.S.C. 78s(b)(3)(A)(iii).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become effective and operative on November 29, 2018. The Exchange states that waiver of the operative delay will provide Users with additional flexibility to manage and display their orders and provide additional control over their executions on the Exchange as soon as possible. The Exchange further states that waiver of the operative delay will allow the Exchange to continue to strive towards a complete technology integration of the Cboe Affiliated Exchanges, with gradual roll-outs of new functionality to ensure the stability of the System. The Exchange notes that the proposed rule change is generally intended to codify and to add certain system functionality to the Exchange's System in order to provide a consistent technology offering for the Cboe Affiliated Exchanges. The Exchange further notes that a consistent technology offering will simplify the technology implementation changes and maintenance by Trading Permit Holders of the Exchange that are also participants on Cboe Affiliated Exchanges. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative on November 29, 2018.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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–CboeEDGX–2018–052 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGX–2018–052. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGX–2018–052 and should be submitted on or before December 17, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Eduardo A. Aleman,

Assistant Secretary.

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BILLING CODE 8011–01–P

[18] 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).

[19] 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:

Interactive Data, SEC File No. 270–330, OMB Control No. 3235–0645.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') 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 for extension and approval.

The ''Interactive Data'' collection of information requires issuers filing registration statements under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) and reports under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) to submit specified financial information to the Commission and post it on their corporate websites, if any, in interactive data format using eXtensible Business Reporting Language (XBRL). This collection of information is located primarily in registration statement and report exhibit provisions, which require interactive data, and Rule 405 of Regulation S–T (17 CFR 232.405), which specifies how to submit and post interactive data. The exhibit provisions are in Item 601(b)(101) of Regulation S–K (17 CFR 229.601(b)(101), F–10 under the Securities Act (17 CFR 239.40) and Forms 20–F, 40–F and 6–K under the Exchange Act (17 CFR 249.220f, 17 CFR 249.240f and 17 CFR 249.306).

In interactive data format, financial statement information could be downloaded directly into spreedsheets and analyzed in a variety of ways using commercial off-the-shelf software. The specified financial information already is and will continue to be required to be submitted to the Commission in traditional format under existing requirements. The purpose of the interactive data requirement is to make financial information easier for investors to analyze and assist issuers in automating regulatory filings and business information processing. We estimate that 10,229 respondents per year will each submit an average of 4.5 reponses per year for an estimated total of 46,031 responses. We further estimate an internal burden of 59 hours per

response for a total annual internal burden of 2,715,829 hours (59 hours per response × 46,031 responses).

Written comments are invited on: (a) Whether this 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 agency's estimate of the burden imposed by 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.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment 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 20, 2018.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–25687 Filed 11–23–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84619; File No. SR–CboeEDGX–2018–051]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Reserve Orders

November 19, 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 5, 2018, Cboe EDGX Exchange, Inc. (''Exchange'' or ''''EDGX'''') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX Options'') proposes to adopt Reserve Orders.

(additions are *italicized;* deletions are [bracketed])

* * * * *

Rules of Cboe EDGX Exchange, Inc.

* * * * *

Rule 21.1. Definitions

The following definitions apply to Chapter XXI for the trading of options listed on EDGX Options.

(a)–(c) No change.

(d) The term ''Order Type'' shall mean the unique processing prescribed for designated orders that are eligible for entry into the System, and shall include:

(1) [(Reserved.)] ''*Reserve Orders*'' *are limit orders that have both a portion of the quantity displayed (*''*Display Quantity*''*) and a reserve portion of the quantity (*''*Reserve Quantity*''*) not displayed. Both the Display Quantity and Reserve Quantity of the Reserve Order are available for potential execution against incoming orders. When entering a Reserve Order, a User must instruct the Exchange as to the quantity of the order to be initially displayed by the System (*''*Max Floor*''*). If the Display Quantity of a Reserve Order is fully executed, the System will, in accordance with the User's instruction, replenish the Display Quantity from the Reserve Quantity using one of the below replenishment instructions. If the remainder of an order is less than the replenishment amount, the System will display the entire remainder of the order. The System creates a new timestamp for both the Display Quantity and Reserve Quantity of the order each time it is replenished from reserve.*

(A) Random Replenishment. An instruction that a User may attach to an order with Reserve Quantity where the System randomly replenishes the Display Quantity for the order with a number of contracts not outside a replenishment range, which equals the Max Floor plus and minus a replenishment value established by the User when entering a Reserve Order with a Random Replenishment instruction.

(B) Fixed Replenishment. For any order that a User does not select Random Replenishment, the System will replenish the Display Quantity of the order with the number of contracts equal to the Max Floor.

(2)–(12) No change.

(e)–(j) No change.

* * * * *

Rule 21.6. Entry of Orders

Users can enter orders into the System, subject to the following requirements and conditions:

(a) Users shall be permitted to transmit to the System multiple orders at a single as well as multiple price levels. *Each order will indicate the Reserve Quantity (if applicable).*

(b)–(f) No change.

* * * * *

Rule 21.8. Order Display and Book Processing

(a)–(k) No change.

(l) *Nondisplayed Orders. Displayed orders have priority over nondisplayed orders. Nondisplayed portions of Reserve Orders are allocated in accordance with paragraph (c) above, but additional priority overlays do not apply, except for the Customer Overlay (if applicable).*

* * * * *

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 2016, the Exchange's parent company, Cboe Global Markets, Inc. (formerly named CBOE Holdings, Inc.) (''Cboe Global''), which is also the parent company of Cboe Exchange, Inc. (''Cboe Options'') and Cboe C2 Exchange, Inc. (''C2''), acquired the Exchange and its affiliated exchanges,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Cboe EDGA Exchange, Inc. (''EDGA''), Cboe BZX Exchange, Inc. (''BZX or BZX Options''), and Cboe BYX Exchange, Inc. (''BYX'' and, together with C2, Cboe Options, EDGX, EDGA, and BZX, the ''Cboe Affiliated Exchanges''). In this context, EDGX Options proposes to align certain system functionality with C2 and BZX Options. Although the Exchange intentionally offers certain features that differ from those offered by the Cboe Affiliated Exchange and will continue to do so, the Exchange believes offering similar functionality to the extent practicable will reduce potential confusion for market participants.

The proposed rule change adopts Reserve Orders. Reserve Orders permit Users to enter orders with both displayed and nondisplayed amounts. Specifically, proposed Rule 21.1(d)(1) provides that ''Reserve Orders'' are limit orders that have both a portion of the quantity displayed (''Display Quantity'') and a reserve portion of the quantity (''Reserve Quantity'') not displayed.[3] Both the Display Quantity and Reserve Quantity of the Reserve Order are available for potential execution against incoming orders. When entering a Reserve Order, a User must instruct the Exchange as to the quantity of the order to be initially displayed by the System (''Max Floor''). If the Display Quantity of a Reserve Order is fully executed, the System will, in accordance with the User's instruction, replenish the Display Quantity from the Reserve Quantity using one of two replenishment options, as described below. If the remainder of an order is less than the replenishment amount, the System will display the entire remainder of the order. The System creates a new timestamp for both the Display Quantity and Reserve Quantity of the order each time it is replenished from reserve.

A User may determine that a Reserve Order should be subject to ''Random Replenishment'' or ''Fixed Replenishment.'' If a Reserve Order has a Random Replenishment instruction, the System randomly replenishes the Display Quantity for the order with a number of contracts not outside a replenishment range, which equals the Max Floor plus and minus a replenishment value established by the User when entering a Reserve Order with a Random Replenishment instruction. For any order that a User does not select Random Replenishment, the System will replenish the Display Quantity of the order with the number of contracts equal to the Max Floor.

Pursuant to proposed Rule 21.8(l), displayed orders have priority over nondisplayed orders. In other words, while both portions of a Reserve Order may execute against incoming marketable orders, the displayed portion will be executed first, and the non-displayed portion will only execute after all displayed interest (from other orders) at that price has executed. Nondisplayed portions of Reserve Orders are allocated in accordance with Rule 21.8(c), but additional priority overlays will not apply, except for the Customer Overlay (if applicable). Therefore, if there are nondisplayed portions of multiple Reserve Orders at the same price that can execute against an incoming marketable order, those nondisplayed portions will be allocated in a pro-rata manner; however, if the Customer Overlay has been applied to the class, the nondisplayed portion of any Customer Reserve Orders will execute first. The Exchange notes that pursuant to Rule 22.13, Interpretation and Policy .03, with respect to nondisplayed trading interest, including the Reserve Quantity of a Reserve Order, the exposure requirement in Rule 22.13(a) is satisfied if the displayable portion of the order (the Display Quantity) is displayed at its displayable price for one second.

The proposed rule change is substantially the same as the rules of other options exchanges.[4]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed rule change is generally intended to add certain system functionality currently offered by C2 and BZX Options to the Exchange's System in order to provide a consistent technology offering for the Cboe Affiliated Exchanges. A consistent technology offering, in turn, will simplify the technology implementation, changes and maintenance by Users of the Exchange that are also participants on Cboe Affiliated Exchanges. The proposed rule change will provide Users with additional flexibility to manage and display their orders on the Exchange, as well as increased functionality on the Exchange. This may encourage market participants to bring additional liquidity to the market, which benefits all investors. Additionally, this will provide Users with greater harmonization between the order handling instructions available among the Cboe Affiliated Exchanges.

The proposed rule change also removes impediments to and perfect the mechanism of a free and open market and a national market system because the proposed functionality is available on other options exchanges.[8] The proposed rule change does not propose to implement new or unique functionality that has not been previously filed with the Commission or is not available on Cboe Affiliated Exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will not impose a burden on intramarket competition, because the use of Reserve Orders, like all other order instructions available on the Exchange, is voluntary. Reserve Orders entered by all Users will be handled in the same manner. The proposed rule change will not impose a burden on intermarket competition, because Reserve Order functionality is available on other options exchanges.[9]

[3] The proposed change to Rule 21.6(a) states that each order will indicate the Reserve Quantity (if applicable).

[4] *See, e.g.,* C2 Rules 1.1 (definition of Reserve order in Order Instruction definition) and 6.12(a)(3); and BZX Options Rules 21.1(d)(1) and 21.8(a)(2).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] *Id.*

[8] *See supra* note 6.

[9] *Id.*

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [10] and subparagraph (f)(6) of Rule 19b–4 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, Rule 19b–4(f)(6)(iii) [13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become effective and operative immediately upon filing. The Exchange states that waiver of the operative delay will provide Users with additional flexibility to manage and display their orders and provide additional control over their executions on the Exchange as soon as possible. The Exchange further states that waiver of the operative delay will allow the Exchange to continue to strive towards a complete technology integration of the Cboe Affiliated Exchanges, with gradual roll-outs of new functionality to ensure the stability of the System. The Exchange notes that the proposed rule change is generally intended to codify and to add certain system functionality to the Exchange's System in order to provide a consistent technology offering for the Cboe Affiliated Exchanges. The Exchange further notes that a consistent technology offering will simplify the technology implementation changes and maintenance by Trading Permit Holders of the Exchange that are also participants on Cboe Affiliated Exchanges. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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–CboeEDGX–2018–051 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGX–2018–051. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGX–2018–051 and should be submitted on or before December 17, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–25596 Filed 11–23–18; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[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).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84636; File No. SR–NYSEAMER–2018–49]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Article II, Section 2.03(h)(ii) and Article VI of Its Operating Agreement

November 20, 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 9, 2018, NYSE American LLC (''Exchange'' or ''NYSE American'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Article II, Section 2.03(h)(ii) and Article VI of its operating agreement to harmonize certain provisions with similar provisions in the governing documents of the Exchange's national securities exchange affiliates and parent companies, as well as make clarifying, technical and conforming changes. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

(1) Generally

The Exchange proposes to amend Article II, Section 2.03(h)(ii) (Board) and Article VI (Indemnification and Exculpation) of the Eleventh Amended and Restated Operating Agreement of the Exchange (''Operating Agreement'') to harmonize certain provisions with similar provisions in the governing documents of the Exchange's national securities exchange affiliates [4] and parent companies, as well as make clarifying, technical and conforming changes.

The Exchange is owned by NYSE Group, Inc., which in turn is indirectly wholly owned by NYSE Holdings LLC (''NYSE Holdings''). NYSE Holdings is a wholly owned subsidiary of Intercontinental Holdings, Inc. (''ICE Holdings''), which is in turn wholly owned by the Intercontinental Exchange, Inc. (''ICE'').[5]

The Exchange operates as a separate self-regulatory organization and has rules, membership rosters and listings distinct from the rules, membership rosters and listings of the other NYSE Group Exchanges. At the same time, however, the Exchange believes it is important for each of the NYSE Group Exchanges to have a consistent approach to corporate governance in certain matters, to simplify complexity and create greater consistency among the NYSE Group Exchanges.[6] The proposed amendments to the Operating Agreement reflect the expectation that the Exchange will continue to be operated with a governance structure substantially similar to that of other NYSE Group Exchanges.

The proposed amendment to Article II, Section 2.03(h)(ii) is based on the Second Amended and Restated By-Laws of NYSE Chicago, Inc. (''NYSE Chicago Bylaws'').[7] The proposed amendments to Article VI are based on the Eighth Amended and Restated Bylaws of Intercontinental Exchange, Inc. (''ICE Bylaws'') and the Sixth Amended and Restated Bylaws of Intercontinental Exchange Holdings, Inc. (''ICE Holdings Bylaws'').

The Exchange proposes to amend the Operating Agreement as follows.

Article II, Section 2.03(h)(ii)

Article II, Section 2.03(h)(ii) establishes the powers and responsibilities of the Regulatory Oversight Committee (''ROC''), and is substantially the same as the related provisions in the governing documents of the other NYSE Group Exchanges.[8] Among other things, the provision states that ''[t]he Board may, on affirmative vote of a majority of directors, at any time remove a member of the ROC for cause.'' The Exchange proposes to add language clarifying that the majority affirmative vote requirement is based on the ''directors then in office,'' as opposed to total number of seats on the Board. The change would be consistent with Article IV, Section 6 of the NYSE Chicago Bylaws.[9]

Article VI

Section 6.02 (Indemnification)

Current Section 6.02 includes provisions related to indemnification by the Exchange. As a wholly-owned subsidiary of ICE, the Exchange believes it appropriate to harmonize the Exchange's indemnification provisions with those of ICE and the Exchange's intermediate holding company, ICE Holdings.[10] The same change was made to Article VI of the NYSE Chicago Bylaws.[11]

Accordingly, the Exchange proposes to delete the text of Section 6.02 in its entirety and replace it with proposed text that is substantially similar to the CHX, ICE and ICE Holdings provisions, with the exception of changes to be consistent with the Operating Agreement's terminology.[12] The proposed text follows:

(a) The Company shall, to the fullest extent permitted by Law (as defined below), as such Law may be amended and supplemented from time to time, indemnify any director or officer made, or threatened to be made, a party to any action, suit or proceeding, whether criminal, civil, administrative or investigative, by reason of being a director or officer of the Company or a predecessor company or, at the Company's request, a director, officer, partner, member, employee or agent of another entity; provided, however, that the Company shall indemnify any director or officer in connection with a proceeding initiated by such person

[4] The Exchange has four registered national securities exchange affiliates: the New York Stock Exchange LLC (''NYSE''), NYSE Arca, Inc. (''NYSE Arca''), NYSE National, Inc. (''NYSE National''), and Chicago Stock Exchange, Inc. (''CHX'' and together with the Exchange, NYSE, NYSE Arca, and NYSE National, the ''NYSE Group Exchanges''). CHX has filed to change its name to NYSE Chicago, Inc. *See* Exchange Act Release No. 84494 (October 26, 2018), 83 FR 54953 (November 1, 2018) (SR–CHX–2018–05) (''NYSE Chicago Release'') (notice of filing and immediate effectiveness of proposal to reflect name changes of the Exchange and its direct parent company and to amend certain corporate governance provisions). The rule changes set forth in the NYSE Chicago Release will become operative upon the Second Amended and Restated Certificate of Incorporation of Chicago Stock Exchange, Inc. (''NYSE Chicago Certificate'') becoming effective pursuant to its filing with the Secretary of State of the State of Delaware.

[5] *See* Exchange Act Release No. 72156 (May 13, 2014), 79 FR 28782 (May 19, 2014) (SR–NYSEMKT–2014–41) (notice of filing and immediate effectiveness of proposed rule change relating to name changes of its ultimate parent and its indirect parents).

[6] *See* NYSE Chicago Release, *supra* note 4, at 54953.

[7] The NYSE Chicago Bylaws will become operative when the NYSE Chicago Certificate becomes effective pursuant to its filing with the Secretary of State of the State of Delaware. *Id.*

[8] *See* Eleventh Amended and Restated Operating Agreement of New York Stock Exchange LLC, Article II, Section 2.03(h)(ii); NYSE Arca Rule 3.3; Fifth Amended and Restated Bylaws of NYSE National, Inc., Article V, Section 5.6; NYSE Chicago Bylaws, Article IV, Section 6.

[9] *See* NYSE Chicago Release, *supra* note 4, at 54961. The Exchange understands that the NYSE, NYSE National and NYSE Arca propose to file similar changes to their respective ROC provisions.

[10] *See* ICE Bylaws, Article X, Section 10.6, and ICE Holdings Bylaws, Article X, Section 10.6.

[11] *See* NYSE Chicago Release, *supra* note 4, at 54962–54963. The Exchange understands that the NYSE, NYSE National and NYSE Arca propose to file similar changes to their respective indemnification provisions.

[12] For example, proposed Section 6.02 uses ''officer'' instead of ''Senior Officers,'' ''Company'' instead of ''Corporation,'' and ''Section 6.02'' instead of ''Section 10.6.''

only if such proceeding was authorized in advance by the Board of Directors of the Company. The indemnification provided for in this Section 6.02 shall: (i) Not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement or vote of stockholders or disinterested directors or otherwise, both as to action in their official capacities and as to action in another capacity while holding such office; (ii) continue as to a person who has ceased to be a director or officer; and (iii) inure to the benefit of the heirs, executors and administrators of an indemnified person.

(b) Expenses incurred by any such person in defending a civil or criminal action, suit or proceeding by reason of the fact that he is or was a director or officer of the Company (or was serving at the Company's request as a director, officer, partner, member, employee or agent of another entity) shall be paid by the Company in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Company as authorized by Law. Notwithstanding the foregoing, the Company shall not be required to advance such expenses to a person who is a party to an action, suit or proceeding brought by the Company and approved by a majority of the Board of Directors of the Company that alleges willful misappropriation of corporate assets by such person, disclosure of confidential information in violation of such person's fiduciary or contractual obligations to the Company or any other willful and deliberate breach in bad faith of such person's duty to the Company or its stockholders.

(c) The foregoing provisions of this Section 6.02 shall be deemed to be a contract between the Company and each director or officer who serves in such capacity at any time while this bylaw is in effect, and any repeal or modification thereof shall not affect any rights or obligations then existing with respect to any state of facts then or theretofore existing or any action, suit or proceeding theretofore or thereafter brought based in whole or in part upon any such state of facts. The rights provided to any person by this bylaw shall be enforceable against the Company by such person, who shall be presumed to have relied upon it in serving or continuing to serve as a director or officer or in such other capacity as provided above.

(d) The Board of Directors in its discretion shall have power on behalf of the Company to indemnify any person, other than a director or officer, made or threatened to be made a party to any action, suit or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that such person, or his or her testator or intestate, is or was an officer, employee or agent of the Company or, at the Company's request, is or was serving as a director, officer, partner, member, employee or agent of another company or other entity.

(e) For purposes of this Section 6.02, ''Law'' shall mean the laws governing the indemnification of, and advancement of expenses to, directors, officers, employees and agents of Delaware corporations, including Section 145 of the General Corporation Law of the State of Delaware (''Section 145''), with such laws being applicable to the Exchange as if the Exchange were a Delaware corporation. To assure indemnification under this Section 6.02 of all directors, officers, employees and agents who are determined by the Company or otherwise to be or to have been ''fiduciaries'' of any employee benefit plan of the Company that may exist from time to time, Section 145 shall, for the purposes of this Section 6.02, be interpreted as follows: An ''other enterprise'' shall be deemed to include such an employee benefit plan, including without limitation, any plan of the Company that is governed by the Act of Congress entitled ''Employee Retirement Income Security Act of 1974,'' as amended from time to time; the Company shall be deemed to have requested a person to serve an employee benefit plan where the performance by such person of his duties to the Company also imposes duties on, or otherwise involves services by, such person to the plan or participants or beneficiaries of the plan; excise taxes assessed on a person with respect to an employee benefit plan pursuant to such Act of Congress shall be deemed ''fines.''

Section 6.03 (Non Exclusivity of Rights)

Current Section 6.03 states that the rights to indemnification and the payment of expenses conferred are not exclusive of any other right a person has. Because the non-exclusivity of rights would now be addressed in the final sentence of proposed Section 6.02(a), the Exchange proposes to delete Section 6.03 in its entirety. The deletion would be consistent with the indemnity provisions of the ICE, ICE Holdings and NYSE Chicago Bylaws, which do not have separate provisions regarding the non-exclusivity of rights.[13]

The remaining sections of Article VI would be renumbered accordingly.

Additional Proposed Amendments

The Exchange proposes to make technical and conforming changes to the title, recitals and signature page of the Operating Agreement.[14]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act,[15] in general, and furthers the objectives of Section 6(b)(1)[16] in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,[17] 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 mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed amendments to the Operating Agreement would contribute to the orderly operation of the Exchange and would enable the Exchange to be so organized as to have the capacity to carry out the purposes of the Exchange Act and comply with the provisions of the Exchange Act by its members and persons associated with members. The proposed changes would create greater conformity between the ROC and indemnification provisions of the Operating Agreement and those of the governing documents of CHX, ICE and ICE Holdings. The Exchange believes that such conformity would streamline the NYSE Group Exchanges' corporate

[13] *See* ICE Bylaws, Article X; ICE Holdings Bylaws, Article X; and NYSE Chicago Bylaws, Article VI.

[14] The Operating Agreement was last amended in March 2018. *See* Exchange Act Release No. 13161 (March 22, 2018), 83 FR 13161 (March 27, 2018) (SR–NYSEAMER–2018–10); *see also* Exhibit 5B to SR–NYSEAMER–2018–10 (March 13, 2018).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(1).

[17] 15 U.S.C. 78f(b)(5).

processes, create more equivalent governance processes among them, and also provide clarity to the Exchange's members, which is beneficial to both investors and the public interest. At the same time, the Exchange will continue to operate as a separate self-regulatory organization and to have rules, membership rosters and listings distinct from the rules, membership rosters and listings of the other NYSE Group Exchanges.

For the same reason, the Exchange believes that the greater consistency among the governing documents of the NYSE Group Exchanges, ICE and ICE Holdings would promote the maintenance of a fair and orderly market, the protection of investors and the protection of the public interest. Indeed, the proposed amendments would make the corporate requirements and administrative processes relating to the Board and ROC more similar to those of CHX, which have been established as fair and designed to protect investors and the public interest.[18]

The proposed amendments to effect non-substantive technical and conforming changes would remove impediments to and perfect the mechanism of a free and open market by ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the governing documents. The Exchange further believes that the proposed amendments would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased transparency and clarity, thereby reducing 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 furtherance of the purposes of the Exchange Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with the corporate governance and administration of 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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[19] and Rule 19b–4(f)(6) thereunder.[20] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

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)[21] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2018–49 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2018–49. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2018–49 and should be submitted on or before December 17, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–25738 Filed 11–23–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2 p.m. on Thursday, November 29, 2018.

PLACE: The meeting will be held at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

[18] *See, e.g.* NYSE Chicago Release, *supra* note 3; and Exchange Act Release Nos. 83303 (May 22, 2018), 83 FR 24517 (May 29, 2018) (SR–CHX–2018–004).

[19] 15 U.S.C. 78s(b)(3)(A)(iii).

[20] 17 CFR 240.19b–4(f)(6).

[21] 15 U.S.C. 78s(b)(2)(B).

[22] 17 CFR 200.30–3(a)(12).

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Peirce, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matters of the closed meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: November 20, 2018.

Brent J. Fields,

Secretary.

[FR Doc. 2018–25748 Filed 11–21–18; 11:15 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:

Form T–6, SEC File No. 270–344, OMB Control No. 3235–0391.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') 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 for extension and approval.

Form T–6 (17 CFR 269.9) is an application for eligibility and qualification for a foreign person or corporation under the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*). Form T–6 provides the basis for determining whether a foreign person or corporation is eligible to serve as a trustee for qualified indenture. Form T–6 takes approximately 17 burden hours per response and is filed by approximately one respondent annually. We estimate that 25% of the 17 hours (4.25 hours) is prepared by the filer for an annual reporting burden of 4 hours (4.25 hours per response × 1 response).

Written comments are invited on: (a) Whether this 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 agency's estimate of the burden imposed by 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 collections 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 unless it displays a currently valid control number.

Please direct your written comment 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 20, 2018.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–25688 Filed 11–23–18; 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:

Form T–1, SEC File No. 270–121, OMB Control No. 3235–0110.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') 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 for extension and approval.

Form T–1 (17 CFR 269.1) is a statement of eligibility and qualification under the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*) of a corporation designated to act as a trustee under an indenture. The information is used to determine whether the corporation is qualified to serve as a trustee. Form T–1 takes approximately 15 hours per response to prepare and is filed by approximately 2 respondents. We estimate that 25% of the 15 hours (4 hours per response) is prepared by the company for a total reporting burden of 8 hours (4 hours per response × 2 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by 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.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment 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 20, 2018.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–25686 Filed 11–23–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84626; File No. SR–OCC–2018–804]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Advance Notice, as Modified by Partial Amendment No. 1, Related to The Options Clearing Corporation's Margin Methodology for Incorporating Variations in Implied Volatility

November 19, 2018.

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing and Settlement Supervision Act of 2010 (''Clearing Supervision Act'') [1] and Rule 19b–4(n)(1)(i) [2] under the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[3] notice is hereby given that on October 22, 2018, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') an advance notice as described in Items I, II and III below, which Items have been prepared by OCC. On October 30, 2018, OCC filed Partial Amendment No. 1 to the advance notice.[4] The Commission is publishing this notice to solicit comments on the advance notice from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This advance notice is filed in connection with proposed changes to enhance OCC's model for incorporating variations in implied volatility within OCC's margin methodology (''Implied Volatility Model''), the System for Theoretical Analysis and Numerical Simulations (''STANS'').[5] The proposed changes to OCC's Margins Methodology document are contained in confidential Exhibit 5 of the filing. Material proposed to be added is marked by underlining and material proposed to be deleted is marked by strikethrough text. The proposed changes are described in detail in Item 10 below. The proposed changes do not require any changes to the text of OCC's By-Laws or Rules. The advance notice is available on OCC's website at *https://www.theocc.com/about/publications/bylaws.jsp.* All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the OCC By-Laws and Rules.[6]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the advance notice and discussed any comments it received on the advance notice. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections A and B below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement on Comments on the Advance Notice Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received. OCC will notify the Commission of any written comments received by OCC.

(B) Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing, and Settlement Supervision Act

Description of the Proposed Change

Background

STANS Overview

STANS is OCC's proprietary risk management system for calculating Clearing Member margin requirements.[7] The STANS methodology utilizes large-scale Monte Carlo simulations to forecast price and volatility movements in determining a Clearing Member's margin requirement.[8] STANS margin requirements are calculated at the portfolio level of Clearing Member accounts with positions in marginable securities and consists of an estimate of two primary components: A base component and a stress test add-on component. The base component is an estimate of a 99% expected shortfall [9] over a two-day time horizon. The concentration/dependence stress test charge is obtained by considering increases in the expected margin shortfall for an account that would occur due to (i) market movements that are especially large and/or in which certain risk factors would exhibit perfect or zero correlations rather than correlations otherwise estimated using historical data or (ii) extreme and adverse idiosyncratic movements for individual risk factors to which the account is particularly exposed. The STANS methodology is used to measure the exposure of portfolios of options and futures cleared by OCC and cash instruments in margin collateral.[10]

The econometric models underlying STANS currently incorporate a number of risk factors. A ''risk factor'' within OCC's margin system is defined as a product or attribute whose historical data is used to estimate and simulate the risk for an associated product. The majority of risk factors utilized in the STANS methodology are the returns on individual equity securities; however, a number of other risk factors may be considered, including, among other things, returns on implied volatility risk factors.[11]

Current Implied Volatility Model in STANS

Generally speaking, the implied volatility of an option is a measure of the expected future volatility of the option's underlying security at expiration, which is reflected in the current option premium in the market. Using the Black-Scholes options pricing model, the implied volatility is the standard deviation of the underlying asset price necessary to arrive at the market price of an option of a given strike, time to maturity, underlying asset price and the current risk-free rate. In effect, the implied volatility is

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] 15 U.S.C. 78a *et seq.*

[4] In Partial Amendment No. 1, OCC corrected an error in Exhibit 5 without changing the substance of the advance notice.

[5] OCC also has filed a proposed rule change with the Commission in connection with the proposed changes. *See* SR–OCC–2018–014.

[6] OCC's By-Laws and Rules can be found on OCC's public website: *http://optionsclearing.com/about/publications/bylaws.jsp.*

[7] *See* Securities Exchange Act Release No. 53322 (February 15, 2006), 71 FR 9403 (February 23, 2006) (SR–OCC–2004–20). A detailed description of the STANS methodology is available at *http://optionsclearing.com/risk-management/margins/.*

[8] *See* OCC Rule 601.

[9] The expected shortfall component is established as the estimated average of potential losses higher than the 99% value at risk threshold. The term ''value at risk'' or ''VaR'' refers to a statistical technique that, generally speaking, is used in risk management to measure the potential risk of loss for a given set of assets over a particular time horizon.

[10] OCC notes that, pursuant to OCC Rule 601(e)(1), OCC also calculates initial margin requirements for segregated futures accounts using the Standard Portfolio Analysis of Risk Margin Calculation System (''SPAN''). No changes are proposed to OCC's use of SPAN because the proposed changes do not concern futures. *See* Securities Exchange Act Release No. 72331 (June 5, 2014), 79 FR 33607 (June 11, 2014) (SR–OCC–2014–13).

[11] In December 2015, the Commission approved a proposed rule change and issued a Notice of No Objection to an advance notice filing by OCC to its modify margin methodology by more broadly incorporating variations in implied volatility within STANS. *See* Securities Exchange Act Release No. 76781 (December 28, 2015), 81 FR 135 (January 4, 2016) (SR–OCC–2015–016) and Securities Exchange Act Release No. 76548 (December 3, 2015), 80 FR 76602 (December 9, 2015) (SR–OCC–2015–804). As discussed further below, implied volatility risk factors in STANS are a set of chosen volatility pivot points per product, depending on the tenor of the option.

responsible for that portion of the premium that cannot be explained by the then-current intrinsic value of the option (*i.e.,* the difference between the price of the underlying and the exercise price of the option), discounted to reflect its time value. OCC considers variations in implied volatility within STANS to ensure that the anticipated cost of liquidating options positions in an account recognizes the possibility that implied volatility could change during the two-business day liquidation time horizon and lead to corresponding changes in the market prices of the options.

OCC models the variations in implied volatility used to re-price options within STANS for substantially all option contracts [12] available to be cleared by OCC that have a residual tenor [13] of less than three years (''Shorter Tenor Options'').[14] To address variations in implied volatility, OCC models a volatility surface [15] for Shorter Tenor Options by incorporating into the econometric models underlying STANS certain risk factors (*i.e.,* implied volatility pivot points) based on a range of tenors and option deltas.[16] Currently, these implied volatility pivot points consist of three tenors of one month, three months and one year, and three deltas of 0.25, 0.5, and 0.75, resulting in nine implied volatility risk factors. These pivot points are chosen such that their combination allows the model to capture changes in level, skew, convexity and term structure of the implied volatility surface. OCC uses a GARCH model [17] to forecast the volatility for each implied volatility risk factor at the nine pivot points.[18] For each Shorter Tenor Option in the account of a Clearing Member, changes in its implied volatility are simulated using forecasts obtained from daily implied volatility market data according to the corresponding pivot point and the price of the option is computed to determine the amount of profit or loss in the account under the particular STANS price simulation. Additionally, OCC uses simulated closing prices for the assets underlying the options in the account of a Clearing Member that are scheduled to expire within the liquidation time horizon of two business days to compute the options' intrinsic value and uses those values to help calculate the profit or loss in the account.[19]

OCC performed a number of analyses of its current Implied Volatility Model and to support development of the proposed model changes, including backtesting and impact analysis of the proposed model enhancements as well as comparison of OCC's current model performance against certain industry benchmarks.[20] OCC's analysis demonstrated that one attribute of the current model is that the volatility changes forecasted by the GARCH model are extremely sensitive to sudden spikes in volatility, which can at times result in over reactive margin requirements that OCC believes are unreasonable and procyclical.[21]

For example, on February 5, 2018, the market experienced extreme levels of volatility, with the Cboe Volatility Index (''VIX'') [22] moving from 17% up to 37%, representing a relative move of 116% (which is the largest relative daily jump in the history of the index). Under OCC's current model, OCC observed that the GARCH forecast SPX volatility for at-the-money implied volatility for a one-month tenor was approximately 4 times larger than the comparable market index, the Cboe VVIX Index, which is a volatility of volatility measure in that it represents the expected volatility of the 30-day forward price of the VIX. As a result, aggregated STANS margins jumped more than 80% overnight due to the GARCH model and margins for certain individual Clearing Members increased by a factor of 10.[23]

In addition, volatility tends to be mean reverting; that is, volatility will quickly return to its long-run mean or average from an elevated level, so it is unlikely that volatility would continue to make big jumps immediately following a drastic increase. For example, based on the VIX history from 1990–2018, VIX levels jumped above 35 (about the level observed on February 5, 2018) for approximately 293 days (*i.e.,* 4% of the sample period). From the level of 35 or higher, the range of daily change on the VIX index was between 27% and -35%. However, the largest daily changes on one-month at-the-money SPX implied volatility forecasted by OCC's current GARCH model on February 5, 2018, were far in excess of those historical realized amounts, which points to extreme procyclicality issues that need to be addressed in the current model.[24]

OCC also performed backtesting of the current model and proposed model enhancements to evaluate and compare the performance of each model from a margin coverage perspective. OCC's backtesting demonstrated that exceedance counts [25] and overall coverage levels over the backtesting period using the proposed model enhancements were substantially similar to the results obtained from the current production model. As a result, OCC believes the current model tends to

[12] OCC's Implied Volatility Model excludes: (i) Binary options, (ii) options on commodity futures, (iii) options on U.S. Treasury securities, and (iv) Asians and Cliquets. These relatively new products were introduced as the implied volatility margin methodology changes were in the process of being completed by OCC, and OCC had *de minimus* open interest in those options. OCC therefore did not believe there was a substantive risk if those products were excluded from the implied volatility model. *See id.*

[13] The ''tenor'' of an option is the amount of time remaining to its expiration.

[14] OCC also incorporates variations in implied volatility as risk factors for certain options with residual tenors of at least three years (''Longer Tenor Options''); however, the proposed changes described herein would not apply to OCC's model for Longer Tenor Options. *See* Securities Exchange Act Release Nos. 68434 (December 14, 2012), 77 FR 57602 (December 19, 2012) (SR–OCC–2012–14); 70709 (October 18, 2013), 78 FR 63267 (October 23, 2013) (SR–OCC–2013–16).

[15] The term ''volatility surface'' refers to a three-dimensional graphed surface that represents the implied volatility for possible tenors of the option and the implied volatility of the option over those tenors for the possible levels of ''moneyness'' of the option. The term ''moneyness'' refers to the relationship between the current market price of the underlying interest and the exercise price.

[16] The ''delta'' of an option represents the sensitivity of the option price with respect to the price of the underlying security.

[17] The acronym ''GARCH'' refers to an econometric model that can be used to estimate volatility based on historical data. *See generally* Tim Bollerslev, ''Generalized Autoregressive Conditional Heteroskedasticity,'' *Journal of Econometrics,* 31(3), 307–327 (1986).

[18] STANS relies on 10,000 price simulation scenarios that are based generally on a historical data period of 500 business days, which are updated daily to keep model results from becoming stale.

[19] For such Shorter Tenor Options that are scheduled to expire on the open of the market rather than the close, OCC uses the relevant opening price for the underlying assets.

[20] OCC has provided results of these analyses to the Commission in confidential Exhibit 3 of the filing.

[21] A quality that is positively correlated with the overall state of the market is deemed to be ''procyclical.'' For example, procyclicality may be evidenced by increasing margin requirements in times of stressed market conditions and low margin requirements when markets are calm. Hence, anti-procyclical features in a model are measures intended to prevent risk-based models from fluctuating too drastically in response to changing market conditions.

[22] The VIX is an index designed to measure the 30-day expected volatility of the Standard & Poor's 500 index (''SPX'').

[23] For example, under the current model the total margin requirement calculated for one particular Clearing Member jumped from $120 million on February 2, 2018, to $1.78 billion on February 5, 2018, representing a 14 times increase in the requirement.

[24] For example, OCC's current model resulted in a maximum variation of 1100% in the one-month at-the-money SPX implied volatility pivot when compared with a maximum 35% move in the VIX for VIX levels greater than 30. Additionally, the model-generated number is significantly higher than 116%, which is the largest realized historical move in the VIX that occurred on February 5, 2018.

[25] Exceedance counts here refer to instances where the actual loss on portfolio over the liquidation period of two business days exceeds the margin amounts generated by the model.

be overly conservative/reactive, and the proposed model is more appropriately commensurate with the risks presented by changes in implied volatility.

OCC believes that the sudden, extreme and unreasonable increases in margin requirements that may be experienced under its current Implied Volatility Model may stress certain Clearing Members' ability to obtain sufficient liquidity to meet these significantly increased margin requirements, particularly in periods of sudden, extreme volatility. OCC therefore is proposing changes to its Implied Volatility Model to limit procyclicality and produce margin requirements that OCC believes are more reasonable and are also commensurate with the risks presented by its cleared options products.

Proposed Changes

OCC proposes to modify its Implied Volatility Model by introducing an exponentially weighted moving average [26] for the daily forecasted volatility for implied volatility risk factors calculated using the GARCH model. Specifically, when forecasting the volatility for each implied volatility risk factor at each of the nine pivot points, OCC would use an exponentially weighted moving average of forecasted volatilities over a specified look-back period rather than using raw daily forecasted volatilities. The exponentially weighted moving average would involve the selection of a look-back period over which the data would be averaged and a decay factor (or weighting factor), which is a positive number between zero and one, that represents the weighting factor for the most recent data point.[27] The look-back period and decay factor would be model parameters subject to monthly review,[28] along with other model parameters that are reviewed by OCC's Model Risk Working Group (''MRWG'') [29] in accordance with OCC's internal procedure for margin model parameter review and sensitivity analysis, and these parameters would be subject to change upon approval of the MRWG.

The proposed changes are intended to reduce the oversensitivity of the current Implied Volatility Model to large, sudden shocks in market volatility and therefore result in margin requirements that are more stable and that remain commensurate with the risks presented during periods of sudden, extreme volatility.[30] The proposed changes are expected to produce margin requirements that are very similar to those generated using OCC's existing model during quiet, less volatile market periods; however, during more volatile periods, the proposed changes would result in a more measured initial response to increases in the volatility of volatility with margin requirements that may remain elevated for a longer period of time after the shock subsides than experienced under OCC's current model. The proposed changes are intended to reduce procyclicality in OCC's margin methodology across volatile market periods while continuing to capture changes in implied volatility and produce margin requirements that are commensurate with the risks presented by OCC's cleared options products. The proposed changes therefore would reduce the risk that a sudden, extreme increase in margin requirements may stress Clearing Members' ability to obtain liquidity to meet such increased requirements, particularly in periods of extreme volatility.

Implementation Timeframe

OCC expects to implement the proposed changes within thirty (30) days after the date that OCC receives all necessary regulatory approvals for the proposed changes. OCC will announce the implementation date of the proposed change by an Information Memorandum posted to its public website at least 2 weeks prior to implementation.

Anticipated Effect on, and Management of, Risk

The volatility changes forecasted by OCC's current Implied Volatility Model are extremely sensitive to large, sudden spikes in volatility, which can at times result in over reactive margin requirements that OCC believes are unreasonable and procyclical (for the reasons set forth above). Such sudden, unreasonable increases in margin requirements may stress certain Clearing Members' ability to obtain liquidity to meet those requirements, particularly in periods of extreme volatility, and could result in a Clearing Member being delayed in meeting, or ultimately failing to meet, its daily settlement obligations to OCC. OCC notes that the proposed changes are expected to produce margin requirements that are very similar to those generated using OCC's existing model during quiet, less volatile market periods. The proposed changes would, however, result in a more measured initial response to increases in the volatility of volatility with margin requirements that may remain elevated for a longer period after the shock subsides than experienced under OCC's current model. The proposed changes would therefore reduce the likelihood that OCC's Implied Volatility Model would produce extreme, over reactive margin requirements that could strain the ability of certain Clearing Members to meet their daily margin requirements at OCC by reducing procyclicality in OCC's margin methodology and ensuring more stable and appropriate changes in margin requirements across volatile market periods while continuing to capture changes in implied volatility and produce margin requirements that are commensurate with the risks presented.

Consistency With the Payment, Clearing and Settlement Supervision Act

The stated purpose of the Clearing Supervision Act is to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically important financial market utilities and strengthening the liquidity of systemically important financial market utilities.[31] Section 805(a)(2) of the Clearing Supervision Act [32] also authorizes the Commission to prescribe risk management standards for the payment, clearing and settlement activities of designated clearing entities, like OCC, for which the Commission is the supervisory agency. Section 805(b) of the Clearing Supervision Act [33] states that the objectives and principles for

[26] An exponentially weighted moving average is a statistical method that averages data in a way that gives more weight to the most recent observations using an exponential scheme.

[27] The lower the number the more weight is attributed to the more recent data (*e.g.,* if the value is set to one, the exponentially weighted moving average becomes a simple average).

[28] OCC initially would use a look-back period of 22 days and an initial decay factor of 0.94 for the exponentially weighted moving average. OCC believes the 22-day look-back is an appropriate initial parameter setting as it would allow for close to monthly updates of the GARCH parameters used in the model. The decay factor value of 0.94 was selected based on the factor initially proposed by JP Morgan's RiskMetrics methodology (*see* JPMorgan/Reuters, 1996. ''RiskMetrics—Technical Document'', Fourth edition).

[29] The MRWG is responsible for assisting OCC's Management Committee in overseeing and governing OCC's model-related risk issues and includes representatives from OCC's Financial Risk Management department, Quantitative Risk Management department, Model Validation Group, and Enterprise Risk Management department.

[30] As noted above, OCC has performed analysis of the impact of the proposed changes, and OCC's backtesting of the proposed model demonstrates comparable exceedance counts and coverage levels to the current model during the most recent volatile period.

[31] 12 U.S.C. 5461(b).

[32] 12 U.S.C. 5464(a)(2).

[33] 12 U.S.C. 5464(b).

risk management standards prescribed under Section 805(a) shall be to:

- Promote robust risk management;
- promote safety and soundness;
- reduce systemic risks; and
- support the stability of the broader financial system.

OCC believes that the proposed changes described herein would enhance its margin methodology in a manner consistent with the objectives and principles of Section 805(b) of the Clearing Supervision Act [34] and the risk management standards adopted by the Commission in Rule 17Ad–22 under the Act for the reasons set forth below.[35]

OCC believes the proposed changes are consistent with the objectives and principles of Section 805(b) of the Clearing Supervision Act [36] in that they would promote robust risk management and safety and soundness while reducing systemic risks and supporting the stability of the broader financial system. As discussed above, the volatility changes forecasted by OCC's current Implied Volatility Model are extremely sensitive to large, sudden spikes in volatility, which can at times result in over reactive margin requirements that OCC believes are unreasonable and procyclical. Such sudden, unreasonable increases in margin requirements may stress certain Clearing Members' ability to obtain liquidity to meet those requirements, particularly in periods of extreme volatility, and could result in a Clearing Member being delayed in meeting, or ultimately failing to meet, its daily settlement obligations to OCC. OCC notes that the proposed changes are expected to produce margin requirements that are very similar to those generated using OCC's existing model during quiet, less volatile market periods. The proposed changes would, however, result in a more measured initial response to increases in the volatility of volatility with margin requirements that may remain elevated for a longer period after the shock subsides than experienced under OCC's current model. The proposed changes would therefore reduce the likelihood that OCC's Implied Volatility Model would produce extreme, over reactive margin requirements by reducing procyclicality in OCC's margin methodology and ensuring more stable and appropriate changes in margin requirements across volatile market periods while continuing to provide for robust management of the risks presented by the implied volatility of OCC's cleared options products. Accordingly, OCC believes the proposed changes would promote robust risk management and safety and soundness while reducing systemic risks and supporting the stability of the broader financial system.

Rules 17Ad–22(e)(6)(i) and (v) [37] require a covered clearing agency that provides central counterparty services to establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that (1) considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market and (2) uses an appropriate method for measuring credit exposure that accounts for relevant product risk factors and portfolio effects across products. As noted above, OCC's current model for implied volatility demonstrates extreme sensitivity to sudden spikes in volatility, which can at times result in over reactive margin requirements that OCC believes are unreasonable and procyclical. The proposed changes are designed to reduce the oversensitivity of the model and produce margin requirements that are commensurate with the risks presented during periods of sudden, extreme volatility. The proposed model enhancements are expected to produce margin requirements that are very similar to those generated using OCC's existing model during quiet, less volatile market periods; however, the proposed changes would result in a more measured initial response to increases in the volatility of volatility with margin requirements that may remain elevated for a longer period of time after the shock subsides than experienced under OCC's current model. The proposed changes are designed to reduce procyclicality in OCC's margin methodology and ensure more stable changes in margin requirements across volatile market periods while continuing to capture changes in implied volatility and produce margin requirements that are commensurate with the risks presented by OCC's cleared options. As a result, OCC believes that the proposed changes are reasonably designed to consider, and produce margin levels commensurate with, the risk presented by the implied volatility of OCC's cleared options and use an appropriate method for measuring credit exposure that accounts for this product risk factor (*i.e.,* implied volatility) in a manner consistent with Rules 17Ad–22(e)(6)(i) and (v).[38]

III. Date of Effectiveness of the Advance Notice and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date the proposed change was filed with the Commission or (ii) the date any additional information requested by the Commission is received. OCC shall not implement the proposed change if the Commission has any objection to the proposed change.

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. A proposed change may be implemented in less than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies the clearing agency in writing that it does not object to the proposed change and authorizes the clearing agency to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

OCC shall post notice on its website of proposed changes that are implemented.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the advance notice is consistent with the Clearing Supervision 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–OCC–2018–804 on the subject line.

[34] *Id.*

[35] 17 CFR 240.17Ad–22. *See* Securities Exchange Act Release Nos. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (S7–08–11) (''Clearing Agency Standards''); 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7–03–14) (''Standards for Covered Clearing Agencies''). The Standards for Covered Clearing Agencies became effective on December 12, 2016. OCC is a ''covered clearing agency'' as defined in Rule 17Ad–22(a)(5) and therefore must comply with the requirements of Rule 17Ad–22(e).

[36] 12 U.S.C. 5464(b).

[37] 17 CFR 240.17Ad–2(e)(6)(i) and (v).

[38] *Id.*

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–OCC–2018–804. 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 advance notice that are filed with the Commission, and all written communications relating to the advance notice 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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the self-regulatory organization.

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–OCC–2018–804 and should be submitted on or before December 17, 2018.

By the Commission.

Brent J. Fields,

Secretary.

[FR Doc. 2018–25606 Filed 11–23–18; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84629; File No. SR–NASDAQ–2018–095]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Nasdaq Rule 5615(b)(4) To Change the Threshold for Qualifying as a Smaller Reporting Company To Qualify for Certain Exemptions From the Compensation Committee Requirements

November 20, 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 14, 2018, The Nasdaq Stock Market LLC (''Nasdaq'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Nasdaq Rule 5615(b)(4) to change the threshold for listed companies that are eligible to benefit from the exemptions from the Exchange's compensation committee requirements applicable to smaller reporting companies so that all companies that qualify for smaller reporting company status under the revised SEC definition will qualify for the Exchange's exemptions.

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 purpose of the proposed rule change is to amend Rule 5615(b)(4) to change the threshold for listed companies that are eligible to benefit from the exemptions from the Exchange's compensation committee requirements applicable to smaller reporting companies so that all companies that qualify for smaller reporting company status under the revised SEC definition will qualify for the Exchange's exemptions.

The SEC recently adopted [3] amendments to the definition of ''smaller reporting company'' set forth in Item 10(f)(1) of Regulation S–K,[4] Rule 12b–2 under the Act [5] and Rule 405 under the Securities Act of 1933.[6] The amendments raise the smaller reporting company cap from less than $75 million in public float to less than $250 million and also include as smaller reporting companies issuers with less than $100 million in annual revenues if they also have either no public float or a public float that is less than $700 million. The amendments became effective on September 10, 2018. As a result of the SEC rule changes, an expanded number of registrants, and hence, of listed companies, will qualify for smaller reporting company status than was previously the case.[7]

Smaller reporting companies are entitled to avail themselves of certain exemptions from Nasdaq's compensation committee requirements.[8]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Release Nos. 33–10513 and 34–83550 (June 28, 2018); 83 FR 31992 (July 10, 2018) (the ''Adopting Release'').

[4] 17 CFR 229.10(f)(1).

[5] 17 CFR 240.12b–2.

[6] 17 CFR 230.405.

[7] *See* the Adopting Release.

[8] Specifically, pursuant to Rule 5605(d)(5), a listed company that satisfies the definition of smaller reporting company is not required to comply with: (i) The additional requirements with respect to the independence of compensation committee members set forth in Rule 5605(d)(2)(A); (ii) the requirements with respect to the specific compensation committee responsibilities and authority set forth in Rule 5605(d)(3) and the requirement to include such responsibilities and authority in its compensation committee charter as set forth in Rule 5605(d)(1)(D); or (iii) the requirement with respect to the compensation committee's responsibility to review and reassess the adequacy of its compensation committee charter on an annual basis. A listed smaller reporting company must comply with all other applicable Exchange corporate governance requirements,

Continued

Rule 5615(b)(4) includes a provision describing the period within which a company must comply with all applicable compensation committee requirements after it ceases to be a smaller reporting company.[9] This provision currently states explicitly that a smaller reporting company must have less than $75 million in public float. In light of the recent changes to the SEC's rules with respect to smaller reporting companies, the Exchange proposes to delete this reference to the $75 million public float cap and revise the provision to state simply that a smaller reporting company that fails to meet the requirements for smaller reporting company status as of the last business day of its second fiscal quarter (the Determination Date) will cease to be a smaller reporting company as of the beginning of the following fiscal year. The effect of the proposed rule change is to change the threshold for listed companies that are eligible to benefit from the exemptions from the Exchange's compensation committee requirements applicable to smaller reporting companies so that all companies that qualify for smaller reporting company status under the revised SEC definition will qualify for the Exchange's exemptions.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] in 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 mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

As noted above, the effect of the proposed rule change is to change the threshold for listed companies that are eligible to benefit from the exemptions from the Exchange's compensation committee requirements applicable to smaller reporting companies so that all companies that qualify for smaller reporting company status under the revised SEC definition will qualify for the Exchange's exemptions. A listed smaller reporting company must comply with all other applicable Exchange corporate governance requirements, including all other applicable compensation committee requirements, unless it qualifies for some other exemption from those requirements. The Commission has already determined through its own rulemaking that the revised thresholds for smaller reporting company status proposed in this rule proposal are consistent with the goal of the Act to further the protection of investors and the public interest [12] and the Exchange believes that its own proposal is consistent with Section 6(b)(5) of the Act for the same reasons. The Exchange also believes that the proposed rule change fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities because it conforms Rule 5615(b)(4) to a rule change made by the Commission.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq 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 will not impose any burden on competition as its sole purpose is to change the threshold for listed companies that are eligible to benefit from the exemptions from the Exchange's compensation committee requirements applicable to smaller reporting companies so that all companies that qualify for smaller reporting company status under the revised SEC definition will qualify for the Exchange's exemptions.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder. [15]

A proposed rule change filed under Rule 19b–4(f)(6)[16] normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[17] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. In its filing with the Commission, Nasdaq has asked the Commission to waive the 30-day operative delay to make Nasdaq Rule 5615(b)(4) consistent with the Commission's revised definition of smaller reporting company that became effective on September 10, 2018. As such, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest and designates the proposed rule change operative upon filing.[18]

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

including all other applicable compensation committee requirements, unless it qualifies for another exemption from those requirements.

[9] Under the SEC rules set forth above with respect to smaller reporting companies, a company tests its status as a smaller reporting company on an annual basis at the end of its most recently completed second fiscal quarter (''Determination Date''). A smaller reporting company ceases to be a smaller reporting company as of the beginning of the fiscal year following the Determination Date (''Start Date''). By six months from the Start Date, a company must comply with Rule 5605(d)(3) and certify to Nasdaq that: (i) It has complied with the requirement in Rule 5605(d)(1) to adopt a formal written compensation committee charter including the content specified in Rule 5605(d)(1)(A)- (D); and (ii) it has complied, or within the applicable phase-in schedule will comply, with the additional requirements in Rule 5605(d)(2)(A) regarding compensation committee composition. A company shall be permitted to phase in its compliance with the additional compensation committee eligibility requirements of Rule 5605(d)(2)(A) relating to compensatory fees and affiliation as follows: (i) One member must satisfy the requirements by six months from the Start Date; (ii) a majority of members must satisfy the requirements by nine months from the Start Date; and (iii) all members must satisfy the requirements by one year from the Start Date.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] *See supra* note 3.

[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] 17 CFR 240.19b–4(f)(6).

[15] 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 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.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] For purposes only of waiving the operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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) [19] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2018–095 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–2018–095. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2018–095, and should be submitted on or before December 17, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–25731 Filed 11–23–18; 8:45 am]

BILLING CODE 8011–01–P

[19] 15 U.S.C. 78s(b)(2)(B).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84624; File No. SR–Phlx–2018–72]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing of Proposed Rule Change To Establish Rules Governing the Give Up of a Clearing Member by a Member Organization on Exchange Transactions

November 19, 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 6, 2018, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish rules governing the give up of a Clearing Member [3] by a member organization on Exchange transactions.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Clearing Member means a member organization which has been admitted to membership in the Options Clearing Corporation pursuant to the provisions of the rules of the Options Clearing Corporation. *See* Rule 1000(b)(3).

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 Phlx Rule 1037, which is currently reserved, to establish requirements related to the give up of a Clearing Member by a member organization on Exchange transactions.

By way of background, to enter transactions on the Exchange, a member organization must either be a Clearing Member or have a clearing arrangement with a Clearing Member.[4] Rule 1052 currently provides that every Clearing Member shall be responsible for the clearance of the Exchange options transactions of such Clearing Member and of each member organization who gives up the name of such Clearing Member in an Exchange options transaction, provided the Clearing Member has authorized such member organization to give up its name with respect to Exchange options transactions.

Recently, certain Clearing Members, in conjunction with the Securities Industry and Financial Markets Association (''SIFMA''), expressed concerns related to the process by which executing brokers on U.S. options exchanges (''Exchanges'') are allowed to designate or 'give up' a clearing firm for purposes of clearing particular transactions. The SIFMA-affiliated Clearing Members have recently identified the current give up process as a significant source of risk for clearing firms, and subsequently requested that the Exchanges alleviate this risk by amending Exchange rules governing the give up process.[5]

[4] *See* Rule 1046.

[5] NYSE Arca Inc. (''Arca'') recently filed to amend its give up procedures. Arca's proposal would allow a Designated Give Up to opt out of acting as the give up for certain OTP Holders and OTP Firms. *See*

Continued

Proposed Rule Change

Based on the above, the Exchange now seeks to amend its rules regarding the current give up process in order to allow a Clearing Member to opt in, at The Options Clearing Corporation (''OCC'') clearing number level, to a feature that, if enabled by the Clearing Member, will allow the Clearing Member to specify which member organizations are authorized to give up that OCC clearing number. As proposed, Rule 1037, which is currently reserved, will be titled as ''Authorization to Give Up'' and will provide that for each transaction in which a member organization participates, the member organization may indicate, at the time of the trade, with respect to floor trading only, or through post trade allocation, any OCC number of a Clearing Member through which a transaction will be cleared (''Give Up''), provided the Clearing Member has not elected to ''Opt In,'' as defined in paragraph (b) of the proposed Rule, and restrict one or more of its OCC number(s) (''Restricted OCC Number'').[6] A member organization may Give Up a Restricted OCC Number provided the member organization has written authorization as described in paragraph (b)(ii) (''Authorized Member Organization'').

Proposed Rule 1037(b) provides that Clearing Members may request the Exchange restrict one or more of their OCC clearing numbers (''Opt In'') as described in subparagraph (b)(i) of Rule 1037. If a Clearing Member Opts In, the Exchange will require written authorization from the Clearing Member permitting a member organization to Give Up a Clearing Member's Restricted OCC Number. An Opt In would remain in effect until the Clearing Member terminates the Opt In as described in subparagraph (iii). If a Clearing Member does not Opt In, that Clearing Member's OCC number may be subject to Give Up by any member organization.

Proposed Rule 1037(b)(i) will set forth the process by which a Clearing Member may Opt In. Specifically, a Clearing Member may Opt In by sending a completed ''Clearing Member Restriction Form'' listing all Restricted OCC Numbers and Authorized Member Organizations.[7] A copy of the proposed form is attached in Exhibit 3 to the filing. A Clearing Member may elect to restrict one or more OCC clearing numbers that are registered in its name at OCC. The Clearing Member would be required to submit the Clearing Member Restriction Form to the Exchange's Membership Department as described on the form. Once submitted, the Exchange requires ninety days before a Restricted OCC Number is effective within the System. This time period is to provide adequate time for the member users of that Restricted OCC Number who are not initially specified by the Clearing Member as Authorized Member Organizations to obtain the required written authorization from the Clearing Member for that Restricted OCC Number. Such member users would still be able to Give Up that Restricted OCC Number during this ninety day period (*i.e.,* until the number becomes restricted within the System).

Proposed Rule 1037(b)(ii) will set forth the process for member organizations to Give Up a Clearing Member's Restricted OCC Number. Specifically, a member organization desiring to Give Up a Restricted OCC Number must become an Authorized Member Organization.[8] The Clearing Member will be required to authorize a member organization as described in subparagraph (i) or (iii) of Rule 1037(b) (*i.e.,* through a Clearing Member Restriction Form), unless the Restricted OCC Number is already subject to a Letter of Guarantee that the member organization is a party to, as set forth in Rule 1037(d).

Pursuant to proposed Rule 1037(b)(iii), a Clearing Member may amend the list of its Authorized Member Organizations or Restricted OCC Numbers by submitting a new Clearing Member Restriction Form to the Exchange's Membership Department indicating the amendment as described on the form. Once a Restricted OCC Number is effective within the System pursuant to Rule 1037(b)(i), the Exchange may permit the Clearing Member to authorize, or remove authorization for, a member organization to Give Up the Restricted OCC Number intra-day only in unusual circumstances, and on the next business day in all regular circumstances. The Exchange will promptly notify the member organizations if they are no longer authorized to Give Up a Clearing Member's Restricted OCC Number. If a Clearing Member removes a Restricted OCC Number, any member organization may Give Up that OCC clearing number once the removal has become effective on or before the next business day.

Proposed Rule 1037(c) will provide that the System will not allow an unauthorized member organization to Give Up a Restricted OCC Number.[9] Specifically:

- For orders that are executed on the trading floor in open outcry using the Options Floor Based Management System (''FBMS''),[10] the System will reject the clearing portion of the trade if an unauthorized Give Up with a Restricted OCC Number was entered. The member organization will receive notification of the rejected clearing information, and will be required to modify the clearing information by contacting the Exchange.[11]
- For all other orders (*i.e.,* orders that are submitted directly to the System through the Exchange's various protocols),[12] the System will not allow an unauthorized Give Up with a Restricted OCC Number to be submitted at the firm mnemonic level at the point of order entry.[13]

Furthermore, the Exchange proposes to adopt paragraph (d) to Rule 1037 to

Securities Exchange Act Release No. 84284 (September 25, 2018), 83 FR 49434 (October 1, 2018) (SR–NYSEArca–2018–68). The Exchange's proposal leads to the same result of providing its Clearing Members the ability to control risk, but it differs in process from Arca's proposal.

[6] Today, electronic trades need a valid mnemonic, which is only set up if there is a clearing arrangement already in place through a Letter of Guarantee. As such, electronic trades automatically clear through the guarantor associated with the mnemonic at the time of the trade, so a member organization may only amend its Give Up post-trade. As proposed, the Exchange will also restrict the post-trade allocation portion of an electronic trade systematically. *See* note 13 below.

[7] This form will be available on the Exchange's website. The Exchange will also maintain, on its website, a list of the Restricted OCC Numbers, which will be updated on a regular basis, and the Clearing Member's contact information to assist member organizations (to the extent they are not already Authorized Member Organizations) with requesting authorization for a Restricted OCC Number. The Exchange may utilize additional means to inform its members of such updates on a periodic basis.

[8] The Exchange will develop procedures for notifying member organizations that they are authorized or unauthorized by Clearing Members.

[9] As described below, the Exchange's proposed process closely follows the current process.

[10] *See* Phlx Rules 1063(e) and 1080(a)(i)(C).

[11] In this case, the FBMS order will be executed, provided the terms of the trade comply with the relevant Exchange rules, and the execution reported to the consolidated tape. The System will, however, reject the clearing portion, and the member organization will have to amend the clearing information by contacting the Nasdaq Correction Post once it receives the reject notification. The Exchange will then promptly process the requested change. This is how such orders are processed today if, for instance, a member organization enters an erroneous OCC clearing number (*i.e.,* 'keypunch errors').

[12] *See* Phlx Rule 1080(a)(i).

[13] Specifically, the System will block the entry of the order from the outset. This is because a valid mnemonic will be required for any order to be submitted directly to the System, and a mnemonic will only be set up for a member organization if there is already a clearing arrangement in place for that firm either through a Letter of Guarantee (as is the case today) or in the case of a Restricted OCC Number, the member organization becoming an Authorized Member Organization. The System will also restrict any post-trade allocation changes if the member organization is not authorized to use a Restricted OCC Number.

provide, as is the case today, that a clearing arrangement subject to a Letter of Guarantee would immediately permit the Give Up of a Restricted OCC Number by the member organization that is party to the arrangement. Since there is an OCC clearing arrangement already established in this case, no further action is needed on the part of the Clearing Member or the member organization.

The Exchange also proposes to adopt paragraph (e) to Rule 1037 to provide that an intentional misuse of this Rule is impermissible, and may be treated as a violation of Rule 707, titled ''Conduct Inconsistent with Just and Equitable Principles of Trade,'' or Rule 708, titled ''Acts Detrimental to the Interest or Welfare of the Exchange.'' This language will make clear that the Exchange will regulate an intentional misuse of this Rule (*e.g.,* sending orders to a Clearing Member's OCC account without the Clearing Member's consent), and that such behavior would be a violation of Exchange rules.

Finally, the Exchange proposes to amend Rule 1052, which addresses the financial responsibility of Exchange options transactions clearing through Clearing Members, to clarify that this Rule will apply to all Clearing Members, regardless of whether or not they elect to Opt In pursuant to proposed Rule 1037. Specifically, the Exchange proposes to add that Rule 1052 will apply to all Clearing Members who either (i) have Restricted OCC Numbers with Authorized Member Organizations pursuant to Rule 1037, or (ii) have non-Restricted OCC Numbers.

Implementation

The Exchange proposes to implement the proposed rule change no later than by the end of Q1 2019. The Exchange will announce the implementation date to its member organizations in an Options Trader Alert.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Section 6(b)(5) of the Act,[15] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments 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.

Particularly, as discussed above, several clearing firms affiliated with SIFMA have recently expressed concerns relating to the current give up process, which permits member organizations to identify any Clearing Member as a designated give up for purposes of clearing particular transactions, and have identified the current give up process (*i.e.,* a process that lacks authorization) as a significant source of risk for clearing firms.

The Exchange believes that the proposed changes to Rule 1037 help alleviate this risk by enabling Clearing Members to 'Opt In' to restrict one or more of its OCC clearing numbers (*i.e.,* Restricted OCC Numbers), and to specify which Authorized Member Organizations may Give Up those Restricted OCC Numbers. As described above, all other member organizations would be required to receive written authorization from the Clearing Member before they can Give Up that Clearing Member's Restricted OCC Number. The Exchange believes that this authorization provides proper safeguards and protections for Clearing Members as it provides controls for Clearing Members to restrict access to their OCC clearing numbers, allowing access only to those Authorized Member Organizations upon their request. The Exchange also believes that its proposed Clearing Member Restriction Form allows the Exchange to receive in a uniform fashion, written and transparent authorization from Clearing Members, which ensures seamless administration of the Rule.

The Exchange believes that the proposed Opt In process strikes the right balance between the various views and interests across the industry. For example, although the proposed rule would require member organizations (other than Authorized Member Organizations) to seek authorization from Clearing Members in order to have the ability to give them up, each member organization will still have the ability to Give Up a Restricted OCC Number that is subject to a Letter of Guarantee without obtaining any further authorization if that member organization is party to that arrangement. The Exchange also notes that to the extent the executing member organization has a clearing arrangement with a Clearing Member (*i.e.,* through a Letter of Guarantee), a trade can be assigned to the executing member organization's guarantor.[16] Accordingly, the Exchange believes that the proposed rule change is reasonable and continues to provide certainty that a Clearing Member would be responsible for a trade, which protects investors and the public interest. Finally, the Exchange believes that adopting paragraph (e) of Rule 1037 will make clear that an intentional misuse of this Rule (*e.g.,* sending orders to a Clearing Member's OCC account without the Clearing Member's consent) will be a violation of the Exchange's rules, and that such behavior would subject a member organization to disciplinary action.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose an unnecessary burden on intramarket competition because it would apply equally to all similarly situated Members. The Exchange also notes that, should the proposed changes make Phlx more attractive for trading, market participants trading on other exchanges can always elect to become Members on Phlx to take advantage of the trading opportunities.

Furthermore, the proposed rule change does not address any competitive issues and ultimately, the target of the Exchange's proposal is to reduce risk for Clearing Members under the current give up model. Clearing firms make financial decisions based on risk and reward, and while it is generally in their beneficial interest to clear transactions for market participants in order to generate profit, it is the Exchange's understanding from SIFMA and clearing firms that the current process can create significant risk when the clearing firm can be given up on any market participant's transaction, even where there is no prior customer relationship or authorization for that designated transaction.

In the absence of a mechanism that governs a market participant's use of a Clearing Member's services, the Exchange's proposal may indirectly facilitate the ability of a Clearing Member to manage their existing customer relationships while continuing to allow market participant choice in broker execution services. While Clearing Members may compete with executing brokers for order flow, the Exchange does not believe this proposal

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] *See* Rule 1046 (providing that a member organization conducting an options business must be a Clearing Member or have a clearing arrangement with a Clearing Member).

imposes an undue burden on competition. Rather, the Exchange believes that the proposed rule change balances the need for Clearing Members to manage risks and allows them to address outlier behavior from executing brokers while still allowing freedom of choice to select an executing broker.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2018–72 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2018–72. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet we site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2018–72 and should be submitted on or before December 17, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–25601 Filed 11–23–18; 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:

Form F–80; SEC File No. 270–357, OMB Control No. 3235–0404.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') 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 for extension and approval.

Form F–80 (17 CFR 239.41) is a registration form used by large, publicly-traded Canadian issuers to register securities that will be offered in a business combination, exchange offer or other reorganization requiring the vote of shareholders of the participating companies. The information collected is intended to make available material information upon which shareholders and investors can make informed voting and investment decisions. Form F–80 takes approximately 2 hours per response and is filed by approximately 4 issuers for a total annual burden of 8 hours (2 hours per response × 4 responses). The estimated burden of 2 hours per response was based upon the amount of time necessary to compile the registration statement using the existing Canadian prospectus plus any additional information required by the Commission.

Written comments are invited on: (a) Whether this 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 agency's estimate of the burden imposed by 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 collections 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 unless it displays a currently valid control number.

Please direct your written comment 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 20, 2018.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–25685 Filed 11–23–18; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 10601]

30-Day Notice of Proposed Information Collection: Special Immigrant Visa Supervisor Locator

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection

[17] 17 CFR 200.30–3(a)(12).

described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments directly to the Office of Management and Budget (OMB) up to December 26, 2018.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to *PRA_BurdenComments@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Special Immigrant Visa Supervisor Locator.
- *OMB Control Number:* 1405–0144.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* CA/VO/L/R.
- *Form Number:* DS–158.
- *Respondents:* Special Immigrant Visa Applicants.
- *Estimated Number of Respondents:* 150.
- *Estimated Number of Responses:* 150.
- *Average Time per Response:* 1 hour.
- *Total Estimated Burden Time:* 150 hours.
- *Frequency:* Once per application.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

Department of State uses Form DS–158 (Special Immigrant Visa Supervisor Locator) in order to assist applicants for special immigrant visas (SIV) under section 602(b) of the Afghan Allies Protection Act of 2009 (Pub. L. 111–8), in attempting to locate an applicant's prior Department of Defense (DoD) supervisor. The information requested on the form is limited to that necessary to locate the supervisor through DoD and Veteran's Affairs, and if the location is successful will assist the applicant in the SIV application process.

Methodology

Applicants are required to complete the DS–158 and to submit their package to the appropriate email address.

Edward J. Ramotowski,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2018–25616 Filed 11–23–18; 8:45 am]

BILLING CODE 4710–06–P

STATE JUSTICE INSTITUTE

SJI Board of Directors Meeting, Notice

AGENCY: State Justice Institute.

ACTION: Notice of meeting.

SUMMARY: The SJI Board of Directors will be meeting on Monday, December 10, 2018 at 1:00 p.m. The meeting will be held at SJI Headquarters in Reston, Virginia. The purpose of this meeting is to consider grant applications for the 1st quarter of FY 2019, and other business. All portions of this meeting are open to the public.

ADDRESSES: State Justice Institute Headquarters, 11951 Freedom Drive, Suite 1020, Reston, Virginia, 20190.

FOR FURTHER INFORMATION CONTACT: Jonathan Mattiello, Executive Director, State Justice Institute, 11951 Freedom Drive, Suite 1020, Reston, VA 20190, 571–313–8843, *contact@sji.gov.*

Jonathan D. Mattiello,

Executive Director.

[FR Doc. 2018–25657 Filed 11–23–18; 8:45 am]

BILLING CODE P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination of Trade Surplus in Certain Sugar and Syrup Goods and Sugar-Containing Products of Chile, Morocco, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, Peru, Colombia, and Panama

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: In accordance with the Harmonized Tariff Schedule of the United States (HTS), the Office of the United States Trade Representative (USTR) is providing notice of its determination of the trade surplus in certain sugar and syrup goods and sugar-containing products of Chile, Morocco, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, Peru, Colombia and Panama. The level of a country's trade surplus in these goods relates to the quantity of sugar and syrup goods and sugar-containing products for which the United States grants preferential tariff treatment under (i) the United States-Chile Free Trade Agreement (Chile FTA); (ii) the United States-Morocco Free Trade Agreement (Morocco FTA); (iii) the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA–DR); (iv) the United States-Peru Trade Promotion Agreement (Peru TPA); (v) the United States-Colombia Trade Promotion Agreement (Colombia TPA); and (vi) the United States-Panama Trade Promotion Agreement (Panama TPA).

DATES: This notice is applicable on January 1, 2019.

FOR FURTHER INFORMATION CONTACT: Dylan Daniels, Office of Agricultural Affairs at 202–395–6095 or *Dylan.T.Daniels@ustr.eop.gov.*

SUPPLEMENTARY INFORMATION:

I. Chile FTA

Section 201 of the United States-Chile Free Trade Agreement Implementation Act (Pub. L. 108–77; 19 U.S.C. 3805 note) and Presidential Proclamation No. 7746 of December 30, 2003 (68 FR 75789), implemented the Chile FTA on behalf of the United States and modified the HTS to reflect the tariff treatment provided for in the Chile FTA.

Note 12(a) to subchapter XI of HTS chapter 99 requires USTR annually to publish a determination of the amount of Chile's trade surplus, by volume, with all sources for goods in Harmonized System (HS) subheadings 1701.11, 1701.12, 1701.91, 1701.99,

1702.20, 1702.30, 1702.40, 1702.60, 1702.90, 1806.10, 2101.12, 2101.20, and 2106.90, except that Chile's imports of goods classified under HS subheadings 1702.40 and 1702.60 that qualify for preferential tariff treatment under the Chile FTA are not included in the calculation of Chile's trade surplus. Proclamation 8771 of December 29, 2011 (77 FR 413) reclassified HS subheading 1701.11 as 1701.13 and 1701.14.

Note 12(b) to subchapter XI of HTS chapter 99 provides duty-free treatment for certain sugar and syrup goods and sugar-containing products of Chile entered under subheading 9911.17.05 in any calendar year (CY) (beginning in CY 2015) in an amount equal to the quantity of goods equal to the amount of Chile's trade surplus in subdivision (a) of the Note. During CY 2017, the most recent year for which data is available, Chile's imports of the sugar and syrup goods and sugar-containing products described above exceeded its exports of those goods by 407,137 metric tons according to data published by its customs authority, the Servicio Nacional de Aduana. Based on this data, USTR has determined that Chile's trade surplus is negative. Therefore, in accordance with U.S. Note 12(b) to subchapter XI of HTS chapter 99, goods of Chile are not eligible to enter the United States duty-free under subheading 9911.17.05 in CY 2019.

II. Morocco FTA

Section 201 of the United States-Morocco Free Trade Agreement Implementation Act (Pub. L. 108–302; 19 U.S.C. 3805 note) and Presidential Proclamation No. 7971 of December 22, 2005 (70 FR 76651), implemented the Morocco FTA on behalf of the United States and modified the HTS to reflect the tariff treatment provided for in the Morocco FTA.

Note 12(a) to subchapter XII of HTS chapter 99 requires USTR annually to publish a determination of the amount of Morocco's trade surplus, by volume, with all sources for goods in HS subheadings 1701.11, 1701.12, 1701.91, 1701.99, 1702.40, and 1702.60, except that Morocco's imports of U.S. goods classified under HS subheadings 1702.40 and 1702.60 that qualify for preferential tariff treatment under the Morocco FTA are not included in the calculation of Morocco's trade surplus. Proclamation 8771 of December 29, 2011 (77 FR 413) reclassified HS subheading 1701.11 as 1701.13 and 1701.14.

Note 12(b) to subchapter XII of HTS chapter 99 provides duty-free treatment for certain sugar and syrup goods and sugar-containing products of Morocco entered under subheading 9912.17.05 in an amount equal to the lesser of Morocco's trade surplus or the specific quantity set out in that Note for that calendar year.

Note 12(c) to subchapter XII of HTS chapter 99 provides preferential tariff treatment for certain sugar and syrup goods and sugar-containing products of Morocco entered under subheading 9912.17.10 through 9912.17.85 in an amount equal to the amount by which Morocco's trade surplus exceeds the specific quantity set out in that Note for that calendar year.

During CY 2017, the most recent year for which data is available, Morocco's imports of the sugar and syrup goods and sugar-containing products described above exceeded its exports of those goods by 743,760 metric tons according to data published by its customs authority, the Office des Changes. Based on this data, USTR has determined that Morocco's trade surplus is negative. Therefore, in accordance with U.S. Notes 12(b) and 12(c) to subchapter XII of HTS chapter 99, goods of Morocco are not eligible to enter the United States duty-free under subheading 9912.17.05 or at preferential tariff rates under subheading 9912.17.10 through 9912.17.85 in CY 2019.

III. CAFTA–DR

Section 201 of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (Pub. L. 109–53; 19 U.S.C. 4031), Presidential Proclamation No. 7987 of February 28, 2006 (71 FR 10827), Presidential Proclamation No. 7991 of March 24, 2006 (71 FR 16009), Presidential Proclamation No. 7996 of March 31, 2006 (71 FR 16971), Presidential Proclamation No. 8034 of June 30, 2006 (71 FR 38509), Presidential Proclamation No. 8111 of February 28, 2007 (72 FR 10025), Presidential Proclamation No. 8331 of December 23, 2008 (73 FR 79585), and Presidential Proclamation No. 8536 of June 12, 2010 (75 FR 34311), implemented the CAFTA–DR on behalf of the United States and modified the HTS to reflect the tariff treatment provided for in the CAFTA–DR.

Note 25(b)(i) to subchapter XXII of HTS chapter 98 requires USTR annually to publish a determination of the amount of each CAFTA–DR country's trade surplus, by volume, with all sources for goods in HS subheadings 1701.12, 1701.13, 1701.14, 1701.91, 1701.99, 1702.40, and 1702.60, except that each CAFTA–DR country's exports to the United States of goods classified under HS subheadings 1701.12, 1701.13, 1701.14, 1701.91, and 1701.99 and its imports of goods classified under HS subheadings 1702.40 and 1702.60 that qualify for preferential tariff treatment under the CAFTA–DR are not included in the calculation of that country's trade surplus.

U.S. Note 25(b)(ii) to subchapter XXII of HTS chapter 98 provides duty-free treatment for certain sugar and syrup goods and sugar-containing products of each CAFTA–DR country entered under subheading 9822.05.20 in an amount equal to the lesser of that country's trade surplus or the specific quantity set out in that Note for that country and that calendar year.

A. Costa Rica

During CY 2017, the most recent year for which data is available, Costa Rica's exports of the sugar and syrup goods and sugar-containing products described above exceeded its imports of those goods by 127,312 metric tons according to data published by the Costa Rican Customs Department, Ministry of Finance. Based on this data, USTR has determined that Costa Rica's trade surplus is 127,312 metric tons. The specific quantity set out in U.S. Note 25(b)(ii) to subchapter XXII of HTS chapter 98 for Costa Rica for CY 2019 is 13,860 metric tons. Therefore, in accordance with that Note, the aggregate quantity of goods of Costa Rica that may be entered duty-free under subheading 9822.05.20 in CY 2019 is 13,860 metric tons (*i.e.,* the amount that is the lesser of Costa Rica's trade surplus and the specific quantity set out in that Note for Costa Rica for CY 2019).

B. Dominican Republic

During CY 2017, the most recent year for which data is available, the Dominican Republic's imports of the sugar and syrup goods and sugar-containing products described above exceeded its exports of those goods by 6,254 metric tons according to data published by the National Direction of Customs (DGA). Based on this data, USTR has determined that the Dominican Republic's trade surplus is negative. Therefore, in accordance with U.S. Note 25(b)(ii) to subchapter XXII of HTS chapter 98, goods of the Dominican Republic are not eligible to enter the United States duty-free under subheading 9822.05.20 in CY 2019.

C. El Salvador

During CY 2017, the most recent year for which data is available, El Salvador's exports of the sugar and syrup goods and sugar-containing products described above exceeded its imports of those goods by 427,977 metric tons

according to data published by the Central Bank of El Salvador. Based on this data, USTR has determined that El Salvador's trade surplus is 427,977 metric tons. The specific quantity set out in U.S. Note 25(b)(ii) to subchapter XXII of HTS chapter 98 for El Salvador for CY 2019 is 35,360 metric tons. Therefore, in accordance with that Note, the aggregate quantity of goods of El Salvador that may be entered duty-free under subheading 9822.05.20 in CY 2019 is 35,360 metric tons (*i.e.,* the amount that is the lesser of El Salvador's trade surplus and the specific quantity set out in that Note for El Salvador for CY 2019).

D. Guatemala

During CY 2017, the most recent year for which data is available, Guatemala's exports of the sugar and syrup goods and sugar-containing products described above exceeded its imports of those goods by 1,431,282 metric tons according to data published by the Asociacion de Azucareros de Guatemala (ASAZGUA). Based on this data, USTR has determined that Guatemala's trade surplus is 1,431,282 metric tons. The specific quantity set out in U.S. Note 25(b)(ii) to subchapter XXII of HTS chapter 98 for Guatemala for CY 2019 is 48,880 metric tons. Therefore, in accordance with that Note, the aggregate quantity of goods of Guatemala that may be entered duty-free under subheading 9822.05.20 in CY 2019 is 48,880 metric tons (*i.e.,* the amount that is the lesser of Guatemala's trade surplus and the specific quantity set out in that Note for Guatemala for CY 2019).

E. Honduras

During CY 2017, the most recent year for which data is available, Honduras' exports of the sugar and syrup goods and sugar-containing products described above exceeded its imports of those goods by 122,527 metric tons according to data published by the Central Bank of Honduras. Based on this data, USTR has determined that Honduras' trade surplus is 122,527 metric tons. The specific quantity set out in U.S. Note 25(b)(ii) to subchapter XXII of HTS chapter 98 for Honduras for CY 2019 is 10,080 metric tons. Therefore, in accordance with that Note, the aggregate quantity of goods of Honduras that may be entered duty-free under subheading 9822.05.20 in CY 2019 is 10,080 metric tons (*i.e.,* the amount that is the lesser of Honduras' trade surplus and the specific quantity set out in that Note for Honduras for CY 2019).

F. Nicaragua

During CY 2017, the most recent year for which data is available, Nicaragua's exports of the sugar and syrup goods and sugar-containing products described above exceeded its imports of those goods by 304,145 metric tons according to data published by the Nicaraguan Ministry of Development, Industry, and Trade (MIFIC). Based on this data, USTR has determined that Nicaragua's trade surplus is 304,145 metric tons. The specific quantity set out in U.S. Note 25(b)(ii) to subchapter XXII of HTS chapter 98 for Nicaragua for CY 2019 is 27,720 metric tons. Therefore, in accordance with that Note, the aggregate quantity of goods of Nicaragua that may be entered duty-free under subheading 9822.05.20 in CY 2019 is 27,720 metric tons (*i.e.,* the amount that is the lesser of Nicaragua's trade surplus and the specific quantity set out in that note for Nicaragua for CY 2019).

IV. Peru TPA

Section 201 of the United States-Peru Trade Promotion Agreement Implementation Act (Pub. L. 110–138; 19 U.S.C. 3805 note) and Presidential Proclamation No. 8341 of January 16, 2009 (74 FR 4105), implemented the Peru TPA on behalf of the United States and modified the HTS to reflect the tariff treatment provided for in the Peru TPA.

Note 28(c) to subchapter XXII of HTS chapter 98 requires USTR annually to publish a determination of the amount of Peru's trade surplus, by volume, with all sources for goods in HS subheadings 1701.12, 1701.13, 1701.14, 1701.91, 1701.99, 1702.40, and 1702.60, except that Peru's imports of U.S. goods classified under HS subheadings 1702.40 and 1702.60 that are originating goods under the Peru TPA and Peru's exports to the United States of goods classified under HS subheadings 1701.12, 1701.13, 1701.14, 1701.91, and 1701.99 are not included in the calculation of Peru's trade surplus.

Note 28(d) to subchapter XXII of HTS chapter 98 provides duty-free treatment for certain sugar goods of Peru entered under subheading 9822.06.10 in an amount equal to the lesser of Peru's trade surplus or the specific quantity set out in that Note for that calendar year.

During CY 2017, the most recent year for which data is available, Peru's imports of the sugar and syrup goods and sugar-containing products described above exceeded its exports of those goods by 485,884 metric tons according to data published by the Superintendencia Nacional de Administracion Tributaria (SUNAT). Based on this data, USTR has determined that Peru's trade surplus is negative. Therefore, in accordance with U.S. Note 28(d) to subchapter XXII of HTS chapter 98, goods of Peru are not eligible to enter the United States duty-free under subheading 9822.06.10 in CY 2019.

V. Colombia TPA

Section 201 of the United States-Colombia Trade Promotion Agreement Implementation Act (Pub. L. 112–42; 19 U.S.C. 3805 note) and Presidential Proclamation No. 8818 of May 14, 2012 (77 FR 29519) implemented the Colombia TPA on behalf of the United States and modified the HTS to reflect the tariff treatment provided for in the Colombia TPA.

Note 32(b) to subchapter XXII of HTS chapter 98 requires USTR annually to publish a determination of the amount of Colombia's trade surplus, by volume, with all sources for goods in HS subheadings 1701.12, 1701.13, 1701.14, 1701.91, 1701.99, 1702.40 and 1702.60, except that Colombia's imports of U.S. goods classified under subheadings 1702.40 and 1702.60 that are originating goods under the Colombia TPA and Colombia's exports to the United States of goods classified under subheadings 1701.12, 1701.13, 1701.14, 1701.91 and 1701.99 are not included in the calculation of Colombia's trade surplus.

Note 32(c)(i) to subchapter XXII of HTS chapter 98 provides duty-free treatment for certain sugar goods of Colombia entered under subheading 9822.08.01 in an amount equal to the lesser of Colombia's trade surplus or the specific quantity set out in that Note for that calendar year.

During CY 2017, the most recent year for which data is available, Colombia's exports of the sugar and syrup goods and sugar-containing products described above exceeded its imports of those goods by 436,478 metric tons according to data published by Global Trade Atlas (GTA) and the Colombian Directorate of National Taxes and Customs (DIAN). Based on this data, USTR has determined that Colombia's trade surplus is 436,478 metric tons. The specific quantity set out in U.S. Note 32(c)(i) to subchapter XXII of HTS chapter 98 for Colombia for CY 2019 is 55,250 metric tons. Therefore, in accordance with that Note, the aggregate quantity of goods of Colombia that may be entered duty-free under subheading 9822.08.01 in CY 2019 is 55,250 metric tons (*i.e.,* the amount that is the lesser of Colombia's trade surplus and the specific quantity set out in that Note for Colombia for CY 2019).

VI. Panama TPA

Section 201 of the United States-Panama Trade Promotion Agreement Implementation Act (Pub. L. 112–43; 19 U.S.C. 3805 note) and Presidential Proclamation No. 8894 of October 29, 2012 (77 FR 66505), implemented the Panama TPA on behalf of the United States and modified the HTS to reflect the tariff treatment provided for in the Panama TPA.

Note 35(a) to subchapter XXII of HTS chapter 98 requires USTR annually to publish a determination of the amount of Panama's trade surplus, by volume, with all sources for goods in HS subheadings 1701.12, 1701.13, 1701.14, 1701.91, 1701.99, 1702.40 and 1702.60, except that Panama's imports of U.S. goods classified under subheadings 1702.40 and 1702.60 that are originating goods under the Panama TPA and Panama's exports to the United States of goods classified under subheadings 1701.12, 1701.13, 1701.14, 1701.91 and 1701.99 are not included in the calculation of Panama's trade surplus.

Note 35(c) to subchapter XXII of HTS chapter 98 provides duty-free treatment for certain sugar goods of Panama entered under subheading 9822.09.17 in an amount equal to the lesser of Panama's trade surplus or the specific quantity set out in that Note for that calendar year.

During CY 2017, the most recent year for which data is available, Panama's exports of the sugar and syrup goods and sugar-containing products described above exceeded its imports of those goods by 12,853 metric tons according to data published by the National Institute of Statistics and Census, Office of the General Comptroller of Panama. Based on this data, USTR has determined that Panama's trade surplus is 12,853 metric tons. The specific quantity set out in U.S. Note 35(c) to subchapter XXII of HTS chapter 98 for Panama for CY 2019 is 540 metric tons. Therefore, in accordance with that Note, the aggregate quantity of goods of Panama that may be entered duty-free under subheading 9822.09.17 in CY 2019 is 540 metric tons (*i.e.,* the amount that is the lesser of Panama's trade surplus and the specific quantity set out in that Note for Panama for CY 2019).

Robert Lighthizer,

United States Trade Representative.

[FR Doc. 2018–25699 Filed 11–23–18; 8:45 am]

BILLING CODE 3290–F9–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent of Waiver With Respect to Land; Indianapolis International Airport, Indianapolis, Indiana

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA is considering a proposal to change 131.227 acres of airport land from aeronautical use to non-aeronautical use and to authorize the sale of airport property located at Indianapolis International Airport, Indianapolis, Indiana. The aforementioned land is not needed for aeronautical use.

The 131.227 acres is located along High School Road between Sam Jones Expressway to the south and the CSX railroad to the north. The land formerly served as parking areas for Indianapolis International Airport. The proposed use of the property is to be used for corporate development.

DATES: Comments must be received on or before December 26, 2018.

ADDRESSES: Documents are available for review by appointment at the FAA Chicago Airports District Office, Melanie Myers, Program Manager, 2300 East Devon Avenue, Des Plaines, Illinois, 60018. Telephone: (847) 294–7525/Fax: (847) 294–7046 and Eric Anderson, Director of Properties, Indianapolis Airport Authority, 7800 Col. H. Weir Cook Memorial Drive, Indianapolis, IN 46241 Telephone: (317) 487–5135.

Written comments on the Sponsor's request must be delivered or mailed to: Melanie Myers, Program Manager, Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Des Plaines, Illinois, 60018. Telephone: (847) 294–7525/Fax: (847) 294–7046.

FOR FURTHER INFORMATION CONTACT: Melanie Myers, Program Manager, Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Des Plaines, Illinois, 60018. Telephone: (847) 294–7525/Fax: (847) 294–7046.

SUPPLEMENTARY INFORMATION: In accordance with section 47107(h) of Title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

The land consists of 176 original airport acquired parcels. The parcels were acquired under grants 8–18–0038–01, 8–18–0038–02, 6–18–0038–06 and local funding. There are no impacts to the airport by allowing the Indianapolis Airport Authority to dispose of the property. The land is not needed for future aeronautical development.

The disposition of proceeds from the sale of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999 (64 FR 7696).

This notice announces that the FAA is considering the release of the subject airport property at the Indianapolis International Airport, Indianapolis, Indiana from federal land covenants, subject to a reservation for continuing right of flight as well as restrictions on the released property as required in FAA Order 5190.6B section 22.16. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA.

Land Description

West Main Parcel

Part of the Northeast Quarter of Section 23, Township 15 North, Range 2 East located in Marion County, Indiana, more particularly described as follows:

Commencing at the Northeast corner (IAA Monument 24–E) of the Northeast Quarter of Section 23, Township 15 North, Range 2 East; thence South 00 degrees 02 minutes 00 seconds West (all bearings are based on the Indiana State Plane Coordinate system, East Zone (NAD83) along the east line of said Northeast Quarter a distance of 1967.84 feet; thence South 58 degrees 11 minutes 49 seconds West 129.48 feet to the Point of Beginning; thence South 58 degrees 11 minutes 49 seconds West 644.13 feet; thence North 31 degrees 08 minutes 51 seconds West 590.73 feet; thence North 44 degrees 25 minutes 44 seconds East 1,140.00 feet; thence South 07 degrees 01 minutes 40 seconds East 225.00 feet; thence South 19 degrees 46 minutes 32 seconds East 215.00 feet; thence South 00 degrees 02 minutes 00 seconds West 377.54 feet; thence South 45 degrees 02 minutes 00 seconds West 63.64 feet; thence South 00 degrees 02 minutes 00 seconds West 132.07 feet to the POINT OF BEGINNING. Containing 14.724 acres, more or less.

East Main Parcel

Part of the Northwest Quarter of Section 24 and part of the Southwest Quarter of Section 13, Township 15

North, Range 2 East, in Marion County, Indiana, more particularly described as follows:

Commencing at the Northwest corner (IAA Monument 24–E) of the Northwest Quarter of said Section 24; thence North 88 degrees 49 minutes 54 seconds East (all bearings are based on the Indiana State Plane Coordinate System East Zone, NAD83) along the North line of said Northwest Quarter 65.01 feet to the Point of Beginning; thence North 00 degrees 22 minutes 02 seconds East parallel with the West line of the Southwest Quarter of said Section 13 a distance of 45.02 feet; thence North 88 degrees 49 minutes 54 seconds East parallel with the North line of the Northwest Quarter of said Section 24 a distance of 1281.85 feet to the West right of way of Interstate 465 per INDOT plans for Project no. IM–465–4(355); thence along said west right of way South 00 degrees 14 minutes 24 seconds West 45.01 feet to the North line of the Northwest Quarter of said Section 24; thence continue along said west right of way South 00 degrees 14 minutes 24 seconds West 621.28 feet; thence leaving said west right of way South 89 degrees 49 minutes 52 seconds West 429.49 feet; thence South 00 degrees 01 minutes 24 seconds East 914.34 feet returning to the western right of way of I–465; thence South 38 degrees 32 minutes 18 seconds West along said western right of way 471.64 feet to the North right of way of Sam Jones Expressway (formerly Airport Expressway) as described in a Finding and Judgment, Cause No. S61–1215 (the following nine courses are along said North right of way); (1) thence South 41 degrees 16 minutes 20 seconds West 12.90 feet; (2) thence South 46 degrees 12 minutes 20 seconds West 19.90 feet; (3) thence South 52 degrees 12 minutes 20 seconds West 19.90 feet; (4) thence South 58 degrees 12 minutes 20 seconds West 19.90 feet; (5) thence South 64 degrees 12 minutes 20 seconds West 19.90 feet; (6) thence South 70 degrees 12 minutes 20 seconds West 19.90 feet; (7) thence South 74 degrees 24 minutes 20 seconds West 8.00 feet; (8) thence South 89 degrees 29 minutes 20 seconds West 409.80 feet; (9) thence North 43 degrees 38 minutes 40 seconds West 68.92 feet to a point located 65 feet east of the West line of the Northwest Quarter of said Section 24; thence North 00 degrees 02 minutes 00 seconds East parallel with said West line 1897.13 feet to the POINT OF BEGINNING. Containing 43.799 acres, more or less.

North Option Parcel

Part of Southwest Quarter of Section 13, Township 15 North, Rang 2 East, in Marion County, Indiana, more particularly described as follows:

Commencing at the Northwest corner (IAA Monument 13–0) of the Southwest Quarter of said Section 13; thence South 00 degrees 22 minutes 02 seconds West (all bearings are based on the Indiana State Plane Coordinate system, East Zone (NAD83)) along the West line of said Southwest Quarter 229.01 feet to the Southwesterly extension of the Southern right of way line of the CSX Railroad; thence North 72 degrees 46 minutes 12 seconds East along said Southwesterly extension 96.10 feet to the East right of way of High School Road per a right of grant to the City of Indianapolis recorded as Instrument number 1998–0020370 and the Point of Beginning; thence continuing North 72 degrees 46 minutes 12 seconds East along said Southwesterly extension and the Southern right of way line of said CSX Railroad 1315.12 feet to the West right of way line of Interstate 465 per INDOT plans for Project No. IM–465–4(355); thence South 00 degrees 14 minutes 24 seconds West along said West right of way line 113.82 feet to the Northern right of way of Minnesota Street per Indianapolis Department of Transportation plans for Project No. DOT (1.17B.36) ST–30–031 (Phase 1 and 2) and a non-tangent curve to the left having a radius of 445.00 feet, the radius point of which bears South 06 degrees 51 minutes 05 seconds East (the following five courses are along said Northern right of way); (1) thence Westerly and Southerly along said curve 643.76 feet to a point which bears North 89 degree 44 minutes 20 seconds West from said radius point; (2) thence South 00 degrees 15 minutes 40 seconds West 577.20 feet to a tangent curve to the right having a radius of 265.00 feet, the radius point of which bears North 89 degrees 44 minutes 20 seconds West; (3) thence Southerly and Westerly along said curve 416.95 feet to a point which bears South 00 degrees 24 minutes 36 seconds West from said radius point; (4) thence North 89 degrees 35 minutes 24 seconds West 622.19 feet (5) thence North 44 degrees 39 minutes 00 seconds West 35.39 feet to the East right of way of High School Road per said Indianapolis Department of Transportation plans (the following two courses are along said East right of way); (1) thence North 00 degrees 22 minutes 02 seconds East 89.43 feet (2) thence North 89 degrees 37 minutes 58 seconds West 15.00 feet to the East right of way of High School Road per Indiana State Highway plans for Project No. 619 (the following five courses are along said East right of way); (1) thence North 00 degrees 22 minutes 02 seconds East 241.30 feet; (2) thence South 89 degrees 37 minutes 58 seconds East 5.00 feet; (3) thence North 00 degrees 22 minutes 02 seconds East 120.00 feet; (4) thence South 89 degrees 37 minutes 58 seconds East 5.00 feet; (5) thence North 00 degrees 22 minutes 02 seconds East 7.84 feet to the east right of way per previously mentioned Instrument number 1998–0020370 (the remaining two courses being along said east line; (1) thence North 10 degrees 15 minutes 51 seconds East 300.25 feet; (2) thence North 00 degrees 22 minutes 02 seconds East 221.37 feet to the Point of Beginning. Containing 24.468 acres, more or less.

South Option Parcel

Part of the Southwest Quarter of Section 13, Township 15 North, Range 2 East, in Marion County, Indiana, more particularly described as follows:

Commencing at the Northwest corner (IAA Monument 24–E) of the Northwest Quarter of said Section 24; thence North 88 degrees 49 minutes 54 seconds East (all bearings are based on the Indiana State Plane Coordinate System East Zone, NAD83) along the South line of the Southwest Quarter of said Section 13 a distance of 65.01 feet; thence North 00 degrees 22 minutes 02 seconds East parallel with the West line of the Southwest Quarter of said Section 13 a distance of 45.02 feet; thence South 88 degrees 49 minutes 54 seconds West parallel with the South line of said Southwest Quarter 35.00 feet to the Point of Beginning; thence continue North 00 degrees 22 minutes 02 seconds East parallel with the west line of the Southwest Quarter of said Section 13 a distance of 1029.39 feet; thence North 17 degrees 03 minutes 59 seconds East 52.20 feet; thence North 00 degrees 22 minutes 02 seconds East 225.57 feet to the South right of way of Minnesota Street per Indianapolis Department of Transportation plans for Project No. DOT (1.17B.36) ST–30–031 (phase 1 and 2) (the following five courses are along said South right of way); (1) thence North 45 degrees 21 minutes 00 seconds East 35.32 feet; (2) thence South 89 degrees 35 minutes 24 seconds East 622.19 feet to a tangent curve to the left having a radius of 355.00 feet, the radius point of which bears North 00 degrees 24 minutes 36 seconds East; (3) thence Easterly and Northerly along said curve 558.55 feet to a point which bears South 89 degrees 44 minutes 20 seconds East from said radius point; (4) thence North 00 degrees 15 minutes 40 seconds East 577.20 feet to a tangent curve to the right having a radius of 355.00 feet, the radius point of which bears South 89

degrees 44 minutes 20 seconds East; (5) thence Northerly and Easterly along said curve 497.28 feet to a point which bears North 09 degrees 28 minutes 48 seconds West from said radius point, said point lies on the West right of way line of Interstate 465 per INDOT plans for Project No. IM–465–4(355); thence South 00 degrees 14 minutes 24 seconds West along said West right of way line 2577.48 feet to a point located 45.00' north of the South line of the Southwest Quarter of said Section 13; thence South 88 degrees 49 minutes 54 seconds West parallel with the South line of said Southwest Quarter 1316.85 feet to the Point of Beginning. Containing 48.236 acres, more or less.

Issued in Des Plaines, Illinois, on November 15, 2018.

Rob Esquivel,

Acting Manager, Chicago Airports District Office, FAA, Great Lakes Region.

[FR Doc. 2018–25578 Filed 11–23–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Intent To Release Airport Property

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on request to release airport property; Palmer Municipal Airport (PAQ), Palmer, Alaska.

SUMMARY: The FAA proposes to rule and invites public comment on the release of land at the Palmer Municipal Airport, Palmer, Alaska.

DATES: Comments must be received on or before December 26, 2018.

ADDRESSES: Documents are available for review by appointment at the FAA Anchorage Airports Regional Office, Molly Lamrouex, Compliance Manager, 222 W 7th Avenue, Anchorage, AK. Telephone: (907) 271–5439/Fax: (907) 271–2851 and the City of Palmer, 231 W Evergreen, Palmer, AK 99645. Telephone: (907) 761–1334.

Written comments on the Sponsor's request must be delivered or mailed to: Molly Lamrouex, Compliance Manager, Federal Aviation Administration, Airports Anchorage Regional Office, 222 W 7th Avenue, Anchorage AK 99513, Telephone Number: (907) 271–5439/ FAX Number: (907) 271–2851.

FOR FURTHER INFORMATION CONTACT: Molly Lamrouex, Compliance Manager, Federal Aviation Administration, Alaskan Region Airports District Office, 222 W 7th Avenue, Anchorage, AK 99513. Telephone Number: (907) 271–5439/FAX Number: (907) 271–2851.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release the aeronautical use only grant provision on four lease lots at the Palmer Airport (PAQ) under the provisions of 49 U.S.C. 47107(h)(2). The City of Palmer has requested from the FAA that approximately 13.07 acres of airport property west of Cope Industrial Way be released for non-aeronautical uses. The FAA has determined that the release of the property will not impact future aviation needs at the airport. The FAA may approve the request, in whole or in part, no sooner than 30 days after the publication of this notice.

The disposition of proceeds from the non-aeronautical leases of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999 (64 FR 7696).

Issued in Anchorage, Alaska, on October 30, 2018.

Kristi Warden,

Acting Director, Alaskan Airports Regional Office, FAA, Alaskan Region.

[FR Doc. 2018–25577 Filed 11–23–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of Unified Carrier Registration Plan Board of Directors (UCR Board) and Registration Systems Subcommittee meetings.

TIME AND DATE: The meetings will occur on the following schedule and will take place in the Eastern (Standard) Time Zone:

Thursday, December 13, 2018

10–11 a.m.—Registration Systems Subcommittee

11 a.m.–2 p.m.—UCR Board

PLACE: These meetings will be open to the public at the National Press Building, 529 14th Street NW, Suite 750, Washington, DC 20045, and via conference call. Those not attending the meetings in person may call toll-free; 1–866–210–1669, passcode 5253902#, to listen and participate in the meetings.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board. An agenda for these meetings will be available no later than 5 p.m. Eastern Standard Time, December 3, 2018, at: *https://ucrplan.org.*

FOR FURTHER INFORMATION CONTACT: Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors, at (505) 827–4565.

Issued on: November 20, 2018.

Larry W. Minor,

Associate Administrator for Policy, Federal Motor Carrier Safety Administration.

[FR Doc. 2018–25822 Filed 11–21–18; 4:15 pm]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of Unified Carrier Registration Plan Audit Subcommittee meeting.

TIME AND DATE: The meeting will occur on December 19, 2018, from 2 p.m. until 4 p.m. Eastern Standard Time.

PLACE: This meeting will be open to the public via conference call. Any interested person may call 1–866–210–1669, passcode 5253902#, to listen and participate in this meeting.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Audit Subcommittee will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement. An agenda for this meeting will be available no later than 5:00 p.m. Eastern Standard Time, December 7, 2018, at: *https://ucrplan.org.*

FOR FURTHER INFORMATION CONTACT: Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors, at (505) 827–4565.

Issued on: November 20, 2018.

Larry W. Minor,

Associate Administrator for Policy, Federal Motor Carrier Safety Administration.

[FR Doc. 2018–25823 Filed 11–21–18; 4:15 pm]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2018–0109]

Pipeline Safety: Information Collection Activities, Gas and Liquid Pipeline Safety Program Certification

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: PHMSA is preparing to request Office of Management and Budget (OMB) approval for the renewal, without change, of the information collection covering the Gas and Liquid Pipeline Safety Program Certifications currently approved under OMB control number 2137–0584. In accordance with the Paperwork Reduction Act of 1995, PHMSA invites comments from affected agencies and members of the public on the information collection detailed below.

DATES: Interested persons are invited to submit comments on or before January 25, 2019.

ADDRESSES: Comments may be submitted in the following ways:

E-Gov website: http://www.regulations.gov. This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590–0001.

Hand Delivery: Room W12–140 on the ground level of DOT, West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: Identify the docket number, PHMSA–2018–0109, at the beginning of your comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. You should know that anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). Therefore, you may want to review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000, (65 FR 19476) or visit *http://www.regulations.gov* before submitting any such comments.

Docket: For access to the docket or to read background documents or comments, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground level of DOT, West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: ''Comments on: PHMSA–2018–0109.'' The docket clerk will date stamp the postcard prior to returning it to you via the U.S. mail. Please note that due to delays in the delivery of U.S. mail to Federal offices in Washington, DC, we recommend that persons consider an alternative method (internet, fax, or professional delivery service) of submitting comments to the docket and ensuring their timely receipt at DOT.

FOR FURTHER INFORMATION CONTACT: Angela Hill by telephone at 202–366–1246, by fax at 202–366–4566, or by mail at DOT, PHMSA, 1200 New Jersey Avenue SE, PHP–30, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: Section 1320.8(d), Title 5, Code of Federal Regulations, requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies an information collection request that PHMSA will submit to OMB for approval.

The following information is provided below for the impacted information collection: (1) Title of the information collection; (2) OMB control number; (3) Current expiration date; (4) Type of request; (5) Abstract of the information collection activity; (6) Description of affected public; (7) Estimate of total annual reporting and recordkeeping burden; and (8) Frequency of collection.

PHMSA requests comments on the following information collection:

Title: Gas Pipeline Safety Program Certification and Hazardous Liquid Pipeline Safety Program Certification.

OMB Control Number: 2137–0584.

Current Expiration Date: 02/28/2019.

Abstract: A state must submit an annual certification to assume responsibility for regulating intrastate pipelines. Certain records must be maintained to demonstrate that the state is ensuring satisfactory compliance with the pipeline safety regulations. PHMSA uses this information to evaluate a state's eligibility to receive Federal grants.

Affected Public: State and local governments.

Annual Reporting and Recordkeeping Burden:

Total Annual Responses: 118.

Total Annual Burden Hours: 4,532.

Frequency of Collection: Annually.

Comments are invited on:

(a) The need for the proposed collection of information, including whether the information will have practical utility in helping the agency to achieve its pipeline safety goals;

(b) The accuracy of the agency'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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued in Washington, DC, on November 19, 2018, under authority delegated in 49 CFR 1.97.

John A. Gale,

Director, Standards and Rulemaking Division.

[FR Doc. 2018–25652 Filed 11–23–18; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons and vessels that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons and these vessels are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global

Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480; or the Department of the Treasury's Office of the General Counsel: Office of the Chief Counsel (Foreign Assets Control), tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Actions

On November 19, 2018, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following person subject to U.S. jurisdiction are blocked pursuant to the relevant sanctions authority listed below.

Individual

1. AMTCHENTSEV, Vladlen, Singapore; DOB 25 Jan 1969; POB Klimovsk, Russia; Gender Male; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Passport M00021291 (South Africa) issued 04 May 2010 expires 03 May 2020; National ID No. 6901256079081 (South Africa) (individual) [DPRK3] (Linked To: VELMUR MANAGEMENT PTE LTD).

Designated pursuant to Section 2(a)(viii) of Executive Order 13722 of March 15, 2016, ''Blocking Property of the Government of North Korea and the Workers' Party of Korea, and Prohibiting Certain Transactions With Respect to North Korea'' (E.O. 13722) for having acted or purported to act for or on behalf of, directly or indirectly, VELMUR MANAGEMENT PTE. LTD., a person whose property and interests are blocked pursuant to E.O. 13722.

Dated: November 19, 2018.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2018–25592 Filed 11–23–18; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0859]

Agency Information Collection Activity: Request for Restoration of Educational Assistance

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 extension 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 25, 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. 2900–0859'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Danny S. 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: 38 U.S.C. 3699.

Title: Request for Restoration of Educational Assistance, VA Form 22–0989.

OMB Control Number: 2900–0859.

Type of Review: Extension of previously approved collection.

Abstract: VA Form 22–0989 will allow students to apply for restoration of entitlement for VA education benefits used at a school that closed or had its approval to receive VA benefits withdrawn. Education Service requests approval of this information collection in order to carry out the implementation of the law which requires VA to immediately accept applications to restore education benefits for school closures and disapprovals beginning after January 1, 2015.

Affected Public: Individuals.

Estimated Annual Burden: 3,511 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: Once.

Estimated Number of Respondents: 14,045.

By direction of the Secretary.

Cynthia D. Harvey-Pryor,

Government Information Specialist, Department of Veterans Affairs.

[FR Doc. 2018–25614 Filed 11–23–18; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Creating Options for Veterans Expedited Recovery (COVER) Commission; Notice of Meeting

In accordance with the Federal Advisory Committee Act, the Creating Options for Veterans Expedited Recover (COVER) Commission gives notice that a meeting will be held:

1. December 4, 5, and 6, 2018 James A. Haley Tampa Veterans Hospital
2. January 14 and 15, 2019, from 1–4 p.m. ET or completion of out-briefs whatever comes first, VANTS call.

The purpose of the COVER Commission is to examine the evidence-based therapy treatment model used by the Department of Veterans Affairs (VA) for treating mental health conditions of Veterans and the potential benefits of incorporating complementary and integrative health approaches as standard practice throughout the Department.

The December 4, 2018 meeting will convene at the James A. Haley Tampa Veterans Hospital and will be open to the public from 9:00 a.m. to 12:20 p.m. ET on Dec. 4; from 8:30–9:30 a.m. on Dec. 5; and from 8:30–11:30 a.m. ET on Dec. 6. The location for all open sessions is in the Auditorium, Building 1, 2nd floor. All other sessions will be closed as the Commissioners will split into several interview/data collection teams to accomplish research, discuss relevance of the interviews and research and focus group information collected, and conduct sensitive interviews/focus groups with Veterans. The public is not

invited to interviews in order protect privacy data and proprietary information under S.C. 552b(c) under (9) (B) ''because it would reveal information the disclosure of which would, ''in the case of an agency, be likely to significantly frustrate implementation of a proposed agency action.''

December 4, 2018 open meetings will consist of briefings on:

1. Overview of Mental Health Services
2. Whole Health/CIH Overview
3. Pain Program Overview

The December 5, 2018, open meeting will consist of a briefing on Mental Health Care in the Community.

December 6, 2018 open sessions will consist of:

1. Mental Health Continuum of Care and Application of the Statistical Analytics for Improvement and Learning (SAIL) report application
2. Department of Defense Collaboration with James A. Haley Veterans Hospital to provide appropriate and timely mental health services

The January 14 and 15, 2018 meetings are VANTS line by Commissioners; a listening line is provided for the public to call in. These meetings are for commissioners to out brief and summarize the COVER Commission subcommittee's activities and findings since the open sessions updates on November 6 & 7, 2018 and to further discuss applicability to the charter and legislative requirements.

The listening line number for the public for all open sessions December 4, 5, & 6 as well as for the subcommittee updates on January 14 & 15, 2018 is 800–767–1750; access code 48664#. The line number will be activated 10 minutes before each of the open or call in sessions.

Members of the public are invited to open sessions. Videotaping or recording, tweeting commission or staff photos or comments are discouraged as they are disruptive to Commission members and staff and other audience members. Any member of the public seeking additional information should email *COVERCommission@va.gov.* The Acting Designated Federal Officer for the Commission is Ms. Alison Whitehead. She and the staff will be monitoring and responding to questions or comments sent to this email box. The Committee will also accept written comments which may be sent to the same email box. In the public's communications with the Committee, the writers must identify themselves and state the organizations, associations, or persons they represent.

Dated: November 20, 2018.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2018–25624 Filed 11–23–18; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee: VA National Academic Affiliations Council, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act that the VA National Academic Affiliations Council (NAAC) will meet via conference call on December 5, 2018, from 1:00 p.m. to 4:00 p.m. EST. The meeting is open to the public.

The purpose of the Council is to advise the Secretary on matters affecting partnerships between VA and its academic affiliates.

On December 5, 2018, the Council will welcome and introduce its seven new members; receive an activities update from its Subcommittee on Diversity and Inclusion; explore the results of the Trainee Satisfaction Survey conducted by the Office of Academic Affiliations; receive a briefing on the alignment of VHA telehealth care delivery with educational accrediting body requirements; and discuss recent stakeholder engagement activities related to implementation of Section 403 of the VA MISSION Act (Pub. L. 115–182). The Council will receive public comments from 2:50 p.m. to 3:00 p.m. EST. Immediately following the public comment session, the Council will receive two annual training briefings from the VA Advisory Committee Management Office and the VA Office of General Counsel.

Interested persons may attend and/or present oral statements to the Council.

The dial in number to attend the conference call is: 1–800–767–1750. At the prompt, enter access code 59021 then press #. Individuals seeking to present oral statements are invited to submit a 1–2 page summary of their comments at the time of the meeting for inclusion in the official meeting record. Oral presentations will be limited to five minutes or less, depending on the number of participants. Interested parties may also provide written comments for review by the Council prior to the meeting or at any time, by email to *Larissa.Emory@va.gov,* or by mail to Larissa A. Emory PMP, CBP, MS, Designated Federal Officer, Office of Academic Affiliations (10A2D), 810 Vermont Avenue NW, Washington, DC 20420. Any member of the public wishing to participate or seeking additional information should contact Ms. Emory via email or by phone at (915) 269–0465.

Dated: November 20, 2018.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2018–25694 Filed 11–23–18; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 83 Monday,

No. 227 November 26, 2018

Part II

Department of the Treasury

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 4, 5, 7, et al.

Modernization of the Labeling and Advertising Regulations for Wine, Distilled Spirits, and Malt Beverages; Proposed Rule

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 4, 5, 7, 14, and 19

[Docket No. TTB–2018–0007; Notice No. 176]

RIN 1513–AB54

Modernization of the Labeling and Advertising Regulations for Wine, Distilled Spirits, and Malt Beverages

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) is proposing to amend its regulations governing the labeling and advertising of wine, distilled spirits, and malt beverages. TTB proposes to reorganize and recodify these regulations in order to simplify and clarify regulatory standards, incorporate guidance documents and current policy into the regulations, and reduce the regulatory burden on industry members where possible.

DATES: TTB must receive comments on this proposal on or before March 26, 2019.

ADDRESSES: Please send your comments on this document to one of the following addresses:

- *Internet: https://www.regulations.gov* (via the online comment form for this document as posted within Docket No. TTB–2018–0007 at ''*Regulations.gov*,'' the Federal e-rulemaking portal);
- *U.S. Mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; or
- *Hand delivery/courier in lieu of mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Suite 400, Washington, DC 20005.

See the Public Participation section of this document for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

FOR FURTHER INFORMATION CONTACT: Christopher M. Thiemann or Kara T. Fontaine, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; telephone 202–453–2265.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

A. TTB's Statutory Authority

Sections 105(e) and 105(f) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e) and 205(f), set forth standards for the regulation of the labeling and advertising of wine, distilled spirits, and malt beverages. The FAA Act was enacted in 1935 and also contains provisions regarding the requirements for basic permits that allow people to engage in business as producers, importers, and wholesalers, and the regulation of unfair trade practices.

The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary of the Treasury (the Secretary) has delegated various authorities to administer and enforce this law to the TTB Administrator through Treasury Department Order 120–01 (dated December 10, 2013, superseding Treasury Order 120–01 (Revised), ''Alcohol and Tobacco Tax and Trade Bureau,'' dated January 24, 2003).

1. History of the FAA Act

After the repeal of Prohibition by the enactment of the Twenty-First Amendment in 1933, the alcohol beverage industry was subject to Federal regulation under the codes of fair competition authorized by the National Industrial Recovery Act. By Executive order, the President created the Federal Alcohol Control Administration to administer the codes of fair competition for the alcohol beverage industry. In 1935, the Supreme Court struck down the provisions of the National Industrial Recovery Act as unconstitutional. See *Schechter Poultry Corp.* v. *United States,* 295 U.S. 495 (1935). After that decision, in order to provide for the orderly regulation of the alcohol beverage industry, Congress enacted the FAA Act in August of 1935.

The legislative history of the FAA Act provides some insight concerning the general purpose of the FAA Act's labeling provisions, which authorize TTB to regulate the labeling of alcohol beverage products:

> * * * the provisions of this bill show that the purpose was to carry that regulation into certain particular fields in which control of interstate commerce in liquors was paramount and necessary. The purpose was to provide such regulations, not laid down in statute, so as to be inflexible, but laid down under the guidance of Congress, under general principles, by a body which could change them as changes were found necessary. Those regulations were intended to insure that the purchaser should get what he thought he was getting, that representations both in labels and in advertising should be honest and straightforward and truthful. They should not be confined, as the pure-food regulations have been confined, to prohibitions of falsity, but they should also provide for the information of the consumer, that he should be told what was in the bottle, and all the important factors which were of interest to him about what was in the bottle. (See Hearings on H.R. 8539 before the Committee on Ways and Means, House of Representatives, 74th Cong., 1st Sess. 10 (1935).)

2. Labeling and Advertising Provisions of the FAA Act

Section 105(e) of the FAA Act, codified in the United States Code at 27 U.S.C. 205(e), sets forth requirements for labeling of wine (which is defined in the FAA Act to cover only wines that contain at least 7 percent alcohol by volume), distilled spirits, and malt beverages (collectively referred to as ''alcohol beverages'' throughout this document). This section of the FAA Act authorizes the Secretary to issue regulations to prevent deception of the consumer, to provide the consumer with ''adequate information'' as to the identity and quality of the product, to prohibit false or misleading statements, and to provide information as to the alcohol content of the product.

3. FAA Act Prohibition of Sale or Shipment of Mislabeled Products

Section 105(e) of the FAA Act (27 U.S.C. 205(e)) also prohibits the sale or

shipment in interstate or foreign commerce of wine, distilled spirits, or malt beverages that are not bottled, packaged, and labeled in accordance with regulations issued by the Secretary. Violations of section 105(e) are misdemeanors that are punishable by a fine. See 27 U.S.C. 207.

The prohibition in section 105(e) applies to any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer or wholesaler of wine, distilled spirits or malt beverages, or as a bottler, or warehouseman and bottler, of distilled spirits. The law makes it unlawful for such persons, directly or indirectly or through an affiliate, to sell or ship, or deliver for sale or shipment, or otherwise introduce, in interstate or foreign commerce, or to receive therein, or to remove from customs custody for consumption, any wine, distilled spirits, or malt beverages in bottles, unless the products are bottled, packaged, and labeled in conformity with the regulations.

4. Authorization of Labeling Regulations in the FAA Act

The FAA Act provides specific guidance as to what the labeling regulations should cover, but builds in a ''zone of discretion'' for TTB to exercise in implementing these regulations. See *Center for Science in the Public Interest* v. *Department of the Treasury,* 797 F.2d 995 (D.C. Cir. 1986). The following provides a summary of the statutory provisions with regard to the labeling of wine, distilled spirits, and malt beverages under section 105(e) of the FAA Act (27 U.S.C. 205(e)).

a. Prohibition of consumer deception. Section 105(e)(1) of the FAA Act (27 U.S.C. 205(e)(1)) authorizes the issuance of regulations that prohibit deception of the consumer with respect to such products or the quantity thereof, and prohibit, irrespective of falsity, such statements relating to age, manufacturing processes, analyses, guarantees, and scientific or irrelevant matters that the Secretary finds to be likely to be misleading to the consumer. This section provides the basis for many of TTB's regulations on prohibited practices with respect to labeling statements.

b. Adequate information as to the identity, quality, and alcohol content of products, as well as the net contents and the manufacturer/bottler/importer. Section 105(e)(2) of the FAA Act (27 U.S.C. 205(e)(2)) authorizes the issuance of regulations to ensure that labels provide the consumer with adequate information as to the identity and quality of the product, the alcohol content thereof, the net contents of the package, and the manufacturer or bottler or importer of the product. This section provides the basis for most of the mandatory information requirements in the TTB labeling regulations.

With regard to alcohol content, section 105(e)(2) sets out different requirements for wine, distilled spirits, and malt beverages. This section provides the Secretary with the authority to issue regulations that require alcohol content statements on labels of distilled spirits products and for wines with an alcohol content of over 14 percent alcohol by volume, leaving such statements optional for wines with an alcohol content at or below 14 percent. Furthermore, the FAA Act contains language that specifically prohibits placement of alcohol content statements on malt beverage labels, unless required by State law. In 1995, that statutory ban was struck down on First Amendment grounds by the U.S. Supreme Court in *Rubin* v. *Coors Brewing Co.,* 514 U.S. 476 (1995) (hereinafter referred to as the ''*Coors*'' decision).

c. Statement of neutral spirits. Section 105(e)(3) of the FAA Act (27 U.S.C. 205(e)(3)) authorizes the issuance of regulations that require an accurate statement in the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, informing the consumer of the percentage of neutral spirits so used and of the name of the commodity from which such neutral spirits have been distilled, or in the case of neutral spirits or of gin produced by a process of continuous distillation, the name of the commodity from which distilled. These very specific statutory provisions are incorporated into the TTB distilled spirits labeling regulations.

d. Prohibition of statements that are disparaging, false, misleading, obscene, or indecent. Section 105(e)(4) (27 U.S.C. 205(e)(4)) authorizes the issuance of regulations to prohibit labeling statements that are disparaging of a competitor's products or are false, misleading, obscene or indecent. This provision is reflected in TTB's current regulations on prohibited practices.

e. Prohibition of implied endorsements that are false or misleading. Section 105(e)(5) (27 U.S.C. 205(e)(5)) authorizes the issuance of regulations that prevent deception of the consumer by use of a trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a name that is in simulation or an abbreviation thereof, and will prevent the use of a graphic, pictorial, or emblematic representation of any such individual or organization, if the use of such name or representation is likely to falsely lead the consumer to believe that the product has been endorsed, made or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization. Certain ''grandfathering'' provisions are included in this section. These provisions are incorporated into the current regulations on prohibited practices.

5. Prohibition of Alteration, Mutilation, Destruction, Obliteration, or Removal of Labels

Section 105(e) makes it unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label upon wine, distilled spirits, or malt beverages held for sale in interstate or foreign commerce or after shipment therein. An exception is made where the activity is authorized by Federal law. The FAA Act also authorizes the Secretary to issue regulations authorizing relabeling for the purposes of compliance with the requirements of section 105(e) or of State law. These regulations are found in parts 4, 5 and 7 of 27 CFR.

6. Certificate of Label Approval Requirements

Section 105(e) of the FAA Act sets out very specific requirements for the issuance of certificates of label approval (COLAs) by the Secretary. The law provides that ''[i]n order to prevent the sale or shipment or other introduction of distilled spirits, wine, or malt beverages in interstate or foreign commerce, if bottled, packaged, or labeled in violation of the requirements of this subsection,'' certain persons are required to obtain a COLA prior to bottling distilled spirits, wine, or malt beverages.

The persons covered by this requirement under the law are bottlers of distilled spirits; producers, blenders, and wholesalers of wine, and proprietors of a bonded wine storeroom; and brewers and wholesalers of malt beverages. With regard to imported products, the law provides that no person shall remove from customs custody, in bottles, for sale or any other commercial purpose, distilled spirits, wine, or malt beverages, without first obtaining a COLA. The law provides that such COLAs are to be issued in such manner and form as the Secretary shall prescribe by regulations.

The law goes on to allow for the issuance of certificates of exemption,

pursuant to regulations issued by the Secretary, when an applicant has shown to the satisfaction of the Secretary that the wine, distilled spirits, or malt beverages to be bottled by the applicant are not to be sold, or offered for sale, or shipped or delivered for shipment, or otherwise introduced, in interstate or foreign commerce. The law provides for the issuance of these certificates to bottlers of distilled spirits; producers, blenders, or wholesalers of wine, or proprietors of a bonded wine storeroom; and brewers and wholesalers of malt beverages. However, the law does not authorize the issuance of certificates of exemption to persons removing alcohol beverages in containers from customs custody, presumably because those products will by definition be introduced in interstate or foreign commerce.

7. Advertising Provisions of the FAA Act

Section 105(f) of the FAA Act (27 U.S.C 205(f)) provides similar authority to the Secretary to prescribe regulations with respect to the advertising of wine, distilled spirits, and malt beverages.

The Secretary is authorized to prescribe regulations that will prevent deception of the consumer and to prohibit, irrespective of falsity, such statements relating to age, manufacturing processes, analyses, guarantees, and scientific or irrelevant matters that the Secretary finds to be likely to mislead the consumer. See 27 U.S.C. 205(f)(1). The Secretary is also authorized to prescribe regulations to ensure that advertisements provide the consumer with adequate information as to the identity and quality of the products advertised, the alcohol content thereof, and the person responsible for the advertisement. See 27 U.S.C. 205(f)(2). The statute bans alcohol content statements on advertisements of both wine and malt beverages; this provision was not the subject of the Supreme Court's decision in *Coors.*

The FAA Act contains advertising provisions that are very similar to the labeling provisions with regard to disclosure of neutral spirits (27 U.S.C. 205(f)(3)) and the prohibition of statements that are disparaging, false, misleading, obscene, or indecent (27 U.S.C. 205(f)(4)). The FAA Act also authorizes the issuance of regulations to prevent advertising statements that are inconsistent with any statement on the labeling of the products advertised. (27 U.S.C. 205(f)(5)).

8. Special Rules for Malt Beverages Under the FAA Act

The statutory requirements for malt beverages under the FAA Act differ from the requirements for distilled spirits and wine. Most notably for purposes of this document, the labeling provisions of the FAA Act apply to the labeling of malt beverages sold or shipped or delivered for shipment or otherwise introduced into or received in any State from any place outside of that State ''only to the extent that the law of such State imposes similar requirements with respect to the labeling'' of malt beverages sold within that State. See 27 U.S.C. 205(f).

The penultimate paragraph of section 105(f) also provides that the advertising provisions of the FAA Act apply to the advertising of malt beverages intended to be sold or shipped or delivered for shipment or otherwise introduced into or received in any State from any place outside of that State, only to the extent that the law of that State imposes ''similar requirements'' with respect to the advertising of malt beverages to be sold within that State.

9. Alcoholic Beverage Labeling Act (ABLA)

The Alcoholic Beverage Labeling Act of 1988 (ABLA) requires that a specific health warning statement appear on the labels of all containers of alcohol beverages for sale or distribution in the United States. See 27 U.S.C. 215. This requirement applies to both interstate and intrastate sale and distribution of alcoholic beverages. In addition, the health warning statement must appear on containers of alcoholic beverages that are sold, distributed, or shipped to members or units of the U.S. Armed Forces, including those located outside the United States.

The health warning statement required by ABLA advises consumers of the risks of birth defects to pregnant women, impairment of the ability to operate a car or other machinery, and other potential health problems resulting from the consumption of alcoholic beverages. As stated in 27 U.S.C. 213:

> The Congress finds that the American public should be informed about the health hazards that may result from the consumption or abuse of alcoholic beverages, and has determined that it would be beneficial to provide a clear, nonconfusing reminder of such hazards, and that there is a need for national uniformity in such reminders in order to avoid the promulgation of incorrect or misleading information * * *.

ABLA provides that no State may require any statement concerning alcoholic beverages and health, other than the required health warning statement, on any alcoholic beverage container, box, carton, or other package that contains such a container. See 27 U.S.C. 216.

This proposed rule does not affect ABLA labeling requirements.

10. Internal Revenue Code Marking Requirements

In addition to the FAA Act and ABLA, Chapter 51 of the Internal Revenue Code of 1986 (IRC), (26 U.S.C. 5001 *et seq.*), sets forth certain marking requirements for alcohol beverage products. Chapter 51 of the IRC imposes Federal excise taxes on beer, wine, and distilled spirits, and provides for the regulation of alcohol beverages to protect the revenue associated with those taxes. The tax rates differ depending on the product, and the marking requirements provide for the proper determination of tax liability based on the identity of the product.

This proposed rule does not amend IRC labeling requirements. However, some IRC labeling regulations require compliance with certain FAA Act labeling regulations by cross-referencing labeling provisions in 27 CFR parts 4, 5 or 7, as applicable.

B. Current TTB Alcohol Beverage Labeling and Advertising Regulations

1. History

The first regulations implementing the labeling and advertising provisions of the FAA Act were promulgated in 1936 by the Federal Alcohol Administration (FAA). Over the next several decades, various amendments to these regulations were published by TTB's other predecessor agencies, the Internal Revenue Service (IRS), and the Bureau of Alcohol, Tobacco and Firearms (ATF). TTB assumed responsibility for the enforcement and implementation of these regulations in January of 2003, pursuant to the Homeland Security Act of 2002.

2. FAA Act-Based Regulations

The TTB regulations that implement the labeling and advertising provisions of the FAA Act, as they relate to wine, distilled spirits, and malt beverages, are set forth in chapter I of title 27 of the Code of Federal Regulations (27 CFR chapter I). Specifically, these regulations are codified in 27 CFR part 4, Labeling and Advertising of Wine (27 CFR part 4); 27 CFR part 5, Labeling and Advertising of Distilled Spirits (27 CFR part 5); and 27 CFR part 7, Labeling and Advertising of Malt Beverages (27 CFR part 7).

a. Mandatory and prohibited labeling information. The TTB regulations

contained in 27 CFR parts 4, 5, and 7 require that all wine, distilled spirits, and malt beverages sold or shipped in, or otherwise introduced into, interstate commerce bear labels that contain certain mandatory information. The regulations also set conditions on the use of certain non-mandatory information and specifically prohibit labeling statements that are false or tend to create a misleading impression.

Provisions in parts 4, 5, and 7 currently require similar mandatory information to appear on labels of wine, distilled spirits, and malt beverages, with some exceptions and with some notable differences among the commodities. The regulations in some circumstances also contain provisions regarding the placement of the mandatory information. Commodity-specific rules are discussed more fully in later sections of this document, but a general description of the current labeling requirements is provided here.

The mandatory information that must appear on alcohol beverage labels includes such things as the brand name of the product; a statement of the class, type, or other designation of the product; the name and address of the bottler or importer; a statement of the net contents; and declarations relating to sulfites or added colors in the product. Alcohol content statements, expressed as a percentage of alcohol by volume, are required for distilled spirits, wine over 14 percent alcohol by volume, and certain flavored malt beverages. These requirements, as well as certain exceptions to these requirements, are set forth later in this preamble.

With regard to the class, type, or other designation, the regulations specify and describe 9 ''classes'' of wine, including ''grape wine'' and ''fruit wine,'' and 12 ''classes'' of distilled spirits, including ''whisky'' and ''brandy.'' Some classes are further subdivided into ''types.'' For example, types of ''grape wine'' include ''table wine'' and ''dessert wine,'' while types of whisky include ''bourbon whisky'' and ''blended whisky.'' For malt beverages, the TTB regulations refer to certain classes but do not provide specific standards of identity for those classes. Instead, the regulations provide that statements of class and type must ''conform to the designation of the product as known to the trade.''

If a wine or distilled spirit does not fall within any class, and if a malt beverage is not known to the trade under a particular designation, the regulations require that a truthful and adequate statement of composition appear on the label as the statement of class and type. While the term ''statement of composition'' is not currently defined in the regulations, TTB's general policy has been to require that such a statement identify the base product and any added flavoring or coloring materials. For example, a statement of composition may be ''grape wine with raspberry flavor added,'' ''a blend of vodka and coconut liqueur,'' or ''ale brewed with watermelon juice.''

As noted above, the ''net contents'' must appear on containers. This is required for all three commodities. TTB regulations provide standards of fill for wine and distilled spirits products but not for malt beverages. This means that the net contents of wine and distilled spirits containers must be consistent with specified quantities prescribed by the standards of fill requirements (such as 750 milliliters).

Certain types of information or representations are prohibited from appearing on alcohol beverage labels, and these are set forth in regulations entitled ''prohibited practices.'' See current 27 CFR 4.39, 5.42, and 7.29, for wine, distilled spirits, and malt beverages, respectively. Some labeling practices are prohibited outright on alcohol beverage labels for any of the commodities. For example, no false or obscene statement may appear on any alcohol beverage label or container. Other practices are prohibited if presented in a manner that is misleading.

Some practices may be prohibited for just one of the commodities. For example, existing regulations prohibit certain uses of the term ''pure'' on distilled spirits labels. Other labeling practices may be used on labels if they comply with certain rules. These include the use of a living person's name or likeness and statements making claims about whether the product is organic.

b. Alcohol advertising regulations. TTB also promulgates regulations covering the advertising of wine, distilled spirits, and malt beverages. These regulations prescribe mandatory information that must be included in an advertisement (such as identification of the responsible party) and also prohibit certain practices similar to the prohibited practices for labels. The advertising regulations are currently found in subpart G of part 4, subpart H of part 5, and subpart F of part 7.

3. TTB's ABLA-Based Regulations

As previously noted, all alcohol beverages bottled or imported for sale or distribution in the United States must bear the health warning statement required by the ABLA, even if the product is not sold in interstate commerce. The regulations promulgated under the authority of the ABLA are set forth in 27 CFR part 16, Alcoholic Beverage Health Warning Statement (27 CFR part 16). As noted above, this proposal does not affect ABLA labeling requirements.

4. TTB's IRC Marking Regulations

Finally, regulations implementing the IRC marking requirements appear in 27 CFR parts 19, 24, and 25 (relating to, respectively, domestic producers and bottlers of distilled spirits, wines, and beer), as well as 27 CFR parts 26, 27, and 28 (relating to distilled spirits, wine, and beer that are, respectively, brought into the United States from Puerto Rico and the Virgin Islands, imported into the United States, and exported from the United States). As noted above, this proposal does not affect these IRC-based regulations.

C. The Certificate of Label Approval (COLA) Process

As noted above, a person who intends to bottle wine, distilled spirits, or malt beverages, or remove those products from customs custody in bottles, for introduction into interstate or foreign commerce must, before doing so, obtain approval of the labels for the bottles through a COLA issued by TTB. Currently, each application for a COLA is reviewed by a TTB specialist for compliance with the FAA Act and TTB regulations. In fiscal year 2015, TTB received over 153,000 applications for label approval. The time between the date of application and final TTB determination on the application averaged approximately 24 days.

In part, the increase in the number of COLA applications is due to the growing number of industry members submitting applications and to product innovations and expansions in product lines by industry members. In addition, because industry members seek to bring products to market quickly, they may submit label approval applications early in their product development process, before the product and its marketing have been finalized. These industry members may submit several applications for different potential labels to cover the different possible ways that product may eventually be formulated and marketed once ready for market.

To implement the FAA Act provision requiring the issuance of COLAs, TTB regulations provide a process through which a person can submit an application for approval of a label, along with a copy of the label, and obtain TTB approval of the label through the

issuance by TTB of a COLA. The COLA is evidence that a label has been reviewed for compliance with the TTB regulations and approved for use. The requirement to obtain a COLA for domestic and imported products is set forth in subparts E and F of part 4 (for wine), subparts E and F of part 5 (for distilled spirits), and subparts D and E of part 7 (for malt beverages). The procedures governing the issuance and revocation of COLAs are set forth in 27 CFR part 13, Labeling Proceedings (27 CFR part 13).

The regulations also authorize the issuance of certificates of exemption for wine and distilled spirits when the applicant establishes that the wine or distilled spirits product is not to be sold, offered for sale, or shipped or delivered for shipment, or otherwise introduced in interstate or foreign commerce. It should be noted that TTB and its predecessor agencies have never issued regulations requiring certificates of exemption for malt beverages that will not be sold or otherwise introduced in interstate or foreign commerce. Furthermore, the regulations do not require malt beverages that will not be sold or otherwise introduced in interstate or foreign commerce to be covered by a certificate of label approval. See TTB Ruling 2013–1. This issue will be discussed later in this preamble.

1. COLA Streamlining Initiatives

TTB has undertaken several initiatives to streamline the label approval process. In 2003, TTB implemented COLAs Online, a system that allows industry members to submit electronic applications for label approval. Currently, over 90 percent of COLA applications are submitted and processed electronically. More recently, in 2013, TTB began electronically processing applications that are received on paper.

On July 5, 2012, TTB published a revised version of TTB Form 5100.31, ''Application for and Certification/Exemption of Label/Bottle Approval.'' The most significant change was to expand the list of items that may be changed on an approved alcohol beverage label without resubmission of the label for TTB approval. This new policy, which is reflected on the form, reduces the number of label applications that industry members would otherwise send to TTB. As a result, label applications were reduced by 8 percent. In 2014 TTB expanded the list of changes that may be made to approved labels without requiring those labels to be resubmitted to TTB for review—this expanded list has been incorporated into the form (see TTB Industry Circular 2014–02 and TTB F 5100.31).

TTB has also been working on additional initiatives to streamline label review. These include making processing improvements designed to speed up review turnaround times; updating labeling guidance on the TTB website (*https://www.ttb.gov*) to help industry members comply with its labeling requirements; and researching industry needs and studying other Federal agencies' best practices so that TTB can continue to improve its label review process in the future.

D. Modernization of the Alcohol Beverage Labeling and Advertising Regulations

As part of the Department of the Treasury's ''Plan for Retrospective Analysis of Existing Rules,'' TTB has been reviewing its existing labeling and advertising of wine, distilled spirits, and malt beverages regulations. TTB proposes to amend these regulations to improve their clarity and readability, to improve compliance, and to ease burdens on the regulated industry. The amended regulations will take into account modern business practices and contemporary consumer understanding in order to modernize the regulations.

In this proposed rule, TTB intends to clarify, update, and consolidate labeling requirements and, where possible, to set forth objective standards for meeting those requirements. This effort also will help TTB use its limited resources more efficiently, facilitate the development and use of more efficient systems for processing applications, and reduce the processing time for label applications.

In preparation for this rulemaking, TTB reviewed its regulations, public guidance, and labeling review practices to identify policies and interpretations that are relevant but have not yet been codified in the regulations, as well as those that are no longer relevant and can be eliminated. In all, TTB reviewed 90 rulings and industry circulars, and incorporated all or parts of approximately 38 of them into the proposed regulations. When these proposed regulations become final, those rulings and industry circulars, or parts thereof, will be superseded by the regulations. TTB also determined that eight rulings and industry circulars were no longer relevant and thus could be superseded without being incorporated.

As a result, the proposed regulations, when finalized, will provide industry with a more comprehensive source for the general rules applicable to alcohol beverage labeling. In addition, in updating these regulations, TTB sought to make the rules applicable to all three commodities as consistent as possible, recognizing that some differences in treatment are required by statute and others by the nature of the commodity or industry practice.

E. Plain Language Principles

On June 1, 1998, the President issued a memorandum that requires Federal agencies to write regulations in ''plain language.'' These proposed regulations have been written in the plain language style. The proposed regulations:

- Use the active voice in the regulations, whenever possible;
- Use shorter sentences, paragraphs, and sections;
- Minimize the use of jargon and unnecessary technical terms;
- Clarify and simplify the regulatory requirements;
- Create consistency in the treatment of the three commodities, as appropriate;
- Break large sections into smaller, more focused sections for better readability; and
- Make it easier for readers to find information through the tables of contents.

F. Scope of This Rulemaking

As mentioned above, TTB is undertaking this modernization effort to improve understanding of the regulatory requirements and to make compliance easier and less burdensome. In addition, the proposed rule will incorporate changes in labeling standards that have come about through statutory changes (such as the change to the labeling of wines with semi-generic designations) and international agreements (through the incorporation of various designations of geographic significance). In the case of wine, we are proposing greater flexibility in the use of certain appellations of origin and multiple varietal designations, both to comply with international commitments and to provide more information to consumers through greater flexibility in the use of this optional information on labels. For all products, TTB is proposing greater flexibility with regard to the placement of mandatory information on labels.

TTB is also reflecting contemporary case law with regard to the protection of commercial speech under the First Amendment. In some cases, this means codifying longstanding interpretations, such as our policy that the prohibition on disparaging statements on labels and in advertisements does not prohibit truthful and accurate comparisons with a competitor's product.

With regard to malt beverages and wine, TTB is updating the alcohol content regulations for the first time since the Supreme Court's decision in *Rubin* v. *Coors Brewing Company,* 514 U.S. 476 (1995), which struck down on First Amendment grounds the FAA Act's ban on alcohol content statements on malt beverage labels. In 1993, after the district court decision in the *Coors* case but prior to the Supreme Court decision, TTB's predecessor agency, the Bureau of Alcohol, Tobacco and Firearms (ATF), issued interim regulations allowing optional statements of alcohol content on malt beverage labels. See T.D ATF–339 (58 FR 21228, April 19, 1993). TTB is now proposing to finalize updated alcohol content regulations, including, in this document, amendments that would modernize the regulations on strength claims to remove outdated language, such as the ban on use of the term ''pre-war strength,'' which refers to the period before World War I.

This proposed rule would also incorporate certain proposals previously aired for comment by TTB in notices or advance notices of proposed rulemaking, including proposals on the use of ''estate grown'' on wine labels, and the use of aggregate packaging to satisfy standards of fill for distilled spirits and wine containers.

TTB is also proposing several amendments that would protect consumers by providing certain more specific labeling and packaging rules. For example, existing regulations require mandatory information to appear on opaque packaging of distilled spirits and wine, because consumers are unable to see the label on the container without removing the container from the packaging. TTB is proposing to extend this requirement to malt beverages.

TTB is also proposing to require mandatory information to appear on any ''closed packaging'' of wine, distilled spirits, or malt beverages. The proposed amendments define closed packaging to include packaging where the mandatory information on the label of the container is not visible to the consumer because the container cannot be readily removed from the packaging. Packaging is considered closed if the consumer must open, rip, untie, unzip, or otherwise manipulate the package to remove the container in order to view any of the mandatory information.

TTB has noted that today's industry increasingly uses terms that apply to one commodity on labels of a different commodity. For example, TTB sees many wine and malt beverage labels that include distilled spirits terms or malt beverage labels that include wine terms. TTB is proposing a specific regulatory provision to prohibit the use of such terms when they might mislead consumers as to the identity of the product, while allowing the non-misleading use of certain terms (such as references to aging malt beverages in barrels previously used for the storage of distilled spirits or wine).

TTB solicits comments on whether these proposals will protect consumers and whether they will require significant labeling changes by industry members. TTB proposes to give all affected parties three years to come into compliance with the proposed regulations, should they be finalized. This will allow industry members to coordinate new labeling requirements with scheduled labeling changes, and to use up existing stocks of labeling and packaging.

There are a number of ongoing rulemaking initiatives related to labeling and advertising of alcohol beverages that will be handled separately from this proposed rule due to their complexity. For example, this document does not deal with ''Serving Facts'' statements, an issue that was the subject of a 2007 notice of proposed rulemaking (see Notice No. 73, 72 FR 41860, July 31, 2007) and TTB Ruling 2013–2. Nor does TTB address its current policy requiring statements of average analysis on labels that include nutrient content claims. Industry members should continue to rely on TTB's published rulings and other guidance documents on these issues. TTB's policy on gluten content statements is still an interim one; therefore, that issue is not addressed in the proposed rule (see TTB Ruling 2014–2). Substantive changes to allergen labeling requirements are not addressed in this document. Standards of fill requirements are not addressed in this document but TTB plans to address them in a separate rulemaking document.

In addition, this document is not intended to specifically address proposals that were submitted to the Department of the Treasury in response to a Request for Information (RFI) published in the **Federal Register** (82 FR 27212) on June 14, 2017. The RFI invited members of the public to submit views and recommendations for Treasury Department regulations that can be eliminated, modified, or streamlined, in order to reduce burdens. The comment period for the RFI closed on October 31, 2017.

Eight comments on the FAA Act labeling regulations, including 28 specific recommendations, were submitted in response to the RFI. For ease of reference, TTB will post the labeling comments in the docket for this rulemaking. We will consider all of the labeling recommendations submitted in response to the RFI either as comments to this proposed rule or as suggestions for separate agency action, as appropriate. We note that our preliminary review of the comments submitted in response to the RFI indicates that many of the topics that were included in those recommendations are addressed in this proposed rule, although our proposals may in some cases differ from those set forth in the comments.

Finally, in this notice TTB proposes to consolidate its alcohol beverage advertising regulations in a new part, 27 CFR part 14, Advertising of Wine, Distilled Spirits, and Malt Beverages. The proposed part 14 contains only those updates needed to conform certain regulated practices to the updates being proposed for the labeling provisions. Additional updates to the regulations on advertising to address contemporary issues, such as social media, are not proposed in this rulemaking but may be proposed in future rulemaking initiatives. Because this proposed rule deals with such a broad scope of modernization changes, TTB will deal with these more specific issues in separate rulemaking documents.

II. Proposed Revisions

A. General Reorganization of the Parts

TTB is proposing to reorganize the contents of 27 CFR parts 4, 5, and 7, and to add a new 27 CFR part 14. As proposed, 27 CFR parts 4, 5, and 7 continue to contain the labeling regulations for wine, distilled spirits, and malt beverages, respectively, while the current subparts of parts 4, 5, and 7 that relate to advertising are removed from those parts and consolidated into a new part 14. As part of TTB's review of the labeling regulations, TTB reviewed the various sections and subparts and determined that much of their basic structure needs to be amended. Under the current structure, information is not always located where a reader would expect to find it. As a result of amendments to the regulations over the years, certain provisions that would logically be grouped together are instead spread throughout a given part. Accordingly, TTB is proposing to group topics together in a more logical order, with related provisions, where appropriate, appearing in a single subpart.

The new subparts are restructured in a progressive order starting with general provisions, such as defining the terms

used in that part and specifying who is subject to the regulations in that part. The ''general provisions'' subpart is followed by subparts setting forth the circumstances under which a certificate of label approval (COLA) is required, how to obtain a COLA, and what information is required on the labels and where it must appear.

Proposed parts 4, 5, and 7 of 27 CFR are each structured similarly. Furthermore, within each part, regulatory provisions that appear in more than one part will have the same number within the part. For example, the regulations that set out the mandatory information for wine, distilled spirits, and malt beverage labels, respectively, are found in proposed §§ 4.63, 5.63, and 7.63. TTB believes that this revised numbering of the regulations will make it easier for the public to find relevant regulations and to compare regulations in the three parts.

The table below shows the organization of the proposed subparts in parts 4, 5, and 7.

PROPOSED SUBPARTS: 27 CFR PARTS 4, 5, AND 7

Part 4 (Wine)	Part 5 (Distilled spirits)	Part 7 (Malt beverages)
Subpart A—General Provisions	Subpart A—General Provisions	Subpart A—General Provisions
Subpart B—Certificates of Label Approval and Certificates of Exemption from Label Approval	Subpart B—Certificates of Label Approval and Certificates of Exemption from Label Approval	Subpart B—Certificates of Label Approval
Subpart C—Alteration of Labels, Relabeling, and Adding Information to Containers	Subpart C—Alteration of Labels, Relabeling, and Adding Information to Containers	Subpart C—Alteration of Labels, Relabeling, and Adding Information to Containers
Subpart D—Label Standards	Subpart D—Label Standards	Subpart D—Label Standards
Subpart E—Mandatory Label Information	Subpart E—Mandatory Label Information	Subpart E—Mandatory Label Information
Subpart F—Restricted Labeling Statements	Subpart F—Restricted Labeling Statements	Subpart F—Restricted Labeling Statements
Subpart G—Prohibited Labeling Practices	Subpart G—Prohibited Labeling Practices	Subpart G—Prohibited Labeling Practices
Subpart H—Labeling Practices That are Prohibited if They are Misleading	Subpart H— Labeling Practices That are Prohibited if They are Misleading	Subpart H— Labeling Practices That are Prohibited if They are Misleading
Subpart I—Standards of Identity for Wine	Subpart I—Standards of Identity for Distilled Spirits	Subpart I—Classes and Types of Malt Beverages
Subpart J—American Grape Variety Names	Subpart J—Formulas	Subpart J—Reserved
Subpart K—Standards of Fill and Authorized Container Sizes	Subpart K—Standards for Fill and Authorized Container Sizes	Subpart K—Reserved
Subpart L—Recordkeeping and Substantiation Requirements	Subpart L—Recordkeeping and Substantiation Requirements	Subpart L—Recordkeeping and Substantiation Requirements
Subpart M—Penalties and Compromise of Liability	Subpart M—Penalties and Compromise of Liability	Subpart M—Penalties and Compromise of Liability
Subpart N—Paperwork Reduction Act	Subpart N—Paperwork Reduction Act	Subpart N—Paperwork Reduction Act

B. Proposed Changes That Apply to Parts 4, 5 and 7

As discussed above, in proposing to update its labeling regulations, one of TTB's purposes has been to apply the same rules to wine, distilled spirits, and malt beverages, to the extent possible, as long as different treatment is not required by statute or by the nature of the commodity. Therefore, a number of the proposed changes to the regulations apply to parts 4, 5 and 7. These proposed changes are described below, in the general order in which they appear in the proposed regulations. See the discussion in sections II C, II D, and II E of this document for provisions specific to wine, distilled spirits, and malt beverages, respectively.

1. Subpart A—General Provisions

a. Definitions. Proposed subpart A includes several sections of general applicability. These sections include definitions of terms used throughout these regulations, as well as sections cross-referencing other regulations that relate to the production and labeling of the alcohol beverage products at issue.

With regard to definitions, TTB is proposing to amend the sections in parts 4, 5, and 7 that define the terms used in those parts (proposed §§ 4.1, 5.1, and 7.1), to add definitions of the following terms: ''brand name,'' ''certificate holder,'' ''certificate of exemption from label approval,'' ''certificate of label approval (COLA),'' ''distinctive or fanciful name,'' and ''net contents.''

The proposed rule defines the term ''brand name'' as the name under which a product or product line is sold. This definition is consistent with the current understanding of the term and with guidance provided in the Beverage Alcohol Manuals (BAMs), TTB P 5120.3, 5110.7, and 5130.3, for wine, distilled spirits, and malt beverages, respectively, which are guidance documents that provide the public with interpretations of some of TTB's labeling regulations.

The term ''certificate holder'' is used in the proposed text of parts 4, 5, and 7 to refer to industry members that have obtained a COLA, certificate of exemption from label approval, or distinctive liquor bottle approval from TTB. The proposed rule sets forth a definition of ''certificate holder'' for parts 4, 5, and 7 that is largely consistent with that definition of that term in part 13 of the TTB regulations (27 CFR part 13), which governs the issuance, denial, and revocation of COLAs. The definition of the term ''certificate of exemption from label approval'' is consistent with the definition already in part 13 of the TTB regulations.

The definition of the term ''Certificate of label approval (COLA)'' is derived from the definition set forth in part 13 of the TTB regulations, but includes some proposed revisions. The proposed definition is ''A certificate issued on TTB Form 5100.31 that authorizes the bottling of wine, distilled spirits, and malt beverages, or the removal of bottled wine, distilled spirits, and malt beverages from customs custody for introduction into commerce, as long as the product bears labels identical to the labels appearing on the face of the certificate, or labels with changes authorized by TTB on the certificate or otherwise.'' The current definition in part 13 recognizes that the COLA form itself authorizes certain allowable revisions to a label that may be made by the certificate holder without having to obtain TTB approval. The revisions made in the proposed definition specifically recognize that TTB may

authorize revisions in other ways, such as by issuing guidance on the TTB website.

The term ''distinctive or fanciful name'' currently refers to a term that must be used on a distilled spirits label, together with a truthful and adequate statement of composition, when a distilled spirits product does not fall within a class and type that is specified in the regulations or on a malt beverage label when a malt beverage is not known to the trade under a particular designation. A distinctive or fanciful name is optional on other distilled spirits or malt beverage products. A distinctive or fanciful name is also optional for a wine, whether or not it bears a statement of composition.

The proposed rule defines the term ''distinctive or fanciful name,'' which is used in proposed parts 4, 5, and 7. The term ''distinctive or fanciful name'' is defined as a descriptive name or phrase chosen to identify a product on the label. It does not include a brand name, class or type designation, statement of composition, or, in part 7 only, a designation known to the trade or consumers.

The proposed rule adds a definition of ''net contents'' in parts 4, 5, and 7. The ''net contents'' is the amount, by volume, of wine, distilled spirits, or malt beverages, respectively, held in a container. The net contents statement is mandatory labeling information.

The proposed regulations also include amendments to several definitions that appear in the current regulations. These changes reflect current TTB policy and are clarifying in nature.

The definition of the term ''container'' is amended in parts 4 and 7 and is added to part 5 to replace the definition of the term ''bottle.'' The proposed rule defines ''container'' in parts 4 and 7 as any can, bottle, box with an internal bladder, cask, keg, barrel, or other closed receptacle, in any size or material, that is for use in the sale of wine or malt beverages, respectively, at retail. Aside from editorial changes, this differs from the current definitions in that it specifically incorporates a box with an internal bladder, sometimes referred to as a ''bag in a box.''

The term ''container'' will replace the term ''bottle'' in the part 5 regulations for distilled spirits and is defined as any can, bottle, box used to protect an internal bladder, cask, keg, or other closed receptacle, in any size or material, that is for use in the sale of distilled spirits at retail. TTB believes that the revised definition will make it clearer that containers of distilled spirits may be made in a variety of materials and sizes, and that the term is not restricted to traditional glass bottles. Because of the restrictions on the size of distilled spirits containers, the proposed definition does not include references to barrels. Furthermore, because there are prescribed standards of fill for both wine and distilled spirits, the definitions in parts 4 and 5 include a cross reference to those standard of fill regulations, to clarify that containers must be in certain sizes.

The proposed rule amends the definition of the term ''interstate or foreign commerce'' in parts 4, 5 and 7 to remove the provision that included commerce within any Territory as being interstate or foreign commerce. The FAA Act extends to the 50 States, the District of Columbia, and Puerto Rico. As set forth in the definitions in the FAA Act, the term ''State'' included a Territory and the District of Columbia, and the term ''Territory'' meant Alaska, Hawaii, and Puerto Rico. See 27 U.S.C. 211(a)(1). Since the enactment of the FAA Act in 1935, Alaska and Hawaii have become states. Furthermore, Puerto Rico is now a Commonwealth, which has affected the status of transactions that occur solely within Puerto Rico under the FAA Act. See ATF Ruling 85–5, which addressed this issue in the context of the trade practice regulations and relied, in part, on *Cordova & Simonpietri Insurance Agency, Inc.* v. *Chase Manhattan Bank,* 649 F. 2d 36 (1st Cir. 1981). Therefore, the proposed rule amends the definition of ''interstate or foreign commerce'' to remove the language indicating that commerce within Puerto Rico is interstate commerce.

The proposed rule amends the definition of the term ''person'' in all three parts by adding ''limited liability company'' to specifically reflect TTB's current position that limited liability companies fall under the definition of a ''person.''

The proposed rule removes the term ''advertisement'' from the definition sections in parts 4, 5, and 7, because these parts will no longer provide substantive rules regarding advertisements. Instead, the proposed rule moves the regulations regarding advertisements to a new proposed part 14.

Finally, in this subsection and throughout parts 4 and 5, the proposed rule updates references to the IRC. The existing regulations include certain references to terms (such as ''rectifier'' or ''bonded wine storeroom'') from previous versions of the IRC. These terms are no longer used in the current tax laws. The proposed rule updates these references to include terms that are currently used in the IRC.

b. General requirements and prohibitions under the FAA Act. Proposed §§ 4.3, 5.3, and 7.3 set out the general requirements and prohibitions under the FAA Act. Proposed §§ 4.3(a), 5.3(a), and 7.3(a) summarize the general requirements regarding COLAs, as set forth in greater detail in subpart B. Proposed §§ 4.3(b), 5.3(b), and 7.3(b) similarly summarize the prohibition against alteration, mutilation, destruction, obliteration, or removal of labels, as set forth in greater detail in subpart C. Proposed §§ 4.3(c) and (d), 5.3(c) and (d), and 7.3(c) and (d) set out the general labeling requirements of this part, as set forth in greater detail in subparts D, E, F, G, H, and I. Finally, proposed §§ 4.3(e) and 5.3(e) summarize the general bottling and standards of fill requirements, which are set out in subpart K for wine and distilled spirits. (Malt beverages are not subject to standard of fill requirements.)

Proposed §§ 4.3(d), 5.3(d), and 7.3(d) also set out for the first time in the regulations TTB's position that in order to be labeled in accordance with the regulations in these parts, a container may not contain an adulterated alcohol beverage within the meaning of the Federal Food, Drug, and Cosmetic Act. It is TTB's longstanding position that adulterated distilled spirits, wines, and malt beverages are mislabeled within the meaning of the FAA Act, even if the bottler or importer of the product in question has obtained a COLA or an approved formula. See Industry Circular 2010–8, dated November 23, 2010. No adulterated distilled spirits, wines, or malt beverages can satisfy the labeling requirements of the FAA Act. Subject to the jurisdictional requirements of the FAA Act, mislabeled distilled spirits, wines, and malt beverages, including adulterated products, may not be sold or shipped, delivered for sale or shipment, or otherwise introduced or received in interstate or foreign commerce, or removed from customs custody for consumption, by a producer, importer, or wholesaler, or other industry member subject to 27 U.S.C. 205(e).

c. Exports in bond. The current regulations exempting products for export from the labeling regulations under the FAA Act are somewhat inconsistent. In existing §§ 4.80 and 7.60, wine and malt beverages ''exported in bond'' are exempted from the requirements of those respective parts. However, current § 5.1, which is entitled ''General,'' provides that part 5 ''does not apply to distilled spirits for export.''

TTB believes that the exemptions in all three parts should be consistent and should be restricted to exportations in

bond. In general, the bottler is required to obtain a COLA prior to removal of the product from the premises. Products that are removed subject to tax may subsequently be exported or may end up in the domestic market, and therefore are not exempted from the labeling requirements of the FAA Act.

Accordingly, proposed §§ 4.8, 5.8, and 7.8 provide that products exported in bond directly from a bonded wine premises, distilled spirits plant, or brewery, respectively, or from customs custody, are not subject to the regulations under these parts. The amendment clarifies that exportation in bond does not include exportation after wine, distilled spirits, or malt beverages have been removed for consumption or sale in the United States, with appropriate tax determination or payment. This is only a clarifying change in parts 4 and 7. With regard to part 5, TTB seeks comments on whether this proposed change will impact existing practices, and if so, what the impact will be.

d. Compliance with Federal and State requirements. For the first time, parts 4, 5, and 7, will make clear that compliance with the requirements of the respective parts relating to the labeling and bottling of wine, distilled spirits and malt beverages does not relieve industry members from responsibility for complying with other applicable Federal and State requirements (see proposed §§ 4.9, 5.9, and 7.9).

These sections also provide that it remains the responsibility of the industry member to ensure that any ingredient used in the production of alcohol beverages complies fully with all applicable Food and Drug Administration (FDA) regulations pertaining to the safety of food ingredients and additives and that TTB may at any time request documentation to establish such compliance. In addition, these three sections provide that it remains the responsibility of the industry member to ensure that containers are made of suitable materials that comply with all applicable FDA health and safety regulations for the packaging of alcohol beverages for consumption and that TTB may at any time request documentation to establish such compliance.

It is TTB's longstanding position that its review of labels and formulas does not relieve the industry member from its responsibility to ensure compliance with applicable FDA regulations. See, *e.g.,* Industry Circular 2010–8, dated November 23, 2010, entitled ''Alcohol Beverages Containing Added Caffeine,'' in which TTB reminded industry members as follows:

> * * * each producer and importer of alcohol beverages is responsible for ensuring that the ingredients in its products comply with the laws and regulations that FDA administers. TTB's approval of a COLA or formula does not imply or otherwise constitute a determination that the product complies with the [Federal Food, Drug, and Cosmetic Act], including a determination as to whether the product is adulterated because it contains an unapproved food additive.

See also Industry Circular 62–33. The instructions on the forms for formula approval repeat this message. Now, TTB is proposing to codify this position in the regulations.

e. Cross references to other regulations. Proposed §§ 4.10, 5.10, and 7.10 are derived from current §§ 4.5, 5.2, and 7.4 and include an expanded list of regulations implemented by other Federal agencies of which industry members should be aware. While the list does not purport to be comprehensive, TTB believes it will be helpful to industry members.

2. Subpart B—Certificates of Label Approval (for Wine, Distilled Spirits and Malt Beverages) and Certificates of Exemption From Label Approval (for Wine and Distilled Spirits)

a. Certificates of label approval (COLAs) and certificates of exemption from label approval. The regulations implementing the statutory requirement for (COLAs) (for wine, distilled spirits and malt beverages) and certificates of exemption (for wine and distilled spirits) are reorganized for clarity. The proposed regulations also set forth, for the first time, some of the things that a COLA does not do. Specifically, the proposed regulations provide that, among other things, a COLA does not confer trademark protection; relieve the certificate holder from its responsibility to ensure that all ingredients used in the production of wine, distilled spirits, or malt beverages comply with applicable requirements of the FDA with regard to ingredient safety; or relieve the certificate holder from liability for violations of the FAA Act, the ABLA, the IRC, or related regulations and rulings.

The proposed revisions reflect the longstanding policy of TTB and its predecessor agencies. Furthermore, the COLA form (TTB Form 5100.31, Application for and Certification/Exemption of Label/Bottle Approval), currently specifically provides that the issuance of a COLA does not confer trademark protection and does not relieve the applicant from liability for violations of the FAA Act, the ABLA, the IRC, or related regulations and rulings. TTB believes that these revisions will clarify this position for the public and industry members.

b. Certificates of exemption. Proposed §§ 4.23 and 5.23 incorporate current regulatory requirements with regard to the issuance of certificates of exemption to bottlers of wine and distilled spirits. Consistent with the current regulations, the proposed rule provides that the bottler may obtain a certificate of exemption upon establishing, to the satisfaction of the appropriate TTB officer, that the wine or spirits to be bottled will be offered for sale only within the State in which bottled, and that they will not be sold, offered for sale, shipped or delivered for shipment, or otherwise introduced, in interstate or foreign commerce.

Consistent with the instructions for Item 18 that currently appear on the TTB Form 5100.31, the proposed regulations provide that, as a condition for receiving exemption from label approval, the label covered by a certificate of exemption must include the statement, ''For sale in [name of State] only.'' It should be noted that it is TTB's current practice to issue certificates of exemption conditioned on the applicant's agreement to add this statement to the container. Under the proposed regulations, TTB will require applicants to include this statement on a label submitted with the application for a certificate of exemption.

c. COLAs for Imported Wine, Distilled Spirits, and Malt Beverages. Consistent with current regulations, proposed §§ 4.24, 5.24, and 7.24 provide that wine, distilled spirits, and malt beverages, imported in containers, are not eligible for release from customs custody for consumption unless the person removing the wine, distilled spirits, or malt beverages has obtained and is in possession of a COLA. The regulations, as amended by the final rule facilitating the use of the International Trade Data System (ITDS) (T.D. TTB–145, 81 FR 94186, December 22, 2016), require importers who file electronically to file with CBP the identification number assigned to the approved COLA. If the importer is not filing electronically, the importer must provide a copy of the COLA to CBP at the time of entry.

d. Administrative rules. In proposed subpart B of parts 4, 5, and 7, several sections are grouped under the heading of ''Administrative Rules.'' These sections set forth requirements for presenting COLAs to government officials; submitting formulas, samples, and other documentation related to obtaining or using COLAs; and applying for and obtaining permission to use personalized labels.

The requirement that a certificate holder must present a COLA upon request by any duly authorized representative of the United States Government (at proposed §§ 4.27, 5.27, and 7.27) reflects current provisions (at current §§ 4.51, 5.55(c), and 7.42) but adds the provision that the COLA may be the original or a copy (including an electronic copy).

i. Formula requirements. TTB currently has specific formula requirements for certain domestic products. These are found in parts 5 and 19 for distilled spirits, in part 24 for wine, and in part 25 for beer. However, TTB often finds it necessary to obtain more specific information about a product that is not otherwise subject to the formula requirements in connection with the COLA review process.

For many imported alcohol beverage products, TTB requires a product evaluation to determine whether a proposed label identifies the product in an adequate and non-misleading way. Pre-COLA product evaluation entails a review of a product's ingredients and formulation and also may include a laboratory analysis of the product. Laboratory analysis involves a chemical analysis of a product. Such pre-COLA product evaluations ensure that:

- No alcohol beverage contains a prohibited ingredient.
- Ingredients are used within limitations or restrictions prescribed by TTB or another Federal agency, as applicable.
- Appropriate tax and product classifications are made.
- Alcohol beverages labeled without a sulfite declaration contain less than 10 parts per million (ppm) of sulfur dioxide.

The type of pre-COLA product evaluation required for a particular product depends on that product's formulation and origin. Industry Circular 2007–4, ''Pre-COLA Product Evaluation,'' dated September 11, 2007, includes a list of the imported products for which TTB currently requires formulas and other pre-COLA analyses.

The Industry Circular also announced that TTB had developed a new form that may be submitted in lieu of the various forms and formats otherwise prescribed in the regulations for specific products. TTB developed the form, TTB F 5100.51, ''Formula and Process for Domestic and Imported Alcohol Beverages,'' to simplify the formula submission process and to provide a more consistent means of information collection across all commodity areas for both imported and domestic products. The Circular stated that TTB intended to pursue a regulatory change that will make use of this form mandatory, entirely replacing the various industry-specific forms and formats currently set forth in the TTB regulations. Until such a change occurs, this form may be used voluntarily as an alternate procedure. A producer or importer who wishes to use TTB F 5100.51 may submit that form in lieu of the forms prescribed in the regulations without first requesting approval from TTB to do so.

Current regulations in §§ 4.38(h), 5.33(g), and 7.31(d) authorize TTB to request more information about the contents of a wine, distilled spirits product or malt beverage, but the language in part 7 is different from the language in parts 4 and 5. Sections 4.38(h) and 5.33(g) provide that, upon request of the appropriate TTB officer, a bottler or importer must submit a full and accurate statement of the contents of any container to which labels are to be or have been affixed. The regulations in § 7.31(d) state that the appropriate TTB officer may require an importer to submit a formula for a malt beverage, or a sample of any malt beverage or ingredients used in producing a malt beverage, prior to or in conjunction with the filing of an application for a COLA.

TTB is proposing to standardize the regulatory language in parts 4, 5 and 7 on this issue. Accordingly, proposed §§ 4.28, 5.28, and 7.28 provide that the appropriate TTB officer may require a bottler or importer to submit a formula, the results of laboratory testing, and samples of the product or ingredients used in the final product, prior to or in conjunction with the review of an application for label approval. The proposed regulations also provide that TTB may request such information after the issuance of a COLA, or in connection with any product that is required to be covered by a COLA. The proposed regulations also provide that, upon request of the appropriate TTB officer, a bottler or importer must submit a full and accurate statement of the contents of any container to which labels are to be or have been affixed, as well as any other documentation on any issue pertaining to whether the wine, distilled spirits, or malt beverage is labeled in accordance with the TTB regulations. These amendments reflect current TTB policy.

As noted above, current TTB regulations and industry practice involve the submission of alcohol beverage formulas in varying forms and formats depending on the type of alcohol beverage and whether the product is domestically produced or imported. TTB believes that this multiplicity of procedures is unnecessarily complicated and burdensome for both the regulated industries and TTB. Accordingly, we propose in this document to amend the TTB regulations in parts 4, 5, and 7 to provide that a formula may be filed electronically by using Formulas Online, or it may be submitted on paper on TTB Form 5100.51. TTB anticipates proposing similar revisions to the IRC regulations in the near future. TTB notes that many industry members now use Formulas Online to submit formulas, and encourages all industry members to consider the advantages of online filing.

ii. Personalized labels. The proposed regulations also set forth, for the first time, the process for applicants seeking label approval to receive permission from TTB to make certain changes in order to personalize labels without having to resubmit the labels for TTB approval (see §§ 4.29, 5.29, and 7.29). Personalized labels may contain a personal message, picture, or other artwork that is specific to the consumer who is purchasing the product. For example, a producer may offer custom labels to individuals or businesses that commemorate an event such as a wedding or grand opening.

Consistent with current policy, as set forth in TTB G 2011–5 and TTB G 2010–1, the proposed regulations provide that label applicants who intend to offer personalized labels must submit a template for the personalized label with their application for label approval, and note on the application a description of the specific personalized information that may change. If the application complies with the regulations, TTB will issue a COLA with a qualification that allows the personalization of labels. The qualification will allow the certificate holder to add or change items on the personalized label such as salutations, names, graphics, artwork, congratulatory dates and names, or event dates, without applying for a new COLA. All of these items on personalized labels must comply with the regulations.

The proposed rule provides that certain changes are not permitted on personalized labels. These include the addition of any information that discusses either the alcohol beverage or the characteristics of the alcohol beverage, as well as information that is inconsistent with or in violation of the provisions of the TTB regulations or any other applicable law or regulation.

3. Subpart C—Alteration of Labels, Relabeling, and Adding Information to Containers

As previously noted, the COLA requirements of the FAA Act are

intended to prevent the sale or shipment or other introduction in interstate or foreign commerce of distilled spirits, wine, or malt beverages that are not bottled, packaged, or labeled in compliance with the regulations. To ensure that products with proper labels are not altered once such products have been removed from bond, section 105(e) of the FAA Act (27 U.S.C. 205(e)) further provides:

> It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label upon distilled spirits, wine, or malt beverages held for sale in interstate or foreign commerce or after shipment therein, except as authorized by Federal law or except pursuant to regulations of the Secretary of the Treasury authorizing relabeling for purposes of compliance with the requirements of this subsection or of State law.

Regulations that implement these provisions of the FAA Act, as they relate to wine, distilled spirits, and malt beverages, are set forth in parts 4, 5, and 7, respectively. Current §§ 4.30 and 7.20 provide that someone wanting to relabel must receive prior written permission from the appropriate TTB officer. Current § 5.31 does not require prior written approval for the relabeling of distilled spirits, as long as such relabeling is done in accordance with an approved COLA.

In proposed subpart C of parts 4, 5, and 7, TTB proposes conforming changes to the regulations that implement this statutory prohibition. This subpart also sets forth the situations in which a person must apply for and obtain written approval prior to relabeling.

Proposed §§ 4.41(a), 5.41(a), and 7.41(a) set forth the statutory prohibition under 27 U.S.C. 205(e) on the alteration of labels. The proposed language provides that the prohibition applies to any persons, including retailers, holding wine for sale in (or after shipment in) interstate or foreign commerce.

Proposed §§ 4.41(b), 5.41(b), and 7.41(b) provide that for purposes of the relabeling activities authorized by this subpart, the term ''relabel'' includes the alteration, mutilation, destruction, obliteration, or removal of any existing mark, brand, or label on the container, as well as the addition of a new label (such as a sticker that adds information about the product or information engraved on the container) to the container, and the replacement of a label with a new label bearing identical information.

Proposed §§ 4.41(c), 5.41(c), and 7.41(c) contain new language that provides that authorization to relabel in no way authorizes the placement of labels on containers that do not accurately reflect the brand, bottler, identity, or other characteristics of the product; nor does it relieve the person conducting the relabeling operations from any obligation to comply with the regulations in this part and with State or local law, or to obtain permission from the owner of the brand where otherwise required.

The existing regulations in parts 4 and 7 require persons wishing to relabel to obtain written permission from TTB, with certain exceptions, while the regulations in part 5 require persons wishing to relabel to obtain a COLA from TTB. TTB believes that the regulations in parts 4, 5 and 7 should be updated to cover all of the situations in which people need to relabel. The existing regulations in part 5 allow persons who are eligible to obtain COLAs covering the products, such as bottlers and importers, to relabel the products even after they have been removed from bottling premises or customs custody, respectively. The proposed rule extends this provision to parts 4 and 7. However, the language in existing parts 4 and 7 allows persons who are not eligible to obtain COLAs, such as retailers, to obtain written permission from TTB to relabel products that are in the marketplace when unusual circumstances exist. The proposed rule extends this provision to part 5.

Accordingly, proposed §§ 4.42(a), 5.42(a), and 7.42(a) provide that proprietors of bonded wine premises, distilled spirits plant premises, and breweries, respectively, may relabel domestically bottled products prior to their removal from, and after their return to bond at, the bottling premises, with labels covered by a COLA, without obtaining separate permission from TTB for the relabeling activity. Proposed §§ 4.42(b), 5.42(b), and 7.42(b) provide that proprietors of bonded wine premises, distilled spirits plant premises, and breweries, respectively, may relabel domestically bottled products after removal from the bottling premises with labels covered by a COLA, without obtaining separate permission from TTB for the relabeling activity. This would, for example, allow a brewer to replace damaged labels on containers that are being held at a wholesaler's premises, as long as the labels are covered by a COLA, without obtaining separate permission from TTB to remove the existing labels and replace them with either identical or different approved labels.

Similarly, proposed §§ 4.42(c) and (d), 5.42(c) and (d), and 7.42(c) and (d) provide that, under the supervision of U.S. customs officers, imported wine, distilled spirits, and malt beverages, respectively, in containers in customs custody may be relabeled without obtaining separate permission from TTB for the relabeling activity. Such containers must bear labels covered by a COLA if and when they are removed from customs custody for consumption.

Proposed §§ 4.43, 5.43, and 7.43 cover relabeling activities that require separate written authorization from TTB. It is rare that someone other than the original bottler or importer will need to relabel the product, but these situations sometimes occur. For example, sometimes unlabeled wine containers are transferred between bonded wine premises. While the bottler is required to obtain a COLA to cover these containers prior to bottling, the transferee, who is labeling the containers, will sometimes want to put additional labels on the containers. In this case, the transferee must obtain TTB approval to place the new labels on the products and must be in possession of the necessary documentation to substantiate any new claims that will appear on the labels.

Thus, the proposed regulations provide that persons who are not eligible to obtain a COLA (such as retailers or permittees other than the bottler) may obtain written authorization for relabeling if the facts show that the relabeling is for the purpose of compliance with the requirements of this part or of State law. The written application must include copies of the original and proposed new labels; the circumstances of the request, including the reason for relabeling; the number of containers to be relabeled; the location where the relabeling will take place; and the name and address of the person who will be conducting the relabeling operations.

TTB is proposing to add to the malt beverage regulations a provision that is already found in slightly different forms in parts 4 and 5. This provision authorizes, without any requirement for separate written permission from TTB, the addition of a label identifying the wholesaler, retailer, or consumer as long as the label contains no reference to the characteristics of the product, does not violate the labeling regulations, and does not obscure any existing labels. The proposed regulations will standardize this provision for wine, distilled spirits, and malt beverages (see proposed §§ 4.44, 5.44, and 7.44).

TTB believes that the proposed regulations will enable permittees, brewers, and retailers to relabel alcohol beverage containers when there is a

good reason to do so, while still restricting the alteration of labels for containers that are in the marketplace. We seek comments from the industry on whether the proposed regulations will protect the integrity of labels in the marketplace without imposing undue burdens on the industry.

4. Subpart D—Label Standards

The current provisions governing legibility of labels, type size, and language requirements are found within one section of parts 4, 5, and 7 for wine, distilled spirits, and malt beverages, respectively. See current §§ 4.38, 5.33, and 7.28. Proposed subpart D includes those and other general provisions. These provisions are predominantly derived from and consistent with requirements set forth in the current regulations.

TTB is proposing to amend the sections that set forth legibility requirements for the mandatory information that is required to be placed on labels (proposed §§ 4.52, 5.52, and 7.52). These sections are derived from current §§ 4.38(a), 5.33(a) and (b), and 7.28(a).

The proposed regulations set forth the requirement that mandatory information must be ''separate and apart'' from descriptive or explanatory information, referred to in the proposed rule as ''additional information,'' with a few exceptions. First, brand names are exempt from this requirement. Second, this provision does not preclude the addition of brief optional phrases as part of the class and type designation (such as, ''premium malt beverage''), the name and address statement (such as, ''Proudly produced and bottled by ABC Winemaking Co. in Napa, CA, for over 30 years''), or other information required by the regulations, as long as the additional information does not detract from the prominence of the mandatory information. Finally, the mandatory statements related to disclosure of certain specified ingredients (FD&C Yellow No. 5, cochineal extract or carmine, sulfites, and aspartame) may not include additional information. It should be noted that the aspartame statement, like the health warning statement required by part 16, must be separate and apart from all other information.

The proposed regulations expand on the requirement that mandatory information must appear on a ''contrasting background'' by adding examples of contrasting backgrounds that would satisfy regulatory requirements. The color of the container and of the alcohol beverage in the container must be taken into account if the label is transparent. The text also clarifies that, with one exception (for the required aspartame statement), mandatory information may appear in lower case letters, capital letters, or both capital and lower-case letters.

The proposed rule makes changes to current provisions pertaining to minimum type size requirements. The current regulations setting forth minimum type size requirements (current §§ 4.38(b), 5.33(b)(5), 5.33(b)(6), and 7.28(b)) prescribe specific heights in millimeters for mandatory information. The height specification is dependent on the size of the container. Among other things, the proposed regulations provide that the minimum type size applies to all capital and lowercase letters.

The proposed rule also makes changes to current provisions pertaining to maximum type size requirements for the alcohol content statement for wine and malt beverages. Current § 4.38(b)(3) provides that the alcohol content statement on containers of 5 liters or less may not appear in script, type, or printing that is more than 3 millimeters in height. This section further provides that the alcohol content statement on containers of wine may not be set off with a border or otherwise accentuated. TTB is retaining the type size requirement, but removing the prohibition against accentuating the alcohol content statement. This is in keeping with TTB's current policy, which allows alcohol content statements to be bolded.

In general, current § 7.28(b)(3)(ii) provides that all portions of the alcohol content statement for malt beverages must be of the same size and kind of lettering and of equally conspicuous color, and not larger than 3 millimeters for containers of 40 fluid ounces or less, and not larger than 4 millimeters for containers larger than 40 fluid ounces. TTB is retaining the maximum alcohol content type size requirements for wine and malt beverages in §§ 4.53 and 7.53, respectively.

TTB is proposing to add sections to all three parts (proposed §§ 4.54, 5.54, and 7.54) to make it explicit that mandatory information may not be obscured in whole or in part. This requirement reflects current policy. Although it certainly is a long-standing component of ''legibility,'' TTB believes that industry members would benefit from the explicit statement of this policy in the regulatory text of parts 4, 5, and 7.

TTB seeks comments on whether the proposed changes to the placement and legibility requirements for mandatory information, which are intended to provide additional flexibility to industry members, adequately protect the consumer by ensuring that mandatory information on containers is readily apparent to consumers.

In proposed §§ 4.55, 5.55, and 7.55, TTB is proposing to amend the language requirements that are currently found in §§ 4.38(c), 5.33(c), and 7.28(c), to allow all mandatory information to appear in Spanish when products are bottled for sale in the Commonwealth of Puerto Rico. Consistent with the current regulations, the proposed regulations generally require mandatory information, other than the brand name, to appear in the English language. The proposed regulations also allow for additional statements in a foreign language, including translations of mandatory information that appears elsewhere in English on the label, to appear on labels and containers, as long as those statements do not conflict with, or contradict, the requirements of parts 4, 5, and 7. Finally, these sections provide that the country of origin may be in a language other than English when allowed by CBP regulations.

5. Subpart E—Mandatory Label Information

Proposed subpart E in parts 4, 5 and 7 sets forth the information that is required to appear on alcohol beverage labels (otherwise known as ''mandatory information''). This subpart also prescribes where and how mandatory information must appear on such labels.

a. What constitutes a label. TTB is proposing to add regulatory text to all three parts to specify what TTB will consider to be the ''label'' for purposes of mandatory information. Proposed §§ 4.61(a), 5.61(a), and 7.61(a) address different forms that labels take (for example, paper, plastic or film labels affixed to the container; information etched, engraved, sandblasted, or otherwise carved into the surface of the container; and information branded, stenciled, painted, printed, or otherwise directly applied to the surface of the container). For purposes of the net contents statement and the name and address statement only, the term ''label'' includes information blown, embossed, or molded into the container as part of the process of manufacturing the container.

Proposed §§ 4.61(b), 5.61(b), and 7.61(b) clarify that placement of information on certain parts of alcohol beverage containers (such as the bottom of the container, caps, corks, or other closures [unless authorized to bear mandatory information by the appropriate TTB officer], and foil or heat shrink capsules) will not meet the

requirements for mandatory information that must appear on labels. This provision is intended to take into account unique types of containers, such as pudding or gelatin-type cups, where the mandatory information is sometimes authorized to appear on the top of the container. Information on these parts of the container are still subject to the restrictions and prohibitions set forth in proposed subparts F, G and H of parts 4, 5, and 7.

Proposed §§ 4.61(c), 5.61(c), and 7.61(c) further clarify longstanding policy that any materials that accompany the container to the consumer but are not firmly affixed to the container, including booklets, leaflets, and hang tags, are not ''labels'' for purposes of proposed parts 4, 5, and 7. Such materials are instead subject to the advertising regulations in proposed new part 14 of the TTB regulations. This is a clarifying change for parts 4 and 5, consistent with the intent of T.D. ATF–180 (49 FR 31667, August 8, 1984), which explained in its preamble that ''[l]abels must be firmly affixed to the container, hang tags are usually tied or slipped over the neck of the bottle. Therefore, when other matter accompanies the container and is not firmly affixed as a label, such matter is advertising material and must bear the mandatory statements.''

b. Packaging (including cartons, coverings, and cases). Current regulations in §§ 4.38a and 5.41 set out rules for the placement of information on bottle cartons, booklets, and leaflets. Briefly, these regulations provide that individual coverings, cartons, or other containers of the bottle used for sale at retail (that is, other than a shipping container), as well as any written, printed, graphic, or other matter accompanying the bottle to the consumer shall not contain any statement, design, device or graphic, pictorial, or emblematic representation prohibited by the labeling regulations.

The current regulations also require the placement of mandatory label information on sealed opaque coverings, cartons, or other containers used for sale at retail (but not shipping containers). Coverings, cartons, or other containers of the bottle used for sale at retail that are designed so that the bottle is easily removable may display any information that is not in conflict with the label on the bottle contained therein. However, any brand names or designations must be displayed in their entirety, with any required modifications and/or statements of composition.

Thus, the prohibited practices for labeling set forth in existing §§ 4.39(a) and 5.42(a) apply to bottles, labels on bottles, any individual covering, carton, or other container of such bottles used for sale at retail, and any written, printed, graphic, or other matter accompanying such bottles to the consumer. Yet, the advertising regulations in existing §§ 4.61 and 5.62 define the term ''advertisement,'' in pertinent part, as including any written or verbal statement, illustration, or depiction, whether it appears in ''a newspaper, magazine, trade booklet, menu, wine card, leaflet, circular, mailer, book insert, catalog, promotional material, sales pamphlet, or in any written, printed, graphic, or other matter accompanying the [container] bottle,'' but excluding ''[a]ny label affixed to any [container] bottle * * * or any individual covering, carton, or other [wrapper of such container] [container of the bottle] which constitutes a part of the labeling'' under the labeling regulations.

The current labeling regulations in part 7 do not include regulations similar to current §§ 4.38a and 5.41. However, as set forth at current § 7.29(a) and (h), the prohibited practices in the labeling regulations for malt beverages apply to containers, any labels on such containers, or any cartons, cases, or individual coverings of such containers used for sale at retail, as well as to any written, printed, graphic, or other material accompanying malt beverage containers to the consumer. The current advertising regulations in part 7, like the advertising regulations in parts 4 and 5, define the term ''advertisement'' (in current § 7.51) to include, in pertinent part, any written or verbal statement, illustration, or depiction, whether it appears in ''a newspaper, magazine, trade booklet, menu, wine card, leaflet, circular, mailer, book insert, catalog, promotional material, sales pamphlet, or in any written, printed, graphic or other matter accompanying the container, representations made on cases * * * or in any other media;'' but excluding any ''label affixed to any container of malt beverages; or any coverings, cartons, or cases of containers of malt beverages used for sale at retail which constitute a part of the labeling'' under the labeling regulations.

TTB believes that the existing regulations create some confusion as to when a case or hang tag constitutes labeling and when it constitutes advertising. Accordingly, TTB is proposing identical regulations in proposed §§ 4.62, 5.62, and 7.62 to address packaging. The proposed regulations provide, consistent with existing regulations in parts 4, 5 and 7, that packaging may not include any statements or representations prohibited by the labeling regulations from appearing on containers or labels. The proposed regulations also provide, consistent with existing regulations in parts 4 and 5 but as a new requirement for part 7, that closed packaging, including sealed opaque coverings, cartons, cases, carriers, or other packaging used for sale at retail, must include all mandatory information required to appear on the label.

Furthermore, the proposed regulations provide greater clarity than the current provisions about when packaging is considered closed. Proposed §§ 4.62, 5.62, and 7.62 provide that packaging is considered closed if the consumer must open, rip, untie, unzip, or otherwise manipulate the package to remove the container in order to view any of the mandatory information. Packaging is not considered closed if a consumer could view all of the mandatory information on the container by merely lifting the container up, or if the packaging is transparent or designed in a way that all of the mandatory information can easily be read by the consumer without having to open, rip, untie, unzip, or otherwise manipulate the package. TTB seeks comment on whether TTB should require mandatory or dispelling information to appear on open packaging when part of the label is obscured.

TTB solicits comments on whether the proposed rules will require significant change to labels, containers, or packaging materials. We also solicit comments on whether the proposed revisions will provide better information to the consumer and make it easier to find mandatory information on labels, containers, and packages.

c. Placement rules. Mandatory information includes the brand name, the class and type designation, alcohol content, net contents, name and address of the responsible party (such as the producer, bottler, or importer), and disclosure of certain ingredients and processes. The current regulations have placement requirements for mandatory information—some mandatory information must appear on the ''brand label,'' and other mandatory information may appear on any label. The regulations in parts 4 and 7 define the brand label as the label carrying, in the usual distinctive design, the brand name. The regulations in part 5 define the brand label, in part, as the principal display panel that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale, and any other label appearing on the same

side of the bottle as the principal display panel.

TTB proposes to provide more flexibility in the placement of the mandatory information for wine, distilled spirits, and malt beverages by eliminating the concept of a defined ''brand label.'' The specific proposals for locating mandatory information on labels for each commodity will be included in the commodity-specific discussions later in the preamble. Where placement requirements exist, the proposed rule provides more specific terminology. Instead of requiring mandatory information to be in ''direct conjunction'' with other mandatory information, the proposed regulations clarify when such information must be immediately adjacent to other information, and when it may be in the same field of vision as other information.

d. Brand name. Proposed §§ 4.64, 5.64, and 7.64 set forth requirements for brand names of wine, distilled spirits, and malt beverages, respectively. Most of the provisions in these sections are commodity specific and are therefore discussed individually later in this document.

However, one proposed change is made in all three parts: TTB is proposing to remove a provision for the continued use of certain trade names of foreign origin that had been used for at least five years immediately preceding August 29, 1935 (the date the FAA Act was enacted). Although the law still authorizes the use of these names, TTB believes that there is no need to retain this provision in the regulations, given that it refers to names that have been used for more than 85 years.

e. Name and address for domestically bottled products. In the regulations on the name and address of bottlers and producers of wine, distilled spirits, and malt beverages, TTB is making editorial changes to existing requirements.

As previously mentioned, the FAA Act provides that wine, distilled spirits, and malt beverage labels must contain certain mandatory information, including the name of the manufacturer, bottler, or importer of the product. See 27 U.S.C. 205(e)(2). The regulations for distilled spirits and malt beverage labels currently provide more flexibility than the regulations for wine labels. Most importantly, wine labels must show the name of the bottler and the place where bottled, while bottlers of distilled spirits and malt beverages have the flexibility to list either the place of bottling, every location at which the same industry member bottles the product, or, under certain circumstances, the principal place of business of the industry member that is bottling the product. Bottlers of distilled spirits or malt beverages that utilize one of the latter two options must mark the labels using a coding system that enables the bottler and TTB to trace the actual place of bottling of each container. This both protects the revenue and allows for the tracing of containers in the event of an adulteration issue.

TTB is aware that, with the growing number of craft brewers and craft distillers in the marketplace, there may be more interest among consumers as to where malt beverages are brewed and where distilled spirits are distilled. On the other hand, TTB also wishes to provide industry members with flexibility in their labeling statements, to accommodate the growing number of arrangements where products are produced or bottled pursuant to contractual arrangements. One of the major reasons for allowing the use of principal places of business and multiple addresses on labels is to allow industry members to use a single label for their products rather than having to seek approval of multiple labels. TTB notes that, under both the existing and proposed regulations, industry members are always free to include optional statements that provide consumers with more information about their production and bottling processes if they wish.

TTB seeks comments from all interested parties, including industry members and consumers, on whether the proposed labeling requirements provide adequate information to the consumer while avoiding undue burdens on industry members. TTB also seeks comments on whether the standards for wine labels should continue to require specific information about the place where production and/or bottling operations occurred.

f. Name and address for imported alcohol beverages. The name and address inform the consumer of the identity of the importer of the alcohol beverage product and the location of the importer's principal place of business. The current regulations at § 4.35(b), 5.36(b), and 7.25(b) provide that, on labels of imported wines, distilled spirits and malt beverages, respectively, the words ''imported by,'' or a similar appropriate phrase, must be stated, followed immediately by the name of the permittee who is the importer, or exclusive agent, or sole distributor, or other person responsible for the importation, together with the principal place of business in the United States of such person.

Like the current regulations, the proposed regulations in §§ 4.68, 5.68, and 7.68 require the name and address of the importer when the product is imported in containers. The proposed regulations clarify that for purposes of these sections, the importer is the holder of an importer's basic permit making the original Customs entry into the United States, or is the person for whom such entry is made, or the holder of an importer's basic permit who is the agent, distributor, or franchise holder for the particular brand of imported alcohol beverages and who places the order abroad. These provisions mirror the policy set forth in Revenue Ruling 71–535 with regard to the name and address requirements applicable to importers, and the ruling will be superseded by the proposed rule.

Proposed §§ 4.67, 5.67, and 7.67 address the labeling of products bottled after importation. If the product is bottled after importation in bulk, by or for the importer thereof, the proposed rules require an ''imported and bottled by'' or ''imported by and bottled for'' statement, as appropriate.

The proposed regulations in §§ 4.67, 5.67, and 7.67 specifically address the name and address requirements applicable to wine, distilled spirits, and malt beverages that are imported in bulk and then subject to further production or blending activities in the United States.

In section 1421 of the Taxpayer Relief Act of 1997, Public Law 105–34, Congress enacted a new provision in the IRC which permits the transfer of beer in bulk containers from customs custody to internal revenue bond at a brewery. After transfer to internal revenue bond at a brewery, imported beer may be bottled or packed without change or with only the addition of water and carbon dioxide, or may be blended with domestic or other imported beer and bottled or packed.

In ATF Procedure 98–1, TTB's predecessor agency provided guidance to brewers and bottlers for the labeling of imported malt beverages bottled in the United States. This guidance was necessary because the existing regulations in part 7 do not address the labeling of imported malt beverages that are bottled in the United States, or the labeling of imported malt beverages that are blended with other imported malt beverages or with domestic malt beverages, and then bottled or packed in the United States.

Section 1422 of The Taxpayer Relief Act of 1997 amended 26 U.S.C 5364 to allow the importation of wine in bulk to bonded wine premises; the law was amended the following year by Public Law 105–206 to restrict this privilege to natural wine. However, even prior to

this amendment, imported taxpaid wine could be brought onto taxpaid wine premises and bottled in the United States. Thus, the regulations in part 4 already provide for the labeling of wine bottled after importation. However, the current regulations do not reflect the fact that wine may be subjected to production activities in the United States after importation in bulk. ATF Procedure 98–3 provided some guidance on this issue.

Similarly, the current regulations in part 5 provide for the labeling of distilled spirits bottled after importation, but do not provide rules concerning the labeling of spirits that were subject to production activities in the United States after importation.

Thus, proposed §§ 4.67, 5.67, and 7.67 provide rules for the labeling of wine, distilled spirits, and malt beverages that are imported in bulk and are then blended with wine, distilled spirits, or malt beverages, respectively, of a different country of origin, or subjected to production activities in the United States that would alter the class or type of the product. The proposed rules provide that such products must be labeled with a ''bottled by'' statement, rather than an ''imported by'' statement. ATF Procedure 98–1 would be superseded by the proposed rule, because its provisions on the labeling of malt beverages imported in bulk will be incorporated, with modifications, into the name and address regulations found in proposed § 7.67.

As further discussed in the next section of this preamble, industry members should note that pursuant to CBP regulations at 19 CFR parts 102 and 134, imported alcohol beverages that are further processed in the United States, or that are blended with domestic alcohol beverages in the United States, may be subject to a country of origin marking requirement, even when the class or type of the product has been altered in the United States. See ATF Ruling 2001–2.

g. Country of origin. Current regulations require a country of origin statement on labels of imported distilled spirits, but include no such requirement for imported wine or malt beverages. Nonetheless, U.S. Customs and Border Protection (CBP) regulations require a country of origin statement to appear on containers of all imported alcohol beverages, including alcohol beverages that are imported in bulk and then subjected to certain production activities or bottling in the United States if, pursuant to CBP regulations, the beverage is the product of a country other than the United States.

The existing distilled spirits regulations in § 5.36(e) provide as follows: ''On labels of imported distilled spirits there shall be stated the country of origin in substantially the following form ''Product of ____'', the blank to be filled in with the name of the country of origin.'' TTB's predecessor agency, ATF, was asked to clarify this requirement as applied to products that consist of blends of spirits produced in more than one country, including mixtures of foreign and domestic spirits. ATF determined that when the country of origin regulation in Part 5 was originally written, the agency did not contemplate that bottlers would blend imported and domestic spirits. When written, the regulations assumed that imported spirits would be bottled using 100 percent imported spirits. Accordingly, ATF issued ATF Ruling 2001–2 to provide that country of origin statements under the regulations in part 5 must comply with applicable CBP requirements.

In ATF Ruling 2001–2, ATF concluded that its country of origin requirements under § 5.36(e) will be interpreted in a manner consistent with CBP's rules of origin, noting that issuance of separate ATF regulations might lead to inconsistencies between CBP and ATF rules and result in confusion for the industries affected by those rules. Accordingly, the ruling held that for an imported distilled spirit that is wholly the product of a single country, the country of origin will be stated in substantially the following form, ''Product of ____.'' It further held that ''substantially the following form'' meant that the distilled spirit may, in the alternative, be labeled in conformity with CBP country of origin marking requirements. For a product composed of spirits produced in more than one country, including mixtures of foreign and domestic spirits, ATF held that the regulation would be satisfied if the country of origin was determined and marked in accordance with CBP regulations. The ruling also noted that an industry member could seek a ruling from Customs for a determination of the country of origin for its product.

TTB is proposing to amend § 5.69, and to add new §§ 4.69 and 7.69, to clarify the relationship between TTB and CBP regulations on this issue. As noted, ATF stated in ATF Ruling 2001–2 that issuance of separate ATF regulations on the country of origin issue might lead to inconsistencies between CBP and ATF rules and result in confusion for the industries affected by those rules. TTB shares the concerns expressed by its predecessor agency on this issue. Accordingly, the proposed §§ 4.69, 5.69 and 7.69 simply contain a cross-reference to the CBP regulations at 19 CFR parts 102 and 134 regarding country of origin statements, rather than independently requiring a country of origin statement under TTB regulations. The proposed regulations also provide that ''[l]abeling statements with regard to the country of origin must be consistent with CBP regulations.'' Finally, proposed §§ 4.69 and 7.69, as well as proposed § 5.69, provide that the determination of the country (or countries) of origin, for imported wines, malt beverages, and distilled spirits, respectively, as well as for blends of imported products with domestically produced beverages, must comply with CBP regulations.

While this is a new provision in the wine and malt beverage regulations, it will not impose any labeling changes, as it simply references an existing requirement found in CBP regulations. However, TTB believes that the proposed regulation will remind industry members who import alcohol beverages in bulk for processing or bottling in the United States that they must place a country of origin statement on the labels where required to do so by CBP regulations.

As discussed earlier in this preamble, industry members should note that pursuant to CBP regulations at 19 CFR parts 102 and 134, imported alcohol beverages that are further processed in the United States, or that are blended with domestic alcohol beverages in the United States, may nonetheless be subject to a country of origin marking requirement, even if the class or type of the product has been altered in the United States. See ATF Ruling 2001–2. When TTB issues COLAs for distilled spirits, wine, or malt beverage containers that do (or do not) include a country of origin statement, it is not making a factual or legal determination of whether such a statement is necessary, or whether a labeled country of origin would comply with either TTB or CBP rules. In fact, the application for label approval typically does not include the information that would be necessary to make such a determination. It is the responsibility of the industry member to ensure compliance with the country of origin marking requirement, both when alcohol beverages are imported in containers and when imported alcohol beverages are subject to bottling, blending, or production activities in the United States. Industry members may seek a ruling from CBP for a determination of the country of origin for their product.

6. Subparts F, G, and H—Statements That Are Restricted, Prohibited, or Prohibited if Misleading

The current regulations include a single section titled ''Prohibited Practices'' that sets forth a number of prohibited practices and also describes certain labeling practices that are regulated in various ways. In order to make regulatory provisions easier to find, and to improve readability, TTB proposes to divide the regulations addressing prohibited practices into three subparts: (1) Subpart F, practices that may be used under certain conditions, (2) subpart G, practices that are always prohibited, and (3) subpart H, practices that are prohibited only if they are used in a misleading manner on labels.

Proposed subparts F, G and H each contain language to clarify that the prohibitions in these subparts apply to any label, container, or packaging, and define those terms as used in these subparts. Specifically, for purposes of proposed subparts F, G, and H, the term ''label'' includes all labels on alcohol beverage containers on which mandatory information may appear, as set forth in proposed §§ 4.61, 5.61, and 7.61, as well as any other label on the container. These proposed sections also set out the parts of the container on which mandatory information may appear.

The proposed text defines ''packaging'' for purposes of proposed subparts F, G, and H, as any carton, case, carrier, individual covering or other packaging of such containers used for sale at retail, but does not include shipping cartons or cases that are not intended to accompany the container to the consumer. The proposed rule also provides that the term ''statement or representation'' as used in those subparts, includes any statement, design, device, or representation, and includes pictorial or graphic designs or representations as well as written ones. It also includes both explicit and implicit statements and representations. This provision avoids the need to repeat the reference to each type of statement or representation in every section in these subparts.

7. Subpart F—Restricted Labeling Statements

TTB is proposing a new section (see proposed §§ 4.85, 5.85, and 7.85) on the use of statements relating to environmental and sustainability practices, which reflects current TTB policy. The proposed rule allows statements related to environmental or sustainable agricultural practices, social justice principles, and other similar statements (such as, ''Produced using 100% solar energy'' or ''Carbon Neutral'') to appear on labels as long as the statements are truthful, specific and not misleading. Statements or logos indicating environmental, sustainable agricultural, or social justice certification (such as, ''Biodyvin,'' ''Salmon-Safe,'' or ''Fair Trade Certified'') may appear on labels of products that are actually certified by the appropriate organization.

8. Subpart G—Prohibited Labeling Practices

Subpart G sets forth the prohibited labeling practices. The proposed rule provides that the prohibitions set forth in this subpart apply to any label, container, or packaging, and then sets out the definitions of those terms for purposes of this subpart. The prohibited practices include false statements and obscene or indecent depictions. The proposed rule restates and reorganizes prohibitions currently found in the TTB regulations.

9. Subpart H—Labeling Practices That Are Prohibited if They Are Misleading

Proposed subpart H sets out the general prohibition against any statement or representation, irrespective of falsity, that is misleading to consumers as to the age, origin, identity, or other characteristics of the wine, distilled spirits, or malt beverages, or with regard to any other material factor. It also sets out different ways in which statements may be misleading. For example, an otherwise truthful statement may be misleading because of the omission of material information, the disclosure of which is necessary to prevent the statement from being misleading. This is not a new policy, but the proposed rule sets it out more clearly (see proposed §§ 4.122, 5.122, and 7.122).

TTB proposes to cancel Rev. Ruling 55–618, which deals with the use of the terms ''kosher'' and ''altar'' on wines. TTB believes that it should not restrict the approval of products labeled as ''altar wine'' to products to be sold only to religious organizations, as the ruling required, and proposes to eliminate that provision of the ruling. Additionally, the use of the terms ''altar-type'' or ''altar-style'' wine are not prohibited from appearing on alcohol beverage products because there is no reasonable basis for protecting the terms. However, the terms ''kosher style'' and ''kosher type'' will remain restricted to only kosher wines because the use of such terms on non-kosher wines would be misleading. TTB does not propose specific regulations implementing the restriction, but believes it is covered by the general prohibition on misleading statements.

a. Guarantees. Proposed §§ 4.123, 5.123 and 7.123 prohibit the use of guarantees that are likely to mislead the consumer. Money-back guarantees are not prohibited. This is a restatement of existing policy currently found in §§ 4.39(a)(5), 5.42(a)(5), and 7.39(a)(5), with minor modifications for clarity.

b. Disparaging statements. Proposed §§ 4.124, 5.124 and 7.124 specifically prohibit the use of false or misleading statements that explicitly or implicitly disparage a competitor's product. This proposed revision reflects the longstanding ATF and TTB policy (as expressed in T.D. ATF–180, 49 FR 31667, August 8, 1984) that a competitor's product is disparaged when statements or claims about the product, or relating to the product, are false or would tend to mislead the consumer. This policy does not preclude additional information such as ''puffery'' statements made about one's own product, nor does it prohibit truthful, nonmisleading comparative statements or claims that place the competitor's product in an unfavorable light.

In the proposed regulatory text, TTB also introduces examples of statements that would be prohibited under this provision. A statement of opinion such as ''We think our [product] tastes better than any other [product] on the market'' is not prohibited. However, a statement such as ''We do not add arsenic to our [product]'', although truthful, would be considered to be disparaging because it falsely implies that other producers do add arsenic to their products. Furthermore, labels may not include statements that disparage their competitor's products by making specific allegations, such as ''Brand X is not aged in oak barrels,'' when such statements are untrue.

c. Tests or analyses. Proposed §§ 4.125, 5.125 and 7.125 prohibit statements or representations of, or relating to, analyses, standards, or tests, whether or not truthful, that are likely to mislead the consumer. These proposed provisions incorporate current policy, but also provide new examples of such a misleading statement, designed to illustrate the principle that a truthful statement about a test or standard may nonetheless be misleading.

d. Depictions of government symbols. Currently, representations relating to the American flag or the U.S. armed forces are prohibited from appearing on alcohol beverage labels in order to

prevent misconceptions that the alcohol beverage is endorsed or otherwise supervised by the U.S. government or the armed forces. However, the regulations prohibit the use of flags from other countries only where it would be misleading. The regulations on U.S. and foreign flags are based on the same statutory provision of the FAA Act at 27 U.S.C. 205(e)(5) that prohibits deception of the consumer by use of a name or representation of individuals or organizations when such use creates a misleading impression of endorsement.

Consistent with the statutory prohibition on which these regulations are based, it is TTB's current policy to enforce this regulatory prohibition only where such representations might tend to mislead consumers. Thus, TTB is proposing to amend the regulations to remove the blanket prohibition against the use of representations of, or relating to, the American flag, the armed forces of the United States, or other symbols associated with the American flag or armed forces. Instead, proposed §§ 4.126, 5.126, and 7.126 retain the prohibition against the use of such symbols or images where they create the impression that there was some sort of endorsement by, or affiliation with, the governmental entity represented. Furthermore, each of these proposed sections specifically provides that the section does not prohibit the use of a flag as part of a claim of American origin or another country of origin.

e. Depictions simulating government stamps or relating to supervision. Proposed §§ 4.127, 5.127, and 7.127 retain prohibitions against depictions simulating government stamps or relating to government supervision but provide that these representations are only prohibited if misleading. TTB solicits comments on whether there is still a need for regulations on this issue.

f. Cross-category terms on labels of wine, distilled spirits, and malt beverages. In proposed §§ 4.128, 5.128, and 7.128, TTB proposes to adopt a new prohibition on the misleading use of cross-commodity terms. Terms used to designate the class and type of wine, distilled spirits, and malt beverages are unique to each commodity. More and more frequently, TTB receives applications for approval of a label for one commodity where the label bears a term normally associated with a different commodity.

For malt beverage products, the current TTB regulations at § 7.29(a)(7) prohibit a label from containing any statement, design, device, or representation that tends to create a false or misleading impression that the malt beverage contains distilled spirits or is a distilled spirits product. (See also 27 CFR 4.39(a)(7), which prohibits misleading statements on wine that create the impression that the wine contains distilled spirits. This prohibition does not apply to truthful statements of composition.) While the current regulations do not prohibit the use of wine terms on malt beverage labels or the use of wine or malt beverage terms on distilled spirits labels, TTB believes that the use of terms normally associated with one commodity may be misleading if used on a product of a different commodity.

For example, if a term that is a class or type designation for wine is used on a malt beverage label as the brand name or as a distinctive or fanciful name, or is placed on the label in an otherwise prominent position, the label may create the misleading impression that the malt beverage is produced with the addition of wine. As a result, TTB has denied approval of labels bearing such terms when it has determined that the labels were misleading. This denial is authorized under TTB's general authority to prohibit misleading information on labels, which is codified at current §§ 4.39(a), 5.42(a), and 7.29(a). However, in other cases, TTB has determined that references to other commodities on labels do not mislead consumers as to the identity of the product. The determination of whether the reference is misleading depends on the overall label, and how the information is presented.

TTB believes that, in order to deal with this issue consistently, the regulations should set forth specific rules about the use of defined terms for one commodity on labels of another commodity. Accordingly, TTB is proposing to amend the regulations to specifically provide that no label, container, or packaging may contain a statement, design, or device that tends to create the false or misleading impression that the product is, or contains, a different commodity. Furthermore, the proposed regulations prohibit class or type designations (or any homophones or coined words that simulate or imitate a class or type designation) that are set forth in the TTB regulations for one commodity from appearing on a label for a product of a different commodity, if such representation creates a misleading impression about the identity of the product.

Consistent with past practice, the proposed regulation does not prohibit a truthful and accurate statement of alcohol content. Similarly, it does not prohibit the use of a brand name of a different commodity, provided that the overall label or advertisement does not create a misleading impression about the identity of the product. The proposed rule continues to allow the use of cocktail names as brand names or distinctive or fanciful names, provided that the overall label or advertisement does not create a misleading impression about the identity of the product.

The proposed rule does not prohibit the use of truthful and accurate statements about the production of the product, as part of a statement of composition or otherwise, such as ''aged in whisky barrels'' for a malt beverage or wine, so long as such statements do not create a misleading impression as to the identity of the product. Consistent with TTB Ruling 2014–4, while statements about aging malt beverages in barrels previously used in the production or storage of distilled spirits or wine are not prohibited, statements that imply that the product contains distilled spirits (such as ''bourbon flavored beer'') are prohibited as misleading.

Finally, TTB proposes to continue to allow the use of terms that compare a product or products of one commodity to a product or products of a different commodity (such as, ''This wine doesn't have the hoppy taste of beer'') without creating a misleading impression as to the identity of the product.

TTB solicits comments on whether the proposed prohibition and the proposed exceptions to the prohibition will adequately protect the consumer and whether the proposed regulations will require changes to existing labels. TTB particularly solicits comments on whether the use of coined terms and homophones in brand names and elsewhere on the labels is misleading to consumers when those terms imply similarity to class and type designations to which a product is not entitled.

g. Appearance of endorsement. The current regulations prohibit the use of the name of a living person or existing private or public organization if the use of that name or a representation misleads the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization. TTB proposes, in §§ 4.130, 5.130, and 7.130, to maintain that rule, but to make more clear that actual endorsements are permitted and that TTB may request documentation supporting the claim of endorsement at the time the application for label approval is submitted or at a later time.

10. Subpart I—Classifications

Subpart I in parts 4, 5, and 7 sets forth rules for the classification of wine, distilled spirits, and malt beverages, respectively. As noted earlier in this document, wine, distilled spirits, and malt beverages are organized into general classes and, within the classes, more specific types. These classes and types, in the case of wine and distilled spirits, have specific standards listed in the regulations; these are known as ''standards of identity.'' For malt beverages, the class and type designations are based on designations of products as known to the trade. The specific classification rules and the changes TTB proposes to make to these rules will be discussed below in the part-specific sections of this document.

11. Subpart K for Parts 4 and 5, Standards of Fill

In subpart K of parts 4 and 5, TTB maintains the current requirements for specified standards of fill (see §§ 4.202 and 5.202). (TTB plans to propose changes to the standards of fill in a separate rulemaking document.) Additionally, TTB proposes to codify its existing policies regarding aggregate packaging.

a. TTB's Current Regulations on Standards of Fill. TTB administers regulations setting forth container size and related standards of fill for containers of distilled spirits and wine distributed within the United States. (There are no standard of fill requirements for malt beverages.) The standards of fill appear in the current regulations in § 4.72 for wine, and §§ 5.47 and 5.47a for distilled spirits. Containers conforming to a standard of fill of, for example, 750 mL—which is a standard of fill prescribed by current regulations for both wine and distilled spirits—must have a net contents of 750 mL of that product.

b. Aggregate Packaging to Meet a Standard of Fill. In 1988, TTB's predecessor agency started permitting bottlers and importers of wine and distilled spirits products to use containers that did not meet a standard of fill provided that the non-standard of fill containers were banded or wrapped together and sold as a single wine or distilled spirits product that, in total, met an approved standard of fill. For example, a wine or distilled spirits product sold in a package of thirty 25 mL containers to meet an authorized standard of fill of 750 mL would be an aggregate package under this policy. While this type of aggregate packaging has been permitted for some time, TTB's policy has not yet been codified in the regulations.

In Notice No. 872, published in the **Federal Register** (64 FR 6485) on February 9, 1999, ATF proposed to codify standards on this issue. According to the preamble of this NPRM, the issue of whether standard of fill requirements may be satisfied by aggregate packaging was first raised in 1988, when an importer sought permission to import bags containing 25 individual 15-mL packages of alcohol beverage for a total of 375 mL, an authorized standard of fill. The request was approved, as were subsequent requests for other types of containers, such as distilled spirits products packaged in packs of thirty 25-mL test tubes to meet an authorized standard of fill of 750 mL.

In the NPRM, ATF stated that it was concerned that the wide array of container types and packaging coming onto the market—including, but not limited to, aggregate packaging—would have a number of adverse impacts including: (1) Confusing consumers as to the quantity and nature of the alcohol beverage; (2) contributing to administrative difficulty in determining appropriate excise tax for the products; (3) making aggregate fill products more easily obtainable by underage individuals; and (4) creating problems with State and local alcohol beverage controls, either by conflicting with State standard of fill provisions or with prohibitions against open containers of alcohol beverages. Accordingly, the NPRM proposed regulations prohibiting the use of aggregate packaging to meet standard of fill requirements.

ATF received approximately 100 comments on the NPRM, with 40 percent of the comments against the proposed regulations and 60 percent favoring them. Comments against the proposed regulations came from the alcohol beverage industry and related industries, such as packaging manufacturers; although one alcohol beverage producer supported the proposed regulations. Comments from industry regarding aggregate packaging mainly contended that the issue could be addressed with labeling requirements and that limiting package sizes was an unnecessary overreach by ATF. Comments on the aggregate packaging aspect of the proposed regulations came mostly from companies that were already using aggregate packaging to meet standard of fill requirements. However, most of the comments against the proposed regulations were not addressed to aggregate packaging, but to another aspect of the NPRM, which proposed regulations relating to packaging that appeared similar to packaging for non-alcohol products. The comments in favor of the proposed regulations came from consumers, parents, substance abuse agencies and consumer advocacy organizations, and were mostly general statements of support for the proposed regulations that did not specify which aspect of the NPRM (aggregate packaging or packaging types) they supported.

The regulations proposed in Notice No. 872 to prohibit aggregate packaging to meet the authorized standards of fill were not finalized, and the practice of aggregate packaging continues today. ATF encouraged the industry to adopt a number of safeguards to protect against consumer deception in the event that aggregate packages were broken apart and the single-serving packages sold individually. These safeguards included labeling the individual containers as ''not for individual sale'' and ''not for children,'' sealing the outer container with shrink wrap or other secure methods, and encouraging bottlers to bottle the individual units of the package in authorized standards of fill (for example, in 50-mL units). TTB continues to allow aggregate packaging under the following conditions:

- The applicant submits to TTB, along with the application for label approval, a sample of the actual external container and a sample of one of the smaller internal containers.
- The external container, as well as each of the smaller internal containers, is labeled with all of the mandatory information required by parts 4 and 24 for wine and parts 5 and 19 for distilled spirits, as well as the health warning statement required by part 16.
- The external container is shrink-wrapped, boxed, or sealed in such a manner that the smaller internal containers cannot be easily removed.
- Each of the smaller internal containers is labeled ''NOT FOR INDIVIDUAL SALE.''
- The external container bears a statement of total net contents that clearly shows how the contents of the individual packages added together are equivalent to one of the authorized standards of fill. (For example, 750 mL = 30 containers of 25 mL each.)

In recent years, TTB's policy regarding aggregate packaging has shifted to allow for non-standard of fill containers to be packaged together even when those containers do not hold the same product. For example, products of differing standards of identity and differing alcohol contents have been permitted to be packaged together as one product. TTB has reevaluated this shift in policy and has determined that

it is inconsistent with the original intent of the aggregate packaging policy, which was to allow one product to be bottled in non-standard of fill containers that would be banded together so that the sum of the identical parts would equal a standard of fill for that product.

c. Proposed Regulatory Amendment. The regulations proposed in this rulemaking document provide for aggregate packaging subject to the conditions set forth above and with the additional requirements that the wine or distilled spirits packaged in the individual non-standard of fill containers within an aggregate package must all be of the same class and type, alcohol content, and tax class. This is a narrowing of the current policy that allows for wines and distilled spirits of differing classes, types, and alcohol contents to be packaged together. TTB believes that this narrowing of the policy is necessary to maintain the original intent of standards of fill requirements, reduce consumer confusion when comparing products, and reduce administrative burden when calculating the tax liability of an aggregately packaged wine or distilled spirits product. The proposed provisions related to aggregate packaging appear in §§ 4.204 and 5.204.

If each internal container already complies with an authorized standard of fill, then the aggregate standard of fill conditions would not apply, and the internal containers would each be subject to label approval. The outer packaging would then be subject to the packaging regulations proposed at §§ 4.62 and 5.62. TTB believes it is appropriate to codify the rules related to aggregate packaging, which apply to labeling and standards of fill, as part of this modernization project.

12. Subpart L—Recordkeeping and Substantiation Requirements

Subpart L of parts 4, 5, and 7 sets forth rules for recordkeeping and substantiation requirements for alcohol beverages. Existing regulations (27 CFR 4.51, 5.55, and 7.42) require bottlers holding an original or duplicate original of a certificate of label approval (COLA) or a certificate of exemption to exhibit such certificates, upon demand, to a duly authorized representative of the United States Government. Current regulations (27 CFR 4.40, 5.51, and 7.31) also require importers to provide a copy of the applicable COLA upon the request of the appropriate TTB officer or a customs officer. However, these regulations do not state how long industry members should retain their COLA. Furthermore, since these regulations were originally drafted, TTB has implemented the electronic filing of applications for label approval. Now, over 90 percent of new applications for label approval are submitted electronically, and the rest are processed electronically by TTB. Industry members have asked for clarification as to whether they have to retain paper copies of certificates that were processed electronically. Finally, because industry members may make certain specified revisions to approved labels without obtaining a new COLA, it is important that the industry members keep track of which label approval they are using when they make such revisions.

Accordingly, proposed §§ 4.211, 5.211, and 7.211 are new to the regulations and provide that, upon request by the appropriate TTB officer, bottlers and importers must provide evidence of label approval for a label that is used on an alcohol beverage container and that is subject to the COLA requirements of the applicable part.

This requirement may be satisfied by providing original certificates, photocopies or electronic copies of COLAs, or records showing the TTB identification number assigned to the approved COLA. Where labels on containers reflect revisions to the approved label that have been made in compliance with allowable revisions authorized to be made on the COLA form or otherwise authorized by TTB, the bottler or importer must be able to identify the COLA covering the product, upon request by the appropriate TTB officer. Bottlers and importers must be able to provide this information for a period of five years from the date the products covered by the COLAs were removed from the bottler's premises or from customs custody, as applicable.

TTB believes that five years is a reasonable period of time for record retention because there is a five-year statute of limitations for criminal violations of the FAA Act. TTB notes that the proposed rule does not require industry members to retain paper copies of each certificate; they should simply be able to track a particular removal to a particular certificate, and they may rely on electronic copies of certificates, including copies contained in the TTB Public COLA Registry.

While the FAA Act does not contain any specific recordkeeping requirements in this regard, the labeling regulations have for decades required industry members to produce COLAs upon demand. Furthermore, such records are necessary to enforce the requirements of the FAA Act with regard to COLAs and certificates of exemption. See, *e.g., National Confectioners Ass'n* v. *Califano,* 569 F.2d 690, 693–94 (D.C. Cir. 1978), which upheld the FDA's authority to require records in the absence of a specific statutory requirement where records were necessary to help in the efficient enforcement of the Federal Food, Drug and Cosmetic Act.

Similarly, the FAA Act provides TTB with comprehensive authority over the labeling of wine, distilled spirits, and malt beverages, and the COLA provisions of the FAA Act are specifically designed to ''prevent the sale or shipment or other introduction of distilled spirits, wine, or malt beverages in interstate or foreign commerce, if bottled, packaged, or labeled in violation of [27 U.S.C. 205(e)].'' See 27 U.S.C. 205(e). The law specifically requires a certificate holder to have the COLA in its possession at the time of bottling or removal of containers from customs custody. Requiring the holder to be able to show evidence of label approval after removal is simply a clarification of TTB's current requirements. We note that in addition to the rulemaking authority provided by 27 U.S.C. 205, TTB has authority under section 2(d) of the FAA Act, Public Law 74–401 (1935) ''to prescribe such rules and regulations as may be necessary to carry out [its] powers and duties'' under the FAA Act.

Proposed §§ 4.212, 5.212, and 7.212 set forth specific substantiation requirements, which are new to the regulations, but which reflect TTB's current expectations as to the level of evidence that industry members should have to support labeling claims. The proposed regulations provide that all claims, whether implicit or explicit, must have a reasonable basis in fact. Claims that contain express or implied statements regarding the amount of support for the claim (*e.g.,* ''tests provide,'' or ''studies show'') must have the level of substantiation that is claimed.

Furthermore, the proposed regulations provide for the first time that any labeling claim that does not have a reasonable basis in fact, or cannot be adequately substantiated upon the request of the appropriate TTB officer, will be considered misleading. The regulations in subpart H are similarly amended to include the same requirement. TTB believes that this provision, which is very similar to the Federal Trade Commission's policy on substantiation of advertising claims, will clarify that industry members are responsible for ensuring that all labeling and advertising claims have adequate substantiation. See ''FTC Policy

Statement Regarding Advertising Substantiation'' (Appended to *Thompson Medical Co.,* 104 F.T.C. 648, 839 (1984), *aff'd,* 791 F.2d 189 (D.C. Cir. 1986), *cert. denied,* 479 U.S. 1086 (1987)).

13. Subpart M—Penalties and Compromise of Liability

In proposed subpart M for parts 4, 5, and 7, TTB proposes simply to include references to various provisions of the FAA Act. Proposed §§ 4.221, 5.221 and 7.221 state that a violation of the labeling provisions of 27 U.S.C. 205(e) is punishable as a misdemeanor and refer readers to 27 U.S.C. 207 for the statutory provisions relating to criminal penalties, consent decrees, and injunctions. Proposed §§ 4.222, 5.222, and 7.222 provide that basic permits are conditioned upon compliance with the provisions of 27 U.S.C. 205, including the labeling provisions of parts 4, 5 and 7, and that a willful violation of the conditions of a basic permit provides grounds for the revocation or suspension of the permit, as applicable, as set forth in 27 CFR part 1.

Proposed §§ 4.223, 5.223, and 7.223 set forth TTB's authority to compromise liability for a violation of 27 U.S.C. 205 upon payment of a sum not in excess of $500 for each offense. This payment is to be collected by the appropriate TTB officer and deposited into the Treasury as miscellaneous receipts.

By placing these provisions in the regulations, TTB will make it easier for a person to locate the penalties for violating the FAA Act and the regulations implementing the FAA Act. These proposed regulations will not change the criminal penalty and compromise provisions, which are set forth in the statute.

14. Subpart N—Paperwork Reduction Act

The Office of Management and Budget (OMB) assigns control numbers to TTB's information collection requirements. In current parts 4, 5, and 7, the OMB control numbers, in some instances, are listed at the end of the sections that impose the respective information collection requirements. TTB believes that industry members will have an easier time locating OMB control numbers for information collection requirements if they are listed in one location. Therefore, proposed subpart N for parts 4, 5, and 7 contains a listing of those sections of proposed part 4, 5, or 7, as the case may be, that impose an information collection requirement along with the assigned OMB control number.

C. Proposed Changes Specific to 27 CFR Part 4 (Wine)

In addition to the changes discussed in section II B of this document that apply to more than one commodity, TTB is proposing additional editorial and substantive changes specific to the wine labeling regulations in part 4. This section will not repeat the changes already discussed in section II B of this document. Accordingly, if a proposed change is not discussed in this section, please consult section II B. The substantive changes that are unique to part 4 are described below.

1. WWTG Labeling Protocol

As described below, TTB is proposing to make several liberalizing changes to the wine labeling regulations in part 4 to conform to international commitments. TTB believes that these changes will increase flexibility in labeling for bottlers and importers of wine, while providing consumers with more information about the wine that they are purchasing.

The World Wine Trade Group (WWTG), which was founded in 1998, is an informal grouping of government and industry representatives from Argentina, Australia, Canada, Chile, the Republic of Georgia, New Zealand, South Africa, and the United States. The group shares information and collaborates on a variety of international issues to create new opportunities for wine trade.

The WWTG Agreement on Requirements for Wine Labeling (''Agreement'') was initialed on September 20, 2006, and was signed in Canberra, Australia, on January 23, 2007, by the United States and other governments. This is an executive agreement and not a treaty. A full copy of the agreement can be viewed at *http://ita.doc.gov/td/ocg/WWTGlabel.pdf.* Negotiations of the Agreement proceeded from the view that common labeling requirements would facilitate trade by providing industry members with the opportunity to use the same label when shipping wine to each of the WWTG member countries.

To conform to Article 6 of the Agreement, which requires the parties to the Agreement to allow information regarding alcohol content and certain other common mandatory information to be placed anywhere on a label in a ''single field of vision,'' TTB engaged in rulemaking to eliminate the requirement in the TTB regulations that alcohol content be stated on the brand label. See T.D. TTB 114 (78 FR 34565, June 10, 2013). After the rulemaking was completed, the United States deposited its instrument of acceptance on October 1, 2013, and became a Party to the Agreement on November 1, 2013.

Under the Agreement, the Parties agreed to continue to discuss labeling requirements concerning tolerances in alcohol content statements, vintage wine, grape variety designations, and wine regions, with a view to concluding an additional agreement on labeling. This additional agreement—the Labeling Protocol—was signed on March 22, 2013, by several Governments other than the United States, and entered into force on November 1, 2013. A full copy of the Labeling Protocol can be found at *http://ita.doc.gov/td/ocg/protocol.pdf.* Because some of the existing labeling regulations in parts 4, 5 and 7 are inconsistent with the terms of the Labeling Protocol, TTB must engage in rulemaking on some of the issues addressed in the Protocol. We intend to address those issues in this proposed rule.

The Labeling Protocol reflects labeling requirements concerning tolerances in alcohol content statements, vintage wine, grape variety designations, and wine regions that are consistent with U.S. efforts to remove trade barriers. The Labeling Protocol will allow U.S. wine producers to export more easily to parties to the Agreement that have more restrictive labeling standards than the United States.

The proposed changes relating to the Labeling Protocol, as well as the other substantive changes that are unique to part 4 are described below, by subpart.

2. Subpart A—General Provisions

Proposed subpart A includes several sections that have general applicability to part 4, including a revised definitions section, a section that defines the territorial extent of the regulations, sections that set forth to whom and to which products the regulations in part 4 apply, a section that identifies other regulations that relate to part 4, and sections that address administrative items such as forms and delegations of the Administrator.

a. Definitions. Proposed § 4.1, which covers definitions of terms used in part 4, is consistent with the current regulatory text that appears in § 4.10, with some amendments in addition to those discussed in section II B of this preamble.

TTB is proposing to add definitions of the following terms: ''brix,'' ''county,'' ''fully finished,'' and ''grape wine.'' These terms are used throughout part 4.

The proposed rule defines the term ''brix'' as ''[t]he quantity of dissolved solids expressed as grams of sucrose in

100 grams of solution at 68 degrees Fahrenheit. (20 degrees Celsius) (Percent by weight of sugar).'' This definition is derived from and is consistent with 27 CFR 24.10, with the exception of changing a typographical error currently found in section 24.10 of ''60 degrees'' to the correct temperature of ''68 degrees.'' TTB intends to correct the definition in § 24.10 in a separate rulemaking document.

The current and proposed regulatory texts use the term ''county'' when providing for authorized appellations of origin. TTB has been asked by many industry members if the term ''county'' includes other political subdivisions that are equivalent to a county, such as a ''parish'' in Louisiana. The proposed rule defines the term ''county'' to include a county or a political subdivision recognized by the State as a county equivalent. This proposed definition will allow the use of names of county equivalents as appellations of origin.

The current and proposed regulatory texts use the term ''fully finished'' when setting forth requirements for labeling wine with an appellation of origin. For example, one of the conditions in current § 4.25(b)(1)(ii) is that ''the wine has been fully finished (except for cellar treatment pursuant to § 4.22(c), and blending that does not result in an alteration of class or type under § 4.22(b)) in one of the labeled appellation States.'' The parenthetical statement after ''fully finished'' appears all three times that term is used in part 4. Accordingly, TTB is defining the term ''fully finished'' as ''Ready to be bottled, except that it may be further subject to the practices authorized in § 4.154(c) and to blending that does not result in an alteration of class or type under § 4.154(b).''

The proposed regulatory text uses the term ''grape wine'' to include still grape wine, sparkling grape wine, and carbonated grape wine. The proposed definition reflects the name change of current class one grape wine to still grape wine, but allows for use of an umbrella term when referring to still grape wine, sparkling grape wine, and carbonated grape wine.

The proposed rule also amends the current definitions of the following terms: ''bottler,'' ''pure condensed must,'' ''total solids,'' and ''wine.''

The current definition of the term ''bottler'' reads as ''[a]ny person who places wine in containers of four liters or less.'' TTB is proposing to remove the size restriction associated with the current definition to denote that a person filling containers of any size is considered a ''bottler.'' This change will allow industry members to use the term ''bottled'' rather than ''packed'' on labels of wine in containers larger than 4 liters. For example, the industry member may use ''bottled by ABC winery, Sutton, Massachusetts'' rather than ''packed by ABC winery, Sutton, Massachusetts'' as the mandatory address statement for a five-liter container. TTB is also proposing to replace the word ''person'' with the phrase ''[a]ny producer or blender or wine, proprietor of bonded wine premises, or proprietor of a taxpaid wine bottling house'' to better define those who are eligible to bottle wine. The proposed rule amends the term ''bottler'' to read as ''[a]ny producer or blender of wine, proprietor of bonded wine premises or proprietor of a taxpaid wine bottling house, who places wine in containers.''

The proposed rule amends the definition of the term ''pure condensed must'' by removing the word ''balling'' and replacing it with the word ''brix'' because the word ''brix'' is more commonly used by the industry. The terms ''balling'' and ''brix'' are synonymous.

The proposed rule amends the definition of the term ''total solids'' by adding the words ''with water'' at the end of this definition to clarify that restoring wine to its original volume must be done with water.

The proposed rule amends the definition of ''wine'' under the FAA Act by making clarifying changes, consistent with the definition of ''wine'' in 27 CFR part 1. This is a technical change and does not alter the current meaning of ''wine'' in part 4.

b. Prohibitions and jurisdictional limits. Proposed § 4.3 sets forth the general requirements and prohibitions under 27 U.S.C. 205(e). This repeats the essential elements of the prohibitions found in current § 4.30, and clarifies that the regulations that prohibit the alteration of labels apply to persons holding wine for sale.

c. Products that are not ''wine'' under the FAA Act. Proposed §§ 4.5 and 4.6 are new provisions that indicate which wines are covered by part 4 and which wine products are not covered by part 4. TTB receives many inquiries on this issue, and TTB believes that including this information in the regulatory text will be helpful to its readers.

Certain winery products that may be taxed as wine under the IRC do not fall within the definition of ''wine'' under the FAA Act, as found in 27 U.S.C. 211(a)(6), because of the differences between the two statutes. Thus, proposed § 4.5 clarifies that wine under part 4 contains at least 7 percent and not more than 24 percent alcohol by volume. Proposed § 4.6(a) clarifies that part 4 does not cover products that would otherwise meet the definition of wine except that they contain less than 7 percent alcohol by volume. The proposed rule states that bottlers and importers of alcohol beverages that do not fall within the definition of malt beverages, wine, or distilled spirits under the FAA Act should refer to the applicable labeling regulations for foods issued by the FDA. Proposed § 4.6(b) clarifies that products that would otherwise meet the definition of wine except that they contain more than 24 percent alcohol by volume are classified as distilled spirits and must be labeled in accordance with 27 CFR part 5.

Proposed § 4.6 also includes a cross reference to § 4.7, which refers to labeling requirements under the ABLA and the IRC.

3. Subpart E—Mandatory Label Information

a. Brand labels. Currently, the TTB regulations at § 4.32 require that certain information appear on the brand label of a wine container, while other mandatory information, and any additional information, may appear on any label. The brand label is defined in § 4.10 as ''[t]he label carrying, in the usual distinctive design, the brand name of the wine'' and, under current § 4.32, the brand name, class or type designation, and statement of the percentage of foreign wine in a blend of American and foreign wines (where a reference is made to the presence of foreign wine on the label), must appear on the brand label. Other mandatory information may appear on any label.

In practice, however, a brand label may wrap nearly or entirely around a bottle or other wine container. As a result, mandatory information may appear anywhere on certain bottles and containers. Furthermore, if the label bearing the brand name is on the back of the container, then it is the brand label.

TTB believes that the current regulations requiring that certain mandatory information be placed on the brand label of wine containers are unduly restrictive. TTB believes that consumers are used to looking at the back and neck labels to find mandatory information on containers.

Accordingly, TTB is proposing to amend the regulations in proposed § 4.63 to allow mandatory information to appear on any label on a wine container.

b. Brand names. Proposed § 4.64 consolidates certain existing regulations with regard to brand names and puts

them in one section of the regulations. Current § 4.32 requires that a brand name be placed on labels of wine. What may be used as a brand name is specified in § 4.33. The current § 4.39(i) pertains to geographical brand names. The proposed rule moves these provisions to proposed § 4.64(c) without substantive changes.

TTB believes that placing the provisions pertaining to geographical brand names with the other provisions pertaining to brand names will enable industry members to find and understand the regulations pertaining to brand names more easily.

c. Alcohol content and the WWTG Labeling Protocol. Under TTB's current regulations in § 4.36, the required alcohol content statement for wine may be expressed as a percentage of alcohol by volume, or as a range, subject to certain requirements. However, the percentage of alcohol by volume is not required to be specifically listed on the label if the type designation ''table'' or ''light'' wine appears on the label. Subject to certain restrictions, a tolerance of one percentage point is allowed for alcohol content statements of wines containing more than 14 percent alcohol by volume, and a tolerance of 1.5 percentage points is allowed for wines containing 14 percent or less alcohol by volume. One of the current exceptions to the tolerance provision states that the alcohol content statement on a wine label must correctly indicate both the taxable grade of the wine and the class and type of the wine if alcohol content is part of the definition of the class and type.

Pursuant to Article 4.1(b) of the WWTG Labeling Protocol, the United States has agreed to accept alcohol content tolerances of up to one percentage point, provided that the alcohol content statement must correctly indicate the tax category, regardless of tolerance levels. This is consistent with current regulations, except that it allows the use of a tolerance in cases that cross over minimum and maximum alcohol content levels for labeling designations, as long as this would not affect the tax category.

Accordingly, proposed § 4.65 maintains the current tolerance levels for alcohol content statements in wine, and maintains the current exception to the tolerance levels for alcohol content statements related to maximum and minimum alcohol contents for tax classifications under 26 U.S.C. 5041. The proposed rule allows the tolerance levels to apply to alcohol content statements that might affect the correct class and type designation, w unless the class or type designation reflects a minimum or maximum alcohol content requirement consistent with requirements set forth in a tax class.

An example of a class or type designation that reflects an alcohol content requirement consistent with a requirement set forth in a tax classification is ''table wine.'' The class and type designation ''table wine'' for a still grape wine is a designation that reflects a maximum alcohol content of 14 percent alcohol by volume, which is consistent with the maximum alcohol content for a tax classification for still wine under 26 U.S.C. 5041. Under current and proposed regulations, grape wine that is labeled as ''table wine'' need not bear a numerical alcohol content statement. Thus, the designation ''table wine'' on a label serves two purposes—it reflects the class and type designation of the wine, and it reflects the alcohol content for tax classification purposes. Accordingly, under the proposed rule, a still grape wine that contains 14.2 percent alcohol by volume would not receive the benefit of the tolerance to the extent that the wine may not be labeled either as a ''table wine'' or with an alcohol content of 14 percent or less, regardless of the tolerance prescribed in this section.

4. Subpart F—Restricted Labeling Statements

Proposed Subpart F—Restricted Labeling Statements, includes specific rules for the use of certain statements on labels, including statements regarding allergens, the term ''organic,'' and other specific statements. The following discussion sets out some of the more important provisions in proposed subpart F that relate specifically to wine.

a. Permit numbers. Current § 4.39(e)(2) sets forth specific format rules for stating optional bonded wine cellar and bonded winery numbers (for example, ''Bonded Wine Cellar No. ____'' or ''B.W. No. ____''). TTB believes these format rules are unnecessarily restrictive and proposes to delete them. However, proposed § 4.86 retains the requirement that the permit number appear adjacent to the name and address of the person operating the wine cellar or winery.

b. Use of vineyard, orchard, farm or ranch names. Current § 4.39(m) provides that the use of vineyard, orchard, farm, or ranch names can only be used if 95 percent of the wine is produced from primary winemaking material grown on the named vineyard, orchard, farm, or ranch. This section further provides that if the name has geographical or viticultural significance, it is subject to the rules in §§ 4.39(i) and 4.39(b), which pertain to names having geographical significance.

Consistent with current policy, TTB is proposing to liberalize the current regulations on the use of vineyard, orchard, farm, or ranch names to allow the use of those names as part of trade names that are found on labels. It has been TTB's policy to allow the use of trade names in name and address statements, such as ''Bottled by John Doe Vineyards, Seattle, Washington,'' where the wine has not been made from grapes grown in the referenced vineyard (or even where there is no vineyard with that name). Furthermore, when such a trade name appears on the label as part of the bottling address, it may also be used as a brand name on the label, without meeting the 95 percent requirement. TTB believes that consumers do not see the use of a vineyard, orchard, farm or ranch name as part of a trade name as making a claim as to the source of the grapes, fruit, or other agricultural products used to make the wine.

Accordingly, the revision to these provisions in proposed § 4.87 clarifies that the 95 percent rule does not apply to trade names or brand names when the vineyard, orchard, farm, or ranch name is shown in the mandatory name and address statement on the label. TTB is retaining the provision that, when used in a brand name, a vineyard, orchard, farm, or ranch name having geographical or viticultural significance is subject to the requirements of proposed § 4.64(b) and (c).

c. Appellations of origin. Proposed §§ 4.88 through 4.91 set out the rules for appellations of origin for grape wines. Proposed §§ 4.96 through 4.98 set out the rules for appellations of origin for fruit wines, agricultural wine, and rice wine. As discussed in more detail below, TTB is proposing to separate out these rules to make it easier to locate all of the rules applicable to grape wine and fruit wine, respectively.

Current § 4.25 sets forth rules governing the minimum percentage of fruit or other agricultural products that must be grown within a specific geographic area in order to qualify for the use of an appellation of origin on a wine label. It also imposes other standards for use of an appellation of origin; for example, the wine must generally conform to the standards of the named appellation governing the composition, method of manufacture, and designation of wines made in such place.

TTB is proposing to include the appellation of origin requirements in several sections and incorporate other

changes as discussed below. In addition to stating what constitutes the use of an appellation of origin, proposed § 4.88(d) clarifies that an appellation of origin is required when a grape wine is designated with a varietal (grape type) designation, a type designation of varietal significance, or a semi-generic type designation, or when the wine is labeled with a vintage date. These requirements are currently found in the class and type regulations in § 4.34.

Current § 4.25(d) provides that an appellation of origin comprising two or no more than three States which are all contiguous may be used if: (1) All of the fruit or other agricultural products were grown in the States indicated, and the percentage of the wine derived from fruit or other agricultural products grown in each State is shown on the label, with a tolerance of plus or minus 2 percent; (2) the wine has been fully finished (except for cellar treatment pursuant to § 4.22(c), and blending which does not result in an alteration of class or type under § 4.22(b)) in one of the labeled appellation States; and (3) the wine conforms to the laws and regulations governing the composition, method of manufacture, and designation of wines in all the States listed in the appellation.

In ATF Ruling 91–1, TTB's predecessor agency held that a multistate appellation of origin cannot be used if conflicting State requirements preclude conformance with the laws and regulations of all the States listed in the appellation of origin. ATF also held that, where a multistate appellation of origin appears on the brand label and the percentage of the wine derived from grapes grown in each State is listed on a label other than the brand label, the States in the multistate appellation of origin must be listed in a descending order of predominance, according to the percentage of the wine derived from grapes grown in each State. Where both the multistate appellation of origin and the listing of the percentage of the wine derived from grapes grown in each State appear on the brand label, ATF stated that it would carefully scrutinize the placement and size and type of the label statements, on a case-by-case basis, to ensure that the label does not tend to create a misleading impression as to the origin of the wine.

Current § 4.25(d) also provides for imported wines to be labeled with an appellation of origin that is comprised of the names of two or no more than three states, provinces, territories, or similar political subdivisions of a country equivalent to a state, which are all contiguous. The appellation may be used if all of the fruit or other agricultural products were grown in the states, provinces, territories, or similar political subdivisions of a country equivalent to a state indicated, and the percentage of the wine derived from fruit or other agricultural products grown in each state, province, territory, or similar political subdivision of a country equivalent to a state is shown on the label with a tolerance of plus or minus 2 percent. Furthermore, the wine must conform to the requirements of the foreign laws and regulations governing the composition, method of production, and designation of wines available for consumption within the country of origin.

In accordance with the WWTG Labeling Protocol, discussed earlier in this preamble, the proposed rules pertaining to multicounty and multistate appellations of origin for both domestic and imported wine in proposed § 4.90 would: (1) Remove the requirement that States (or political subdivisions for imported wine) be contiguous in order to claim that the wine is produced from grapes grown in more than one State; (2) reduce the minimum percentage of grapes from 100 percent to 85 percent for wine to be labeled with such an appellation; (3) remove the requirement that the percentage of the wine derived from grapes grown in each State (or political subdivisions for imported wine) must be shown on the label; (4) add the requirement that the amount of wine derived from grapes grown in each State (or political subdivision for imported wine) named in the appellation must be greater than the amount of wine derived from grapes grown in any State not named in the appellation; and (5) add the requirement that States (or political subdivisions for imported wine) be listed in descending order according to the percentage of wine derived from grapes grown in those States (or political subdivisions for imported wine).

These amendments are liberalizing in several regards. First, they would permit the use of such an appellation where at least 85 (rather than 100) percent of the wine is derived from grapes grown within the areas named in the appellation. Second, they would eliminate the requirement to list the percentage of grapes from each State or other region, thus allowing greater flexibility in blending for producers. TTB notes that this approach is more consistent with regard to the rules for single appellations of origin, which may be comprised of not less than 75 percent wine made from grapes grown in the labeled region (in the case of an appellation that is a State, county, or similar political subdivision), or 85 percent (in the case of an appellation that is a viticultural area), without any requirements for identifying the percentage of grapes coming from outside of the named appellation.

TTB also notes that the proposed requirements with regard to listing States and counties in descending order of predominance are largely consistent with the policy set forth in ATF Ruling 91–1, and supersedes that ruling. Finally, the proposed requirement will not require the listing of each State or county (or foreign equivalent) on the label; however, labels may not, for example, selectively include States that contributed only a small percentage of grapes while leaving out States that contributed a larger percentage of grapes. For example, in a case where grapes used to make a wine were grown in 4 States, with the first 2 States contributing 45 and 40 percent, respectively, the third State contributing 12 percent and the fourth State contributing 3 percent, the proposed rule requires the listing of the first 2 States, in order of predominance, leaving it up to the industry member whether it wanted to include a third State. However, the third State listed on the label would have to be the State contributing 12 percent, and not the State contributing 3 percent, even though in either case, the States listed would contribute more than 85 percent of the grapes used to make the wine. The industry member could, of course, choose to list all 4 States on the label.

Under the proposed rule, a multistate appellation of origin for American wine would continue to be unavailable unless the wine is fully finished in one of the labeled appellation States, and the wine conforms to the laws and regulations governing the composition, method of manufacture, and designation of wines in all of the States listed in the appellation, which is consistent with the current regulations.

In general, the current regulations provide that wine derived from fruit or agricultural products grown in the county or State indicated on the label may be designated with an appellation of origin. This means that appellations of origin are available to grape wine as well as citrus wine, fruit wine, and agricultural wine.

TTB is proposing to separate the appellation of origin requirements for grape wine from those requirements for fruit and agricultural wine because an appellation of origin becomes mandatory when grape wine is labeled with certain type designations or a vintage date. Furthermore, an appellation of origin for grape wine

includes viticultural areas, which have no relevance for fruit or agricultural wine. Otherwise, TTB is proposing the same liberalizing amendments for wines labeled with appellations of origin, regardless of whether the wines are made from grapes, other fruit, or other agricultural products.

d. Estate bottled and estate grown. Proposed §§ 4.92 and 4.93 set out the rules for use of the claims ''estate bottled'' and ''estate grown.'' While the ''estate bottled'' rules are unchanged, except for clarifying changes, the proposed ''estate grown'' regulation is new, and represents a change in policy.

On November 3, 2010, TTB published Notice No. 109, an advance notice of proposed rulemaking (ANPRM), that set forth TTB policy regarding the use of the term ''estate grown'' on wine labels and requested comments (see 75 FR 67666). Specifically, TTB stated that, for over twenty years, TTB and its predecessor agency have allowed the term ''Estate grown'' to be used as a synonym for the term ''Estate bottled.'' The regulations providing for the use of the term ''Estate bottled'' are found in current § 4.26 and, in general, allow the use of that term only if the wine is labeled with a viticultural area appellation of origin and the bottling winery: (1) Is located in the labeled viticultural area; (2) grew all of the grapes to make the wine on land owned or controlled by the winery within the boundaries of the labeled viticultural area; (3) crushed the grapes, fermented the resulting must, and finished, aged, and bottled the wine in a continuous process (the wine at no time having left the premises of the bottling winery).

Notice No. 109 explained that some industry members had requested that TTB permit the use of the words ''Estate grown'' on labels of wines that do not meet the ''Estate bottled'' standards in § 4.26. TTB invited comments from industry members, consumers, and other interested parties on whether TTB should propose to amend the regulations to reflect its current policy that ''Estate grown'' may be used on a label if the wine meets the requirements for products labeled ''Estate bottled'' under § 4.26. TTB also asked if it should propose a standard for ''Estate grown'' in the regulations that differs from that specified for ''Estate bottled'' and, if so, what that standard should be.

TTB received 16 comments in response to its questions pertaining to the use of ''Estate grown'' on labels. Only four of the comments were in support of TTB's policy that ''Estate grown'' may be used on the label only if the wine meets the requirements for products labeled ''Estate bottled.'' A few of the comments were in support of TTB codifying its existing policy, and one commenter stated its belief that all aspects of the ''Estate bottled'' requirements should apply to the term ''Estate grown,'' except for the requirement of the viticultural area. Most of the comments suggested that ''Estate bottled'' and ''Estate grown'' are not synonymous.

In this rulemaking document, TTB is proposing to add a section to the regulations that will provide for the use of the term ''Estate grown'' (see § 4.93) on a label only if all of the following conditions are met:

(1) The wine is labeled with an appellation of origin;

(2) The producing winery is located within the appellation of origin;

(3) The producing winery grew all of the grapes used to make the wine on land owned or controlled by the producing winery within the boundaries of the appellation of origin, and fermented 100 percent of the wine from those grapes; and

(4) If the bottling winery is not the producing winery, the label must state that the wine was ''estate grown'' by the producing winery, and the name and address of both wineries must appear on the label. An acceptable labeling statement would be ''Estate grown and produced by ABC Winery, Seattle, Washington. Bottled by XYZ Winery, Tacoma, Washington.''

This is a liberalizing change that will allow the use of the term, ''Estate grown,'' in a way that distinguishes grape growing from bottling operations.

e. Claims on grape wine labels for viticultural practices that result in sweet wine. Proposed § 4.94 codifies in the regulations for the first time the position that TTB's predecessor agency set out in rulings pertaining to viticultural practices that result in sweet wine. TTB proposes to supersede ATF Rulings 78–4, 82–4, and 2002–7, by incorporating the rulings' holdings in proposed § 4.94.

Initially, proposed § 4.94(a) sets out the rules for using certain terms on grape wine that denote the use of viticultural practices resulting in sweet wine. In all such cases, the wine must also be labeled with the amount of sugar contained in the grapes at the time of harvest and with the amount of residual sugar in the finished wine.

Proposed § 4.94 provides that the term ''ice wine'' may be used only to describe wines produced exclusively from grapes that have been harvested after they have naturally frozen on the vine. The proposed rule provides that wine produced from grapes that were frozen post-harvest may not be labeled as ''ice wine,'' but may be labeled with a statement indicating the wine was made from grapes that were frozen post-harvest. It provides that wines labeled with the term ''ice wine,'' ''late harvest,'' or ''late picked'' may not be ameliorated, concentrated, fortified, or produced from concentrate. Finally, proposed § 4.94 provides that wine made from grapes that have been infected with the botrytis cinerea mold may be labeled with a term such as ''Botrytis Infected,'' ''Pourriture Noble,'' or another name for infection by the botrytis cinerea mold.

f. Vintage dates for grape wine. Proposed § 4.95 sets out the rules for the use of vintage dates on wine labels. The current regulations prescribing requirements for labeling grape wine with vintage dates are found in § 4.27. These regulations characterize the vintage date as the year of ''harvest.'' Thus, wine produced from grapes that were grown in 2012 but harvested early in 2013 must bear the year 2013 as the vintage date.

However, the WWTG Labeling Protocol provides that ''vintage'' is the year of growth or harvest of the grapes used to make the wine, as defined in each Party's laws, regulations, or requirements. The current definition in TTB's regulations is thus more restrictive than the definitions found in the Labeling Protocol.

TTB recognizes that other countries have different rules for vintage dates, based on different growing conditions in different parts of the world. For example, in the Southern Hemisphere, the growing season may start in September and end in April, and thus includes parts of two calendar years. In Australia, the labeling rules provide that grapes harvested between September 1 and December 31 of a particular calendar year are treated as if they were harvested in the following calendar year for purposes of a vintage declaration. This effectively treats the entire growing season as a single year. In the Northern Hemisphere, the issue is less likely to arise, but does come up with regard to grapes that may be harvested in January for an ice wine type of product.

TTB believes that allowing the year of harvest to be determined based on the rules of the country of origin will not be misleading to consumers. Accordingly, we are proposing to amend the regulations to provide that the year of harvest for imported wines will be determined in accordance with the country of origin's laws and regulations.

TTB proposes to remove the requirement that a person who wishes to label wine with a vintage date must possess appropriate records from the producer substantiating the year of

vintage and the appellation of origin, because the substantiation requirements apply to all label claims, not just vintage dates.

TTB proposes to liberalize the requirements for imported wines that are bottled in the United States, by removing the requirement that such wines must have been bottled in containers of 5 liters or less prior to importation, or that they be bottled in the United States from the original container of the product showing a vintage date. This will allow the use of vintage dates on wine imported in bulk containers and bottled in the United States, as long as the bottlers have the appropriate documentation substantiating that the wine is entitled to be labeled with a vintage date.

The current regulations also provide that wine bearing a vintage date must also bear an appellation of origin that is shown in direct conjunction with the type designation as required by § 4.32(a)(2). As discussed in the grape wine appellation of origin section of this preamble, this rule would remove the requirement that the appellation of origin be shown in direct conjunction with the type designation. Instead, the appellation of origin would have to be shown in the same field of vision as the type designation.

The regulations in current § 4.27 also provide that for a wine to be labeled with a ''vintage date,'' it must have been derived from grapes harvested in the labeled calendar year. It has been TTB's longstanding policy that only one vintage date may appear on a label, even if the wine is made from grapes harvested in different years. We note that in 1980, in response to a petition, ATF aired a proposal to allow multiple vintage dates in an advance notice of proposed rulemaking (see Notice No. 357, November 13, 1980, 45 FR 74942). Comments on that proposal were evenly divided, and subsequently ATF issued a notice of proposed rulemaking setting forth specific proposals (Notice No. 378, August 5, 1981, 46 FR 39850). Because only a few comments (mainly opposed to allowing multiple vintage dates on labels) were received in response to that document, on May 18, 1984, ATF published Notice No. 529, which withdrew the proposal (49 FR 21083). We do not intend to reopen this issue at the present time. Accordingly, TTB proposes to codify this policy in proposed § 4.95.

g. Appellations of origin for fruit wine, agricultural wine, and rice wine. As discussed earlier in this preamble, current § 4.25 prescribes the rules for use of appellations of origin and allows wine produced from ''fruit or agricultural products'' to bear an appellation of origin. Proposed §§ 4.96 through 4.98 for labeling fruit wine, agricultural wine, or rice wine contain the same appellation of origin labeling requirements as are proposed elsewhere for labeling grape wine. See §§ 4.88 through 4.99.

5. Subpart H—Labeling Practices That Are Prohibited if They Are Misleading

Proposed subpart H sets forth certain labeling practices that are prohibited if they are used in a misleading way. Most of these subpart H provisions restate and reorganize rules currently found in the TTB regulations. Some of the proposed revisions are set forth below.

Proposed § 4.133(a) broadens existing language in current § 4.39(a)(8) to prohibit the use of terms defined in part 4 in a manner that is not consistent with the part 4 definitions. This would include optional designations as well as mandatory designations. For example, under the proposed rule, a wine that was produced from grapes that were not frozen on the vine may not be labeled with the optional claim ''ice wine.'' Proposed § 4.133(b) prohibits the use of coined words that simulate or imitate any class or type designation set forth in parts 4, 5 and 7 unless the wine conforms to the requirements prescribed with respect to such designation and is in fact so designated on its labels.

Finally, proposed § 4.133(c) and (d) prohibit certain misleading references to grape varieties and statements of harvest date, respectively, subject to the provisions of proposed §§ 4.136 and 4.134, respectively, as discussed below.

In general, proposed § 4.134 restates the existing rules prohibiting certain statements of age unless they are made on a label that bears a vintage date. It allows certain miscellaneous date statements, such as statements about the date on which a business was founded. It also specifically states that, subject to certain exceptions discussed below, the use of harvest or growth dates is not generally authorized for wines other than those labeled with a vintage date in accordance with proposed § 4.95.

Proposed § 4.134 liberalizes current TTB policy prohibiting statements relating to the years of harvest of grapes or fruit as additional information for wines designated as grape wine or fruit wine. Accordingly, the proposed regulations allow the use of additional truthful, accurate, and specific information about the year of harvest of the grapes or fruit, provided that the label indicates the percentage of wine derived from grapes or fruit, as applicable, harvested in each year. If applicable, the years of harvest must be presented in descending order based on the percentage of wine derived from grapes or fruit, as applicable, grown in each year. Examples of allowable statements would be as follows: ''60% of the grapes used to make this wine were harvested in 2014; the remaining 40% were harvested in 2013,'' or ''This wine is a blend of 50% wine made from apples harvested in 2012 and 50% wine made from apples harvested in 2011.''

Proposed § 4.135 is derived from current § 4.39(k) and in general, continues to prohibit misleading references to the origin of the wine. The proposed section liberalizes TTB's current policy by specifically authorizing the use of truthful, accurate, and specific information about the origin of the grapes, fruit, or other agricultural materials that were used to produce the wine when such wine is not labeled with an appellation of origin. The name of the place may not appear on the label in a way that creates the misleading impression that the wine is entitled to an appellation of origin.

Under both current and proposed regulations, a wine is entitled to the name of a State as an appellation of origin if, among other things, at least 75 percent of the wine is derived from fruit or agricultural products grown in that State, and it has been fully finished (except for certain cellar treatment and blending) within the labeled State or an adjacent State. Thus, if a grape wine is made in New York, and 50 percent of the grapes are grown in New York and the other 50 percent are grown in Virginia, the wine would not be entitled to either a New York or a Virginia appellation of origin. Furthermore, the wine would not be entitled to a multistate appellation of origin, because New York and Virginia are not contiguous.

Under the proposed regulations, the label for such a wine may include additional information about where the grapes were grown, even though the wine is not entitled to either a New York or a Virginia appellation of origin. However, neither state name can stand alone as though the wine is entitled to a single state appellation of origin, nor can the wine be designated as ''New York/Virginia wine.'' The additional information must set forth the origin of 100 percent of the grapes, fruit or other agricultural products used to make the wine, in descending order of predominance, together with the place where the wine was fermented. This will ensure that the consumer is not misled into believing that a statement of the origin of the grapes used to make a grape wine is the same as an appellation of origin for that wine. For example, if

the wine in question is designated ''red wine,'' the proposed regulation would allow the label to include a statement such as ''This wine was fermented and bottled in New York from 50 percent grapes grown in New York and 50 percent grapes grown in Virginia.''

Proposed § 4.136(a) and 4.136(b) restate the prohibition in current § 4.39(n) on the use of varietal names, type designations of varietal significance, semi-generic geographic type designations, or geographically distinctive designations, on wines that are not made in accordance with the standards set forth in the standards of identity for still grape wine, sparkling grape wine, and carbonated grape wine. The proposed language also makes it clear that the use of such names on a grape wine that does not meet the requirements for use of the designation named is prohibited if it tends to create a false or misleading impression as to the designation, origin, or identity of the wine.

Proposed § 4.136(c) codifies and supersedes ATF Ruling 85–14, which allowed the use of certain information about grape varieties as additional information on the labels of certain wines. The proposed regulation allows the use of truthful, accurate, and specific additional information on the label about the grape varieties used to make a still grape wine, sparkling grape wine, or carbonated grape wine, provided that the information includes every grape variety used to make the wine, listed in descending order of predominance. The percentage of each grape variety may be, but is not required to be, shown on the label, with a tolerance of two percentage points. When shown, percentages must be shown for all grape varieties listed, and the total must equal 100 percent.

As discussed later in this document, TTB is proposing to liberalize the rules for use of a designation that includes more than one grape variety. Under this proposal, a varietal designation that includes the names of two or more varieties may be used without disclosing the percentage of the wine derived from each variety, as is currently required under § 4.23(d). If this option is available, it is not clear whether industry members will still want to include information about grape varieties as additional information, rather than labeling their wines with a varietal designation that includes two or more grape varieties. However, TTB recognizes that many wine labels currently include information about grape varieties as additional information; thus, we are proposing to continue to allow this practice. TTB seeks comments on this proposal.

TTB is proposing to eliminate the provision in current § 4.39(j) that inappropriately treats ''product names'' as if they were ''brand names,'' and thus causes confusion. The current text allows for certain ''*product* names with specific geographical significance'' when qualified with the word ''brand,'' even where the geographical name does not accurately represent the origin of the wine. [Emphasis added.] TTB solicits comments on the proposed revisions with regard to representations as to origin. In particular, TTB requests information on whether this proposed change may affect current labels.

TTB is also proposing to eliminate the provision in current § 4.39(l), which prohibits the use of foreign terms which (1) describe a particular condition of the grapes at the time of harvest; or (2) denote quality under foreign law on labels of domestically produced wine. TTB believes that the misleading use of such foreign terms is covered by the general prohibition of misleading statements or representations as to the age, origin, identity, or other characteristics of the wine (see proposed § 4.122).

6. Subpart I—Standards of Identity for Wine

a. General overview of the classes and types of wine. The regulations governing how wine must be identified on labels and the provisions for optional labeling statements are found in current subpart C, and are referred to as the ''standards of identity.'' Current § 4.21 sets forth the standards of identity for wine and prescribes the several classes and types of wine that an industry member may use to designate wine. The consistent and accurate designation of wine leads to consumer and trade understanding of the quality and identity of the wine.

Current § 4.32 requires a class, type or other designation to appear on the brand label. The general rules for class and type designations are set forth in current § 4.34. In general, the regulations require the class designation to appear on the label; however, certain type designations are authorized for use in place of a class designation. These other type designations are not specified in the current standards of identity but are found elsewhere in the regulations in part 4. For example, under current § 4.23, the names of one or more grape varieties may be used as a type designation of a grape wine, subject to certain conditions. In addition to these varietal type designations, current § 4.28 sets forth the conditions for use of ''type designations of varietal significance.'' Current § 4.24 sets out the rules for ''generic,'' ''semi-generic,'' and ''non-generic'' designations of geographic significance. TTB is proposing to reorganize the standards of identity so that proposed § 4.142 includes all of the type designations within the class designation ''still grape wine.''

In addition to the various designations discussed above, a statement of composition may be required to accompany certain class and type designations. For example, current § 4.21(d), (e), and (f) prescribe the standards of identity for citrus wine, fruit wine, and wine from other agricultural products, respectively. These standards require that an adequate statement of composition be placed on the label, along with the appropriate class designation, when the wine is produced from more than one type of fruit, citrus fruit, or agricultural product, respectively. TTB is proposing to amend the regulations to allow a designation (such as ''apple-pear wine'') rather than a statement of composition.

TTB is amending the standards of identity to incorporate all of the ways in which an industry member may designate wine in accordance with TTB's regulations. By indicating all of the ways an industry member must or may designate wine within the standards of identity, the proposed regulations provide better guidance on what constitutes a class designation or a type designation, and when a type designation may be used in place of a class designation.

b. Production standards. Current § 4.21 refers to numerous production standards that impact the way in which a wine may be designated. These include amelioration limits, volatile acidity levels, and the addition of brandy and alcohol. However, in many cases, these standards refer to outdated rules under chapter 51 of the Internal Revenue Code.

Wine that is domestically produced must be made in compliance with the production standards set forth in 26 U.S.C. 5381–5387, and designated in accordance with 26 U.S.C. 5388. These rules are also found in TTB's IRC-based wine regulations in 27 CFR part 24.

In accordance with part 24, wine that is the product of the juice or must of sound, ripe grapes or other sound ripe fruit (including berries), made with any cellar treatment authorized by subparts F and L of part 24 and containing not more than 21 percent by weight of total solids, is deemed to be ''natural wine.'' Classes 1, 2, and 3 of the existing regulations in current § 4.21 are grape wine, sparkling grape wine, and carbonated grape wine, respectively,

and are produced by the normal alcoholic fermentation of the juice of sound, ripe grapes (including restored or unrestored pure condensed grape must), with or without the addition, after fermentation, of pure condensed grape must, and with or without added grape brandy or alcohol, but without other addition or abstraction except as may occur in cellar treatment. As discussed further below, TTB is proposing to revise the standards of identity for grape wines and for fruit wines to clarify that these wines must be ''natural wines'' in accordance with 26 U.S.C. 5381–5383.

c. Natural wine certification. Prior to amendment in 2004, section 5382 of the IRC, 26 U.S.C. 5382(a), set forth certain standards for the proper cellar treatment of ''natural wine.'' That section provided that ''proper cellar treatment of natural wine constitutes those practices and procedures in the United States and elsewhere, whether historical or newly developed, of using various methods and materials to correct or stabilize the wine, or the fruit juice from which it is made, so as to produce a finished product acceptable in good commercial practice.'' Section 5382(b) then went on to provide certain practices that were specifically recognized, including standards for the amelioration and sweetening of natural wine and standards for the addition of wine spirits to natural wine.

Section 2002 of the Miscellaneous Trade and Technical Corrections Act of 2004, Public Law 108–429, 118 Stat. 2434 (''the Act''), was signed by the President on December 3, 2004. Section 2002 of the Act revised section 5382(a) of the IRC. The revision of section 5382(a) took effect on January 1, 2005, and involved the following principal substantive changes: (1) The addition of a new paragraph (1)(B) to provide that, in the case of wine produced and imported subject to an international agreement or treaty, proper cellar treatment of natural wine includes those practices and procedures acceptable to the United States under the agreement or treaty; and (2) the addition of a paragraph (3) setting forth a new certification requirement regarding production practices and procedures for imported natural wine produced after December 31, 2004.

The new certification provision directs the Secretary of the Treasury to accept the practices and procedures used to produce the wine if, at the time of importation, one of the following conditions is met:

(1) The Secretary has on file or is provided with a certification from the government of the producing country, accompanied by an affirmed laboratory analysis, that the practices and procedures used to produce the wine constitute proper cellar treatment under regulations prescribed by the Secretary;

(2) The Secretary has on file or is provided with a certification required by an international agreement or treaty covering proper cellar treatment, or the wine is covered by an international agreement or treaty covering proper cellar treatment that does not require a certification; or

(3) In the case of an importer that owns or controls or that has an affiliate that owns or controls a winery operating under a basic permit issued by the Secretary, the importer certifies that the practices and procedures used to produce the wine constitute proper cellar treatment under regulations prescribed by the Secretary.

The certification provision went into effect on January 1, 2005. Effective May 28, 2008, TTB adopted a final rule implementing the certification requirements regarding production practices and procedures for imported natural wine. The regulations implementing this statutory requirement are found in 27 CFR 27.140, which states that, except as otherwise provided, an importer of natural wine must have an original or copy of a certification from the producing country stating that the practices and procedures used to produce the imported wine constitute proper cellar treatment in part 24. As provided for in the law, one exception to this requirement is for natural wines that are imported from countries that have an international agreement or treaty (enological practices agreement) with the United States specifying that the practices and procedures used to produce the wine are acceptable to the United States. Currently, 35 countries have enological practices agreements with the United States. These agreements exempt certain natural grape wines from the natural wine certification requirement.

d. Proposed changes and questions pertaining to the standards of identity for wine. It is clear that the existing standards of identity for grape wine (including sparkling grape wine and carbonated grape wine), citrus wine, and fruit wine are intended to incorporate the standards set forth in the IRC for the sweetening and amelioration of natural wine, as well as the standards for the addition of wine spirits. However, as set forth in further detail below, because of amendments over time to the IRC standards, the existing regulations contain a patchwork of inconsistent references to current and prior standards.

TTB is proposing to update these standards to clarify that these classes of wine must comply with the standards for ''natural wine'' set forth in section 5382 of the IRC. For imported wines, this means that a wine designated as a still grape wine, sparkling grape wine, or carbonated grape wine must be made in accordance with the standards set forth in 26 U.S.C. 5382 and 5383 for natural wine, and a wine designated as a fruit wine must be made in accordance with the standards set forth in 26 U.S.C. 5382 and 5384 for natural wine. It should be noted that imported wines can comply with the standards set forth in 26 U.S.C. 5382 if the practices used to make the wine have been accepted by the United States in an international agreement or treaty. Under the proposed rule, imported wines that are not entitled to a grape wine or fruit wine designation because they are not ''natural wine'' would have to meet the standards of identity for another designation set forth in part 4 or be designated with a statement of composition.

Proposed § 4.151 restates the requirements currently found in § 4.34(a) with regard to the designation of wines with a truthful and adequate statement of composition where the wine does not conform to any of the standards of identity found in part 4. As announced in the Department of the Treasury's semiannual regulatory agenda (available online at *https://www.reginfo.gov*), TTB plans to publish a notice of proposed rulemaking titled ''Proposals Concerning Labeling of Flavored Wine,'' in which TTB will propose more specific rules regarding the labeling of flavored wine products. Accordingly, proposed § 4.151(c) simply states that ''the appropriate TTB officer may require a statement of composition to identify the base wine(s), including blends of wine or fermentable materials, as well as other materials added to the wine before, during, and after fermentation, as appropriate, in order to ensure that the label provides adequate information about the identity of the product.''

This proposed language would not change current policy with regard to statements of composition on wine labels. Proposed § 4.151(c) also sets forth current policy regarding statements of composition for a blend of two different types of fruit or agricultural wine. In those cases, the statement of composition must include of the names of the types of wine (such as, ''blueberry wine and apple wine'' or ''mead/rhubarb wine'').

TTB is proposing substantive changes that affect multiple classes of wine, as

well as several substantive changes that affect individual classes of wine. These changes are described below:

i. Amelioration. Pursuant to 26 U.S.C. 5383 and 27 CFR 24.10, amelioration is the addition to wine or juice, of water, sugar, or a combination of both to reduce or balance high acid content in some juice and wines. Amelioration may take place before, during, or after fermentation. Current § 4.21(a) provides three amelioration standards for grape wine, and current § 4.21(d), (e), (f), and (g) provide two amelioration standards each for citrus wine, fruit wine, and wine from other agricultural products.

Current § 4.21(a) allows grape wine to be ameliorated before, during, or after fermentation either: (1) By adding, separately or in combination, dry sugar, or such an amount of sugar and water solution as will not increase the volume of the resulting product more than 35 percent, as long as the product so ameliorated does not have an alcohol content derived by fermentation of more than 13 percent by volume, or a natural acid content, if water has been added, of less than five parts per thousand, or a total solids content of more than 22 grams per 100 cubic centimeters; (2) by adding, separately or in combination, not more than 20 percent by weight of dry sugar, or not more than 10 percent by weight of water; or (3) in the case of domestic wine, in accordance with 26 U.S.C. 5383.

In general, the first two amelioration methods date back to the late 1930s and could be used for both domestic and imported wines. The methods conformed to the provisions of the 1939 IRC at 26 U.S.C. 3036. When the IRC of 1954 was enacted, new amelioration provisions were added. A specific reference to section 5383 of the 1954 IRC was added to § 4.21 through the publication of T.D. 6319 (23 FR 7698) on October 4, 1958.

The amelioration rule in part 24 (27 CFR 24.178) states that ''the fixed acid level of the juice or wine may not be less than 5.0 grams per liter after the addition of ameliorating material.'' However, this requirement only applies in part 4 if water was used as the ameliorating material. TTB has found that the difference in methods is confusing for industry members, as well as the public at large.

Furthermore, different terminology relating to amelioration is used in current parts 4 and 24. Current part 4 refers to a ''natural acid content'' in parts per thousand, while current part 24 refers to a ''fixed acidity level'' in grams per liter. The difference in terminology and units also is confusing for industry members, as well as the public at large.

Accordingly, this proposed rule removes two of the three amelioration methods listed in the part 4 regulations. This change is made in proposed §§ 4.142, 4.145, and 4.146. The proposed rule will clarify that grape wines, and fruit wines must all conform to the standards for natural wine set forth in the IRC.

ii. Cellar treatment. The current regulations for classes 1, 4, and 5 (grape wine, citrus wine, and fruit wine) prohibit the addition or abstraction (removal) of substances other than those specified in the standard of identity and those provided for as cellar treatment. As indicated above, this proposed rule will clarify that grape wine and fruit wine must be made according to the standards set forth in 26 U.S.C. 5382 and 5384 for natural wine under the IRC. Thus, the proposed standards of identity for grape wine and fruit wine cross reference the statutory cellar treatment provisions for natural wine in sections 5382 and 5384. This change is made in proposed §§ 4.142 and 4.145.

iii. Added brandy or alcohol. The current regulations concerning classes 1, 4, and 5, allow for the addition of grape brandy, citrus brandy, or fruit brandy, respectively, or alcohol. Domestically produced natural wines may only be produced with the addition of brandy or wine spirits that are derived from the same kind of fruit. For example, grape wine can be produced with the addition of grape brandy or grape wine spirits, and strawberry wine can be produced with the addition of strawberry brandy or strawberry wine spirits. With regard to imported wines, however, in some cases, the United States has recognized fortification practices of the country of origin that allow for the use of spirits that are derived from a different source.

TTB believes that the existing regulation's authorization of the addition of ''grape brandy or alcohol'' to grape wine, and the addition of ''fruit brandy or alcohol'' to fruit wine may cause confusion and is therefore proposing to instead authorize the addition of ''added spirits of the type authorized for natural wine under 26 U.S.C. 5382'' in proposed §§ 4.142 and 4.145. This change will incorporate the standards which specify that wine spirits must be derived from the same type of fruit, which are found in 26 U.S.C. 5382, but it will also provide for the recognition of different standards for certain imported wines pursuant to international agreements.

iv. Dessert wine. Current § 4.21(a), (d), (e), (f), and (g) prescribe the standard for designating grape wine, citrus wine, fruit wine, and wine from other agricultural products as ''dessert wine.'' Dessert wine is defined as wine having an alcoholic content in excess of 14 percent but not in excess of 24 percent by volume. TTB is not proposing to change this standard, but seeks comments on it, as explained below.

TTB has rejected applications for COLAs for labels that carry the term ''dessert wine'' where the wine did not contain more than 14 percent alcohol by volume. It has been suggested that the trade and consumer understanding of the term ''dessert wine'' may no longer be consistent with the meaning that the regulations assign to it. TTB has approved labels for wines containing no more than 14 percent alcohol by volume that include the phrase ''may be served as dessert wine.'' TTB believes that consumers may believe that the term ''dessert wine'' indicates the level of sweetness that the wine possesses, or may attribute some other meaning to the word. Accordingly, TTB is interested in receiving comments pertaining to the use of ''dessert wine'' as a designation that denotes alcohol content. TTB is also interested in receiving comments on whether there is a more appropriate term for designating wines that contain more than 14 percent alcohol by volume but less than 24 percent alcohol by volume.

v. Light wine. The current regulations for grape wine allow the term ''light'' to be used in two instances. The first is as an alternative designation for ''table wine,'' which is defined as ''grape wine having an alcoholic content not in excess of 14 percent by volume.'' The second instance in which ''light'' may be used for grape wine is as a designation that denotes that a ''dessert wine'' that has no more than 17 percent alcohol by volume (for sherry) or 18 percent alcohol by volume (for angelica, madeira, muscatel, or port). The current classes for citrus wine, fruit wine, and wine from other agricultural products also allow the designation ''light wine'' in lieu of the designation ''table wine.'' TTB is not proposing to change the standard for ''light'' wine but is interested in receiving comments as to whether the proposed use of the designation ''light'' on wine labels, to indicate alcohol content, is consistent with industry and consumer understanding of that term.

vi. Natural wine. Current classes 1, 4, and 5 provide for wine that does not contain ''added brandy'' to be designated as ''natural.'' TTB has received numerous applications for COLAs which use the designation ''natural.'' On these proposed labels, the term ''natural'' was intended to indicate

to the consumer that the wine was produced following a certain set of production guidelines.

TTB believes that the designation ''natural'' may no longer have the meaning ascribed to it by the regulations. Additionally, the definition in the current part 4 is inconsistent with the IRC definition. Accordingly, the standards of identity no longer provide that grape wine or fruit wine containing no added brandy or alcohol may be designated as ''natural.'' TTB is interested in receiving comments regarding whether trade and consumer understanding of the term ''natural,'' when used on a wine label, is that no brandy has been added to the wine. TTB is also interested in receiving comments that indicate how the industry and consumers interpret the term ''natural'' in relation to wine. Finally, commenters should let TTB know if the proposed change would impact existing labels.

vii. Changes pertaining to individual classes or types. In addition to the changes affecting multiple classes of wine discussed above, TTB is making the following changes affecting certain individual classes of wine:

• *Champagne ''style'' and ''type:''* Current § 4.21(b)(2) recognizes ''champagne'' as a type of sparkling grape wine the effervescence of which results solely from the secondary fermentation of the wine in glass containers of not greater than one gallon capacity. Sparkling wines having the taste, aroma, and characteristics generally attributed to champagne but not otherwise conforming to the standard for champagne may, in addition to but not instead of the class designation ''sparkling wine,'' be further designated as ''champagne style'' or ''champagne type'' or as ''champagne'' (along with an appellation of origin), and a qualifying term such as ''bulk process,'' ''fermented outside the bottle,'' ''secondary fermentation outside the bottle,'' ''secondary fermentation before bottling,'' ''not fermented in the bottle,'' or ''not bottle fermented.'' The term ''charmat method'' or ''charmat process'' may be used as additional information.

The proposed regulations in § 4.173(d) continue to allow the use of ''champagne'' with one of the qualifying terms specified above on products designated as ''sparkling wine,'' where their effervescence results from secondary fermentation in containers with a capacity of more than one gallon. The proposed regulations clarify that such wines must comply with the rules applicable to the use of ''champagne'' as a semi-generic designation, in accordance with proposed § 4.174. Thus, a sparkling wine that undergoes secondary fermentation in a tank may be designated, for example, as ''Sparkling wine,'' with the further designation of ''New York champagne—not fermented in the bottle—Charmat process,'' or ''California champagne style—bulk process'' as long as the use of the term ''champagne'' complies with the grandfathering and other rules set forth in proposed § 4.174.

• *Fruit wine and citrus wine:* The standards of identity currently provide for a class, fruit wine, in § 4.21(d) and a class, citrus wine, in § 4.21(e). The production requirements, such as amelioration and acidity limits, are the same for fruit wine and citrus wine. Furthermore, the ways in which fruit wine and citrus wine may be designated are consistent. Finally, TTB does not receive many applications for COLAs for wines designated as ''citrus wine'' (as opposed to applications for COLAs for citrus wines derived wholly from one kind of citrus fruit, such as ''orange wine'' or ''grapefruit wine''). Eliminating the class ''citrus wine'' would not require a change to labels of citrus wines that are made from a single type of citrus fruit. For these reasons and because citrus is a type of fruit, TTB proposes to eliminate the class of ''citrus wine'' and to include any wines made from citrus fruits in the fruit wine class. TTB solicits comments on whether this change (in proposed § 4.145) will require changes to existing labels.

• *Agricultural wine:* Current § 4.21(f) provides that ''wines from other agricultural products'' constitute class 6. This class includes wines produced from honey, raisins, dandelions, rice, maple syrup, and agave. This class does not include wines produced from fruit that is used in the production of grape wine, fruit wine, or citrus wine. Currently, wine produced from rice in accordance with the commonly accepted method of manufacture of such a wine is designated as Saké, which is a type of ''wine from other agricultural products.''

TTB proposes to move Saké from current class 6, and create a new class, ''rice wine,'' in order to more clearly describe the standards for rice wines, including Saké and Gyeongju Beopju. Pursuant to Article 2.13.2 of the United States-Korea Free Trade Agreement, the United States agreed to recognize Gyeongju Beopju as a distinctive product of the Republic of Korea. Gyeongju Beopju was recognized in TTB Ruling 2012–3 as a non-generic designation of geographic significance, and as a product made in the Republic of Korea in accordance with the laws and regulations of the Republic of Korea governing the manufacture of this product. Proposed § 4.148(c)(2) recognizes Gyeongju Beopju as a type designation, which means that the words ''rice wine'' would not have to appear as part of the designation. TTB seeks comments on whether this is appropriate, or whether the product should be designated as ''Gyeongju Beopju rice wine.'' TTB Ruling 2012–3 also recognizes Andong Soju, which is a distilled spirit, as a distinctive product of the Republic of Korea. As discussed in section II D of the preamble, TTB is proposing to amend the distilled spirits regulations to incorporate this holding of the ruling, and to supersede TTB Ruling 2012–3 in its entirety.

• *Varietal (grape type) labeling:* Proposed § 4.156 sets out the rules for varietal (grape type) labeling as a type designation for grape wine. The proposed rule is largely consistent with the current regulation, but sets out some liberalizing changes consistent with the WWTG Labeling Protocol, discussed earlier in this preamble.

The regulation providing for the use of one or more grape varieties as the type designation for grape wine is in current § 4.23. In addition to other requirements, current § 4.23 requires that a wine labeled with a varietal designation also be labeled with an appellation of origin.

Subject to certain exceptions, current § 4.23(b) provides that the name of a single grape variety may be used as the type designation of a grape wine if not less than 75 percent of the wine is derived from grapes of that variety, and if all of that 75 percent is grown in the area indicated by the labeled appellation of origin.

Current § 4.23(d) sets forth the current rules for the use of two or more grape varieties as the type designation for a grape wine. All of the grapes used to make the wine must be of the varieties shown on the label. The percentage of the wine derived from each variety must be shown on the label (with a tolerance of plus or minus 2 percentage points). Finally, if the wine is labeled with a multicounty appellation of origin, the percentage of the wine derived from each variety from each county must be shown on the label; and if the wine is labeled with a multistate appellation of origin, the percentage of the wine derived from each variety from each State must be shown on the label.

TTB is proposing to make changes consistent with the WWTG Labeling Protocol. For wines labeled with more than one grape variety as the type designation, these changes would require that not less than eighty-five

percent (instead of 100 percent) of the wine be derived from grapes of the labeled varieties. They would also remove the requirement that the percentage of the wine derived from each variety must be shown on the label. The proposed regulations remove the requirement that, if the wine is labeled with a multicounty or multistate appellation of origin, the percentage of the wine derived from each county or State must be shown on the label. The proposed rule adds a requirement that each grape variety listed must be in greater proportion in the wine than any variety that is not listed, and requires that the varieties be listed in descending order of predominance, based on the percentage of wine that is derived from each grape variety. Thus, if a wine is made from four different varieties of grapes, with the first representing 50 percent of the wine, the second representing 40 percent of the wine, the third representing seven percent of the wine, and the fourth representing three percent of the wine, the bottler would have three options under the proposed rule if it wishes to use a varietal designation. It could list all four of the varieties, in descending order of predominance, or it could list the first three varieties, in descending order of predominance, or it could list simply the first two varieties, in descending order of predominance. However, the proposed rule would not allow the bottler to include the fourth variety (representing three percent of the wine) without also including the third variety (representing seven percent of the wine).

As previously noted, proposed § 4.23(b) requires that 75 percent of the wine must be derived from grapes of the variety listed on the label. This allows for some blending with wines made from other grapes, which are not required to be listed on the label. TTB believes that the proposed rule would provide consumers with adequate information about the identity of the product, and encourage the use of multiple varietal designations by producers. The proposed regulations would afford greater flexibility in the blending of wines.

Proposed § 4.157 sets forth rules on grape type designations of varietal significance. These are largely consistent with current § 4.28, with the exception of a proposed change relating to the designation ''Gamay Beaujolais.'' In 1997, ATF published a final rule (T.D. ATF–388, 62 FR 16749) that phased out the use of the designation ''Gamay Beaujolais'' on American wine labels over a period of 10 years. The current regulations at § 4.28(e)(3) set out the rules for the use of the designation ''Gamay Beaujolais'' for wines bottled prior to April 9, 2007. However, as set forth in current § 4.28(e)(3), the designation ''Gamay Beaujolais'' may not be used on labels of American wine bottled on or after April 9, 2007. While wines bottled prior to that date may still bear the designation in accordance with the transitional rule, TTB does not believe that it is necessary or useful to keep the transitional rule in the regulations. However, TTB seeks comments on whether that provision should be kept in the regulations.

e. Generic, semi-generic, and nongeneric designations of geographic significance. The regulations prescribing requirements for labeling wine with terms that have been found to be generic, semi-generic, and nongeneric designations of geographic significance are currently found in § 4.24. As described in more detail below, these regulations have not been updated to reflect amendments to the IRC in 2006 regarding the use of certain ''semi-generic'' names; thus, we are proposing to amend the regulations to reflect those amendments to the IRC.

The general rule, as stated in current § 4.24(c)(1), is that a name of geographic significance, which is also the designation of a class or type of wine, may be used in the designation of only those wines of the origin indicated by such name. Examples of these ''nongeneric'' names (such as ''Spanish,'' or ''Napa Valley''), are listed in § 4.24(c)(2). The exception to this general rule is where the Administrator has found a name of geographic significance to be either ''generic'' or ''semi-generic.''

''Generic'' names are those specified in current § 4.24(a)(2) (such as ''Vermouth'' and ''Saké''), which are no longer considered as having geographic significance but are indicative of a class or type of wine. A wine may be labeled with a generic designation regardless of the place of origin. ''Semi-generic'' designations (such as ''Madeira'' and ''Sherry'') are those names which retain some geographic significance but which are also known as the designation of a class or type of wine. Current section 4.24(b)(1) provides that semi-generic names may be used to designate wines of an origin other than that indicated by the particular geographic name, provided that the designation is accompanied by an appellation of origin indicating the true origin of the wine.

In addition to the general rule set forth above which restricts the use of nongeneric names used to designate wines, current § 4.24(c)(1) provides that the Administrator may find that certain of these nongeneric names are also the ''distinctive'' designations of specific wines. A name of geographic significance is deemed to be a distinctive designation if it is known to the U.S. consumer and trade as the designation of a specific wine of a particular place or region, distinguishable from all other wines. Current section 4.24(c)(3) states that names such as ''Chambertin,'' ''Liebfraumilch,'' and ''Lacryma Christi'' are examples of distinctive designations. A list of foreign distinctive designations appears in subpart D of part 12. Additional examples of foreign nongeneric names that are not distinctive designations of wine are listed in subpart C of part 12.

This proposed rule would codify these provisions in three separate sections, proposed sections §§ 4.173 through 4.175.

Proposed § 4.173 defines generic designations of geographical significance as ''the name of a class or type of wine that once had geographic significance but has been deemed by the Administrator to have lost any geographic significance.'' Also, paragraph (b) of proposed § 4.173 makes clear that ''vermouth'' and ''Saké'' comprise the list of generic designations, and are not merely examples of such designations.

As mentioned above, current § 4.24(b) provides that semi-generic designations may be used to designate wines of an origin other than that indicated by the name only if there appears in direct conjunction therewith an appropriate appellation of origin disclosing the name of the true place of origin of the wine, and if the wine so designated conforms to the standards of identity, if any, for such wine contained in the regulations in part 4, or, if there is no such standard, to the wine trade's understanding of such class or type. Examples of semi-generic names that are also type designations for grape wines are: Angelica, Burgundy, Claret, Chablis, Champagne, Chianti, Malaga, Marsala, Madeira, Moselle, Port, Rhine Wine (or Hock), Sauterne, Haut Sauterne, Sherry, and Tokay.

In proposed § 4.174, TTB is proposing substantive changes to the regulations governing the use of semi-generic designations on wine labels. These changes are consistent with changes in the law, which in turn stem from the 2006 Agreement between the United States and the European Union (EU) on Trade in Wine (''the EU Agreement''). The EU Agreement addresses a wide range of issues regarding the production, labeling, and import requirements for wine that help to

establish predictable conditions for bilateral wine trade.

Under section 5388(c) of the Internal Revenue Code of 1986 (IRC), 26 U.S.C. 5388(c), a name of geographic significance, which is also the designation of a class or type of wine, is determined to be semi-generic only if so found by the Secretary of the Treasury. In the EU Agreement, the United States made a commitment to seek to change the legal status of those names to restrict their use solely to wines originating in the applicable EU Member State, with certain exceptions for ''grandfathered'' names. The grandfathered names are: Burgundy, Chablis, Champagne, Chianti, Claret, Haut Sauterne, Hock, Madeira, Malaga, Marsala, Port, Retsina, Rhine, Sauterne, Sherry, and Tokay.

Shortly thereafter, section 422 of the Tax Relief and Health Care Act of 2006 (Pub. L. 109–432) amended section 5388 of the IRC (26 U.S.C. 5388) to implement Article 6 of the EU Agreement. The effect of this change in law is to restrict use of the semi-generic terms pursuant to the EU Agreement.

Article 6.2 of the EU Agreement and 26 U.S.C. 5388 allow a person or his or her successor in interest using one of the grandfathered names in the United States before March 10, 2006, to continue using the name, provided that the name is only used on labels for wine bearing the brand name, or the brand name and distinctive or fanciful name, if any, for which the applicable COLA was issued prior to the date of signature of the EU Agreement.

In accordance with the EU Agreement and the relevant changes in U.S. law, TTB has imposed restrictions on the use of the semi-generic names and the name Retsina. Although Retsina is a class of wine that was not previously recognized in the TTB regulations or in 26 U.S.C. 5388 as a semi-generic name, under the terms of the EU Agreement and 26 U.S.C. 5388, it is treated the same as the semi-generic names.

Under the provisions of the ''grandfather'' exception, any person or his or her successor in interest may continue to use a semi-generic name or Retsina on a wine label, provided the semi-generic name or Retsina is used only on labels for wine bearing the same brand name, or the same brand name and a distinctive or fanciful name, if any, that appear on a COLA issued prior to March 10, 2006. The grandfather clause is not available to wines originating in the EU. The proposed amendments will implement these provisions in the part 4 labeling regulations for the first time.

Accordingly, proposed § 4.174 defines a semi-generic designation as a geographic term which is also the designation of a class or type of wine and which has been deemed to have become semi-generic by the Administrator. It lists the semi-generic names and the restrictions on their use, in accordance with the provisions of 26 U.S.C. 5388. It should be noted that while the law provides the same protection to ''Retsina'' as it does to the names that are listed as being ''semi-generic,'' it does not specifically provide that ''Retsina'' is a semi-generic name. TTB believes that this leads to confusion. Accordingly, TTB is proposing to amend the regulations to recognize ''Retsina'' as a semi-generic name. It should be further noted that, while ''Angelica'' is included as a semi-generic name, it is not subject to the grandfather provisions under 26 U.S.C. 5388.

ATF Ruling 73–5 held that Spanish wines bearing labels with semi-generic designations such as ''Burgundy,'' ''Chablis,'' ''Sauterne,'' or ''Rhine'' do not meet the requirements of § 4.25(a)(3). Because proposed § 4.174(c) requires that imported wine labeled with a semi-generic designation conform to the requirements of the producing country, and EU regulations would not allow a wine from Spain to be called a ''Burgundy,'' ''Chablis,'' ''Sauterne'' or ''Rhine,'' the proposed rule would supersede ATF Ruling 73–5.

Proposed § 4.175 defines a nongeneric designation as a name of geographic significance that has not been found by the Administrator to be generic or semi-generic. The proposed regulation also states that, ''A nongeneric name of geographic significance may be deemed to be the distinctive designation of a wine if the Administrator finds that it is known to the consumer and to the trade as the designation of a specific wine of a particular place or region, distinguishable from all other wines.'' Other than these clarifying provisions, the changes in proposed § 4.175 are editorial in nature.

7. Subpart J—American Grape Variety Names

Proposed subpart J of part 4 includes the list of approved names of American grape varietals, the list of alternate names of American grape varietals, and the approval processes for grape varietal names.

As previously mentioned, proposed § 4.157 provides the rules for using the name of one or more grape varieties as a type designation for a grape wine. Proposed § 4.157(e) provides that the name of a grape variety may be used in a type designation for an American wine only if that name has been approved by the Administrator. A list of approved grape variety names appears in proposed subpart J.

Proposed § 4.191 states how to petition the Administrator for approval of a grape variety name. This is largely consistent with existing § 4.93. However, TTB is proposing a change in proposed § 4.191(e) to codify TTB's current policy with regard to the administrative approval of grape variety names pending future rulemaking.

Current § 4.93 provides that the TTB Administrator will publish the list of approved grape variety names in the **Federal Register** annually. TTB is proposing to revise this provision in proposed § 4.191 to eliminate the provision for publishing the names in the **Federal Register**. Instead, a complete list of grape variety names (including those listed in regulations and those temporarily approved by the Administrator) may be found on the TTB website, at *https://www.ttb.gov.*

While neither the proposed nor the existing regulations require TTB to engage in rulemaking before approving the use of a grape variety name to designate an American wine, it is TTB's preference to go through rulemaking in order to solicit comments on the use of proposed varietal names. However, rulemaking takes time, and TTB does not wish to delay the use of newly approved grape varietal names on American wine labels. Accordingly, it is TTB's practice to issue an ''administrative approval'' for new grape variety names that meet the criteria set forth in the regulations. An administrative approval is temporary in nature, and means that TTB will allow the use of the grape variety name as a type designation on a wine label pending rulemaking. An administrative approval may be revoked as a result of subsequent rulemaking concerning the grape variety name.

Current § 4.92 provides a list of alternative grape variety names that may be used on a temporary basis, in lieu of the prime name of the grape variety that is shown in the list. These alternative grape variety names may be used for wine bottled before a specified date, which varies from 1997 to 2012. The alternative grape variety names in the list for wine bottled prior to 1997 and the names in the list for wine bottled prior to 1999 are not included in proposed § 4.192. Though absent from the list in the regulations, the alternative names authorized for wines bottled prior to 1997 and 1999 will still be authorized. However, TTB no longer believes it is necessary to include this

transitional rule in the codified regulations.

D. Proposed Changes Specific to 27 CFR Part 5 (Distilled Spirits)

In addition to the changes discussed in section II B of this document that apply to more than one commodity, TTB is proposing editorial and substantive changes specific to the distilled spirits labeling regulations in part 5. This section will not repeat the changes already discussed in section II B of this document. Accordingly, if a proposed change is not discussed in this section, please consult section II B. The substantive changes that are unique to part 5 are described below, by subpart.

1. Subpart A—General Provisions

Proposed subpart A includes several sections that have general applicability to part 5, including a revised definitions section, a section that defines the territorial extent of the regulations, sections that set forth to whom and to which products the regulations in part 5 apply, a section that identifies other regulations that relate to part 5, and sections addressing administrative items such as forms and delegations of the Administrator.

Proposed § 5.1, which provides definitions of terms used in part 5, has some changes from the regulatory text that appears in current § 5.10. In addition to the proposed amendments discussed above in section II B of this document, TTB proposes to modify the definition of ''age'' to simplify it and to make clear that spirits are only aged when stored in or with oak. The wood contact creates chemical changes in the spirits, which is the aging process. Thus, for example, spirits stored in oak barrels lined with paraffin are not ''aged.''

Additionally, TTB proposes to add a definition of ''American proof,'' which cross references the definition of ''proof.'' The term ''American proof'' is used in some circumstances to clarify that the proof listed on a certificate should be calculated using the standards in the part 5 regulations, not under another country's standards.

TTB proposes to amend the definition of ''distilled spirits'' to codify its longstanding position that products containing less than 0.5 percent alcohol by volume are not regulated as ''distilled spirits'' under the FAA Act.

TTB also proposes to add a definition of ''grain,'' which would define the term to include cereal grains as well as the seeds of the pseudocereal grains: amaranth, buckwheat, and quinoa. TTB has received a number of applications for labels for products using pseudocereals, and TTB also notes that the FDA has proposed draft guidance allowing the seeds of pseudocereals to be identified as ''whole grains'' on labels (see 71 FR 8597, February 17, 2006).

Finally, TTB proposes to define the term ''oak barrel,'' which is used with regard to the storage of certain bulk spirits. TTB and its predecessor agencies have traditionally considered a ''new oak container,'' as used in the current regulations, to refer to a standard whiskey barrel of approximately 50 gallons capacity. Accordingly, TTB proposes to define an oak barrel as a ''cylindrical oak drum of approximately 50 gallons capacity used to age bulk spirits.'' However, TTB seeks comment on whether smaller barrels or non-cylindrical shaped barrels should be acceptable for storing distilled spirits where the standard of identity requires storage in oak barrels.

2. Subpart B—Certificates of Label Approval and Certificates of Exemption of Label Approval, Subpart C—Alteration of Labels, Adding Information to Containers, and Relabeling, and Subpart D—Label Standards

Proposed subparts B, C, and D are updated for clarity and contain substantive changes as described in section II B of this preamble. The rules found in proposed §§ 5.42—5.44 regarding relabeling incorporate portions of, and would supersede, ATF Ruling 54–592, which deals with relabeling of distilled spirits with labels with different trade names, and ATF Ruling 62–224, which deals with labeling by wholesalers.

3. Subpart E—Mandatory Label Information

Proposed subpart E of part 5 sets forth the information that is required to appear on a label and prescribes how that information must appear on the label. The current regulations governing mandatory label requirements are found in subpart D of part 5. Proposed subpart E is generally structured similarly to the corresponding sections in the current regulations.

TTB is proposing to clarify where mandatory information must appear on a container. The proposed amendments will have the effect of increasing flexibility for placing such information on a distilled spirits container. Current § 5.32(a) requires that the following appear on the ''brand label'': The brand name, the class and type of the distilled spirits, the alcohol content, and, on containers that do not meet a standard of fill, net contents. The term ''brand label'' is defined in current § 5.11 generally as the principal display panel that is most likely to be displayed, presented, shown, or examined under normal retail display conditions. Further, the definition states that ''[t]he principal display panel appearing on a cylindrical surface is that 40 percent of the circumference which is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.''

TTB believes that the information that currently must appear together on the brand label (or ''principal display panel'') is closely related information that, taken together, conveys important facts to consumers about the identity of the product. TTB is proposing, in proposed § 5.63(a), to allow this mandatory information to appear anywhere on the labels, as long as it is within the same field of vision, which means a single side of a container (which for a cylindrical container is 40 percent of the circumference) where all pieces of information can be viewed simultaneously without the need to turn the container. TTB believes that requiring that this information appear in the same field of vision, rather than on the display panel ''most likely to be displayed, presented, shown, or examined'' at retail, is a more objective and understandable standard, particularly as applied to cylindrical bottles. This amendment also eliminates the requirement that mandatory information appear parallel to the base of the container.

Paragraph (b) of current § 5.32 specifies that mandatory information other than that listed in paragraph (a) must appear either on the brand label or on a back label, in effect allowing this information to appear anywhere on the container. Paragraph (b) of the proposed § 5.63 in effect makes no change in this requirement by providing that the mandatory information set forth in that paragraph must appear ''on a label or labels anywhere on the container'' of each distilled spirits container.

Also with respect to the mandatory information, TTB proposes to clarify the existing requirement that, if the alcohol content is listed in terms of using degrees of proof, it must appear in direct conjunction with the mandatory alcohol content statement. The proposed rule provides that the statement of proof must appear immediately adjacent to the mandatory alcohol content statement.

The proposed rule still provides that the mandatory alcohol content statement must be stated on the label as a percentage of alcohol by volume. The proof statement may, but need not,

appear on the label. In ATF Ruling 88–1, TTB's predecessor agency clarified that the proof must appear in direct conjunction only once on the label or in an advertisement, specifically, in the place where the alcohol by volume statement is serving as the mandatory alcohol content statement. Accordingly, the proposed rule clarifies that additional statements of proof need not be accompanied by the alcohol by volume statement.

TTB also proposes in § 5.65(c) to provide for an expanded tolerance for labeling of alcohol content. The current regulations in 27 CFR 5.37(b) provide a tolerance for a drop in alcohol content only, of 0.15 percent alcohol by volume for most distilled spirits and of 0.25 percent for spirits with a high solids content or for spirits bottled in small bottle sizes. The tolerance was established to allow for variations in alcohol content that occur due to losses in alcohol content during the bottling process.

Industry members have expressed concern that while improvements in analytical equipment have made measuring alcohol content more precise, the volatility of ethyl alcohol makes it challenging during bottling to control alcohol content within the narrow parameters that are currently authorized. For example, many distilled spirits products have a minimum bottling alcohol content of 40 percent alcohol by volume. In some cases, distillers may target their alcohol content slightly higher than 40 percent, expecting evaporation of alcohol during the bottling process. However, in some instances, the alcohol content does not drop to the desired 40 percent during the bottling process. Current TTB regulations would not allow a product with, for example, an actual alcohol content of 40.15 percent alcohol by volume to be labeled with an alcohol content of 40 percent alcohol by volume.

The proposed rule amends the alcohol content regulations in part 5 to allow for an expanded alcohol content tolerance. TTB proposes to expand the alcohol content tolerance to 0.3 percent alcohol by volume above or below the labeled alcohol content.

TTB also proposes to make a similar amendment to the alcohol content regulations found in 27 CFR 19.356. The regulations in part 19 apply to the operations of distilled spirits plants. Section 19.356 sets forth tolerances for alcohol content and fill for bottling operations, and TTB proposes to expand the alcohol content tolerances in this section to mirror those in the proposed § 5.65(c). Because this alcohol content tolerance is larger than the previously allowed 0.25 percent for high solids content or for small bottles, we also propose to eliminate the stepped tolerance scheme and provide for the same tolerance for all distilled spirits.

TTB believes that this proposal would allow greater flexibility and business efficiencies for bottlers. We note that while taxes on distilled spirits are generally determined on the basis of the labeled alcohol content of the product, we believe that the proposal does not present risks to the revenue because there likely will be both overproof and underproof bottles and there is no economic incentive for intentionally overproofing bottles. We invite comments on this issue.

The current regulations in 27 CFR 27 CFR 5.36 allow for various statements as part of the name and address. The phrase ''bottled by'' is simple to understand—it may be used by the bottler of the spirits. Similarly, the phrase ''distilled by'' may be used only by the original distiller of the distilled spirits.

Currently, section 5.36(a)(4) allows a variety of terms, as appropriate, to be used by a rectifier of distilled spirits, including ''blended by,'' ''made by,'' ''prepared by,'' ''manufactured by,'' or ''produced by.'' Because there is no longer a rectification tax on distilled spirits, and thus these terms have lost their significance under the IRC, some industry members and consumers are confused as to when the use of those terms is appropriate. TTB proposes to clarify in proposed § 5.66(b)(2) the meaning of those terms. For example, the term ''produced by,'' when applied to distilled spirits, does not refer to the original distillation of the spirits, but instead indicates a processing operation (formerly known as rectification) that involves a change in the class or type of the product through the addition of flavors or some other processing activity. TTB solicits comments on whether the proposed definitions of these terms are consistent with trade and consumer understanding.

TTB has received several inquiries about its existing regulations on labeling certain whisky products with a State where distillation occurs. Current § 5.36(d) require the State of distillation to be listed on the label if it is not included in the mandatory name and address statement. However, because the name and address statement may be satisfied with a bottling statement, there is no way to know, simply by reviewing a proposed label, whether distillation actually occurred in the same State as the bottling location.

Accordingly, proposed § 5.66(f) would provide that the State of original distillation for certain whisky products must be shown on the label in at least one of the following ways:

- By including a ''distilled by'' (or ''distilled and bottled by'' or any other phrase including the word ''distilled'') statement as part of the mandatory name and address statement, followed by a single location. This means that a principal place of business or a list with multiple locations would not suffice;
- By including the name of the State in which original distillation occurred immediately adjacent to the class or type designation (such as ''Kentucky Bourbon whisky''), as long as distillation and any required aging occurred in that State; or
- By including a separate statement, such as ''Distilled in [name of State].''

The TTB regulations set forth certain rules for how age statements may appear on labels. TTB proposes to update the rule, currently found in § 5.40(d), which states that age, maturity, or similar statements may not appear on neutral spirits (except for grain spirits), gin, liqueurs, cordials, cocktails, highballs, bitters, flavored brandy, flavored gin, flavored rum, flavored vodka, flavored whisky, and specialties, because such statements are misleading. TTB has seen recent growth in the number of distilled spirits products, such as gin, being stored in oak containers. However, the prohibition in the current regulations means that a producer cannot use age statements to inform the public how long its product has been stored in oak containers, and TTB has approved labels using terms such as ''finished'' or ''rested'' for these types of products. TTB believes that consumers should be able to make their own determinations on how the aging would affect the product, and that age statements would provide truthful information to consumers. Accordingly, TTB proposes to allow age statements on all spirits except for neutral spirits (other than grain spirits, which may contain an age statement). The revision appears at proposed § 5.74(e). Proposed § 5.74 incorporates and supersedes ATF Ruling 93–3, which exempts grappa from the mandatory age statement for brandies aged less than four years. Finally, TTB proposes to supersede Revenue Ruling 69–58, which deals with rules for age statements that have been incorporated in the regulations.

4. Subparts F, G and H—Restricted and Prohibited Labeling Practices, and Labeling Practices That Are Prohibited if They Are Misleading

As described in section II B of this document, the current regulations set forth the prohibited labeling practices in a single section, § 5.42. In order to make it easier to find the relevant regulation and to improve readability, TTB proposes to separate these practices into three subparts—one for practices for which there are certain rules, one for practices that are prohibited in all instances, and one for practices that are prohibited only if misleading.

In addition to changes in provisions that apply to all three of the commodities, which are discussed in section II B of this preamble, proposed § 5.87 prescribes rules for the use of the terms ''barrel proof,'' ''cask strength,'' ''original proof,'' ''original barrel proof,'' ''original cask strength,'' and ''entry proof'' on distilled spirits labels. The proposed text incorporates the holding, set forth in ATF Ruling 79–9 that the terms ''original proof,'' ''original barrel proof,'' and ''entry proof,'' when appearing on a distilled spirits product label, indicate that the proof of the spirits entered into the barrel and the proof of the bottled spirits are the same.

The ruling further held that the term ''barrel proof'' appearing on a distilled spirits label indicates that the bottling proof is not more than two degrees lower than the proof established at the time the spirits were gauged for tax determination. The proposed regulations update the description of the term ''barrel proof'' to take into account changes in the operation of distilled spirits plants because of the Distilled Spirits Tax Revision Act of 1979. The reference to the time of tax determination is no longer the applicable standard under the current tax determination system. Since the term ''barrel proof'' is intended to indicate that the spirit is approximately the same proof as when it is dumped from the barrel, the proposed regulations state that the term may be used on a label when the bottling alcohol content (proof) of distilled spirits is not more than two degrees of proof lower than the proof of the spirit when the spirit was dumped from the barrel. TTB notes that it rarely sees such terms on distilled spirits labels and specifically seeks comments on whether they still have relevance and provide meaningful information to the consumer and whether TTB should regulate their use on labels.

Proposed § 5.88 sets forth rules for the use of the terms ''bottled in bond,'' ''bond,'' ''bonded,'' or ''aged in bond,'' or other phrases containing these or synonymous terms. The use of these terms was originally restricted to certain products under the Bottled in Bond Act of 1897 (29 Stat. 626). The Bottled in Bond Act was intended to provide standards for certain spirits that would inform consumers that the spirits were not adulterated. Treasury Department officers monitored bonded distilled spirits plants. The Bottled in Bond Act was repealed by the Distilled Spirits Tax Revision Act of 1979 (see title VIII, subtitle A, Public Law 96–39, 93 Stat. 273). TTB's predecessor agency, ATF, decided to maintain the rules concerning ''bottled in bond'' and similar terms, because consumers continued to place value on these terms on labels. Proposed § 5.88 maintains the requirements for the use of ''bottled in bond'' and similar terms and reorganizes them for clarity. Imported spirits may use ''bottled in bond'' and similar terms on labels when the imported spirits are produced under the same rules that would apply to domestic spirits.

In order to maintain parity between whisky that is aged and vodka and gin, which do not undergo traditional aging, vodka and gin are required to be stored in wooden containers in order to use ''bond'' or similar terms, but the wood containers must be coated or lined with paraffin or another substance to prevent the vodka or gin from coming into contact with the wood. TTB seeks comment on whether it should eliminate the requirement that bonded vodka or gin be stored in wooden containers. TTB rarely sees ''bonded'' vodka or gin; ''bond'' and similar terms are most frequently used on labels of whisky. Commenters may also wish to opine on whether TTB should maintain any special standards for the use of ''bonded'' or similar terms, since all domestic distilled spirits products are now bottled on bonded premises.

In addition, proposed § 5.89 would set forth new rules for the use of multiple distillation claims, such as ''double distilled'' or ''triple distilled.'' Current regulations, at § 5.42(b)(6), provide that such claims are allowable if they are truthful statements of fact and further provide that the terms ''double distilled'' or ''triple distilled'' shall not be permitted on labels of distilled spirits if the second or third distillation is ''a necessary process for production of the product.'' TTB is regularly asked for guidance on the meaning of this regulation and responds on a case-by-case basis depending on the relevant specific facts. Although TTB policy is clear that the distillation steps necessary to meet a product's standard of identity would be considered the first distillation, TTB has not set forth a policy on how additional distillations may be claimed or counted where an industry member intends to use a multiple distillation claim. TTB is proposing in this rulemaking, at proposed § 5.89, to define a distillation as a single run through a pot still or one run through a single distillation column of a column (reflux) still. TTB believes that this definition is consistent with what consumers understand the terms to mean and also believes that this meaning most fully informs consumers as to the identity and quality of the distilled spirits product. TTB specifically seeks comment on this proposed meaning of distillation and proposed method for counting multiple distillations.

Proposed § 5.90 sets forth rules for the use on distilled spirits labels of terms related to Scotland. Such rules currently appear only in the regulatory sections related to product standards of identity and class and type, at current §§ 5.22(k)(4) and 5.35, respectively. The proposed provision retains the current rule set forth at current § 5.22(k)(4), that the words ''Scotch,'' ''Scots,'' ''Highland,'' or ''Highlands'' and similar words connoting, indicating, or commonly associated with, Scotland may be used only on a product wholly produced in Scotland, but moves this rule to the provisions on restricted labeling practices in the new subpart F. However, regardless of where the finished products are produced, the term ''Scotch Whisky'' would not be prohibited from appearing on the label in the statement of composition for distilled spirits specialty products that use Scotch Whisky or in the statement of composition on the label of Flavored Scotch Whisky. (However, even though the finished product may be produced anywhere, the Scotch Whisky component must continue to be made in Scotland under the rules of the United Kingdom.) In addition, proposed § 5.90(b) clarifies (in accordance with current regulations as well as proposed § 5.127) that phrases related to government supervision may be allowed only if required or specifically authorized by the regulations of the United Kingdom, and supersedes Revenue Ruling 61–15, which applied that rule to specific language on labels of Scotch whisky bottled in the United States. If this proposed provision is included in the final rule, the 1961 ruling would be superseded in its entirety.

Proposed § 5.91 sets forth rules for the use of the term ''pure'' on distilled

spirits labels, containers, and packaging. This rule currently appears in § 5.42(b)(5) and provides that the term ''pure'' may not be used unless it is a truthful representation about a particular ingredient, it is part of the name of a permittee or retailer for whom the spirits are bottled, or it is part of the name of the permittee who bottled the spirits.

5. Subpart I—Standards of Identity for Distilled Spirits

TTB is proposing amendments to the standards of identity for distilled spirits that are intended to clarify the classes and types of distilled spirits. TTB also is proposing to insert charts into the regulatory text to make the relationship between classes and types, and the standards for each, easier to understand and apply. Throughout the standards of identity, TTB proposes to identify alcohol content in terms of alcohol by volume as opposed to degrees of proof.

TTB proposes to clarify, in § 5.141, that the standards of identity apply to a finished product without regard to whether an intermediate product is used in the manufacturing process. This means that the intermediate product is treated as a mixture for the convenience of the manufacturer, but determinations as to the classification and labeling of the product will be made without regard to the fact that the elements of the intermediate product were first mixed together in the intermediate product. In the case of distilled spirits specialty products, TTB currently treats intermediate products as ''natural flavoring materials'' when they are blended into a product, for the purpose of disclosure as part of a truthful and adequate statement of composition. TTB has seen changes in the alcohol beverage industry and in various formulas and believes that treating intermediate products as natural flavoring materials does not provide adequate information to consumers, as required by the FAA Act. Accordingly, TTB proposes to clarify that blending components such as distilled spirits and wines together first in an ''intermediate product'' is the same as adding the ingredients separately for purposes of determining the standard of identity of the finished product. Additionally, TTB proposes to change its policy with regard to statements of composition for specialties to require the disclosure of elements of the intermediate product (including spirits, wines, flavoring materials, or other components) as part of the statement of composition.

Some distilled spirits products may conform to the standards of identity for more than one class. Consistent with longstanding policy, TTB proposes to clarify, in § 5.141(b)(3), that such a product may be designated with any class designation to which the product conforms. For example, a vodka with added natural orange flavor and sugar bottled at 45 percent alcohol by volume may meet the standard of identity for a flavored spirit or for a liqueur. Accordingly, the product may be designated as ''orange flavored vodka'' or ''orange liqueur'' at the option of the bottler or importer. Under current policy, TTB would not allow a product to be designated on a single label as both ''orange flavored vodka'' and ''orange liqueur,'' because TTB views it as misleading for a label to bear two different class designations. TTB seeks comments on whether the TTB regulations should permit a distilled spirits label to bear more than one class designation if the product conforms to the standards of identity for more than one class.

The following proposed provisions relate to the standards of identity for distilled spirits products:

Proposed § 5.142 sets forth the standards for neutral spirits. Current § 5.22(a) states that neutral spirits are distilled spirits produced from any material at or above 190° proof and, if bottled, bottled at not less than 80° proof. Further, ''vodka'' is a neutral spirit so distilled, or so treated after distillation with charcoal or other materials, as to be without distinctive character, aroma, taste, or color. Proposed § 5.142 would clarify several factors related to designating a neutral spirits product, factors that typically have been taken into account on a case-by-case basis. First, TTB is proposing to provide that the source material of the neutral spirits may be specifically included in the designation on the label of the product. Thus, the bottler would have the option of labeling a product as ''Apple Neutral Spirits'' (in addition to ''neutral spirits distilled from apples'' as the required commodity statement) or ''Grape Vodka,'' (in addition to ''vodka distilled from fruit'' as the required commodity statement) as long as such statements accurately describe the source materials.

TTB also is proposing to codify the holding set forth in Revenue Ruling 55–740, that neutral spirits, other than grain spirits, that are stored in wood barrels become specialty products and must be labeled in accordance with the appropriate rules for such products set forth in proposed § 5.156. Because storage in wood barrels renders the spirits not neutral, TTB's predecessor agency determined that consumers would be misled if spirits, other than grain spirits, were stored in wood barrels and then labeled as neutral spirits or vodka. Finally, the proposed regulations include allowable designations for neutral spirits labels.

TTB also is proposing to amend the standard of identity for vodka, a type of neutral spirit, to codify the holdings in several past rulings: Ruling 55–552, which holds that vodka may not be stored in wood; Ruling 76–3, which explains that vodka treated with charcoal may be labeled as ''charcoal filtered''; and Ruling 56–98 and Ruling 97–1, which allow treatment with 2 grams per liter of sugar and trace amounts (1 gram per million) of citric acid and sugar. In addition, TTB is specifically seeking comment on whether the requirement that vodka be without distinctive character, aroma, taste, or color should be retained and, if this requirement is no longer appropriate, what the appropriate standards should be for distinguishing vodka from other neutral spirits.

Proposed § 5.143 sets forth the standards for whiskies. TTB proposes to clarify that the word whisky may be spelled ''whisky'' or ''whiskey.'' TTB also proposes to require that, where a whisky meets the standard for one of the types of whiskies, it must be designated with that type name, except that Tennessee Whisky may be labeled as Tennessee Whisky even if it meets the standards for one of the type designations. Currently, TTB allows the term ''Tennessee Whisky'' to appear on labels, even if the product meets a more specific standard of identity, such as for bourbon whisky.

In the current regulations, when a whisky meets the standard for a type of whisky, it is unclear whether the label must use that type designation or may use the general class ''whisky'' on the label. TTB believes that consumers expect that the type designation will appear on the container when it applies. Additionally, historical documents indicate that TTB's predecessor agencies classified whiskies with the type designation that applied, and required that type to be the label designation. For example, in January of 1937, the Federal Alcohol Administration stated that ''Where a product conforms to the standard of identity for 'Straight Bourbon Whiskey' it must be so designated and it may not be designated simply as 'Whiskey.'" See FA–91, ''A Digest of Interpretations of Regulations No. 5 Relating to Labeling and Advertising of Distilled Spirits,'' p. 5.

In order to make the types of whiskies easier to understand, TTB proposes inserting a chart in the regulations that would set forth the types of whisky that

are not distinctive products of other countries, the source material from which the whisky may be produced, whether storage is required, the proof at which the whisky may be stored, and whether neutral spirits and harmless, coloring, flavoring, or blending materials may be used. Among other things, the proposed rule will codify in the regulations for the first time TTB's current policy, as set forth in the Distilled Spirits Beverage Alcohol Manual (TTB P 5110.7), that coloring, flavoring, or blending materials may not be added to products designated as ''bourbon whisky.''

TTB also proposes to provide for a new type designation of ''white whisky or unaged whisky.'' TTB has seen a marked increase in the number of products on the market that are distilled from grain but are unaged or that are aged for very short periods of time. Under current regulations, unaged products would not be eligible for a whisky designation (other than corn whisky) and would have to be labeled with a distinctive or fanciful name, along with a statement of composition. In order to provide guidance for these products, TTB proposes that products that are either unaged (so they are colorless) or aged and then filtered to remove color should be designated as ''white whisky'' or ''unaged whisky,'' respectively. This proposal represents a change in policy, because currently all whiskies (except corn whisky) must be aged, although there is no minimum time requirement for such aging. TTB believes that currently some distillers may be using a barrel for a very short aging process solely for the purpose of meeting the requirement to age for a minimal time. Consequently, TTB is proposing the new type designation of ''white whisky or unaged whisky'' and specifically requests comments on this new type and its standards.

In addition, TTB proposes to maintain the definitions for Scotch Whisky, Canadian Whisky, and Irish Whisky without change, but seeks comment on whether these standards should be clarified to indicate that certain standards for these types may differ from U.S. standards for whisky. For example, Scotch Whisky is whisky produced in Scotland in accordance with United Kingdom laws and regulations, which do not require that whisky be aged in new charred oak barrels. TTB policy is to allow whisky labeled as Scotch whisky to be produced under United Kingdom standards, and TTB seeks comment on whether, and what, additional clarifications in the regulations would improve understanding of the TTB labeling regulations.

Proposed § 5.144 generally restates the current standards for gin, but, in order to make the use of other aromatics optional, would change the requirement that gin be made with juniper berries and other aromatics. Also, TTB proposes to remove the designation ''Geneva gin (Hollands gin)'' from the list of ''distilled gin'' designations because that designation usually refers to gin that has been stored in wooden containers, which is not necessarily synonymous with the description ''distilled gin.''

Proposed § 5.145 sets out the standards for brandy, with minor clarifying changes. One of the proposed amendments would allow the use of the terms ''Slivovitz'' and ''Kirschwasser'' as optional designations for plum brandy and cherry brandy, respectively. Additionally, TTB proposes to incorporate Armagnac, Brandy de Jerez, and Calvados into the regulations as types of brandy. These products are distinctive products of France, Spain, and France, respectively, and they are recognized by TTB under current policy.

Proposed § 5.148 is a new section that provides for a class called ''agave spirits.'' Currently, spirits that are distilled from agave are considered distilled spirits specialties, and the labels of the products must contain a statement of composition, such as ''Spirits Distilled from Agave.'' Because TTB's standards of identity are generally distinguished by agricultural commodity, TTB believes it would be useful for consumers and for industry members if TTB created a class of spirits for spirits that are distilled from agave. TTB proposes that the mash for agave spirits be comprised of at least 51 percent agave and that it may contain up to 49 percent sugar (weight before the addition of water). As proposed, Tequila, which currently appears as a class of distilled spirits in the TTB regulations and Mezcal, which does not currently appear in the TTB regulations but which is protected under the North American Free Trade Agreement, would be types of agave spirits produced in Mexico in accordance with the laws and regulations of Mexico. This would not require a change of labels of Tequila or Mezcal because these type designations may appear alone on the label without the class name ''agave spirits.''

Proposed § 5.149 sets forth a new standard of identity for Absinthe (or Absinth). Absinthe products are distilled spirits products produced with herbs, including wormwood, fennel, and anise. Under Industry Circular 2007–5, certain absinthe-type products are now allowed in the U.S. market, but are generally classified as distilled spirits specialty products or liqueurs (if they meet the standard of identity for a liqueur). Under current TTB policy, the word ''Absinthe'' may not stand alone on the label; therefore, labels use multi-word names that include the word ''Absinthe'' (such as ''Absinthe Vert'' or ''Absinthe Superieure''). TTB believes that consumers understand what absinthe is and that it is appropriate to set out a standard of identity for absinthe. The proposed standard reminds the reader that the products must be thujone-free under FDA regulations. Based on current limits of detection, a product is considered ''thujone-free'' if it contains less than 10 parts per million of thujone. Finally, TTB proposes to supersede Industry Circular 2007–5 in its entirety, without incorporating the requirement that all wormwood-containing products undergo analysis by TTB's laboratory before approval. TTB will verify compliance with FDA limitations on thujone through marketplace review and distilled spirits plant investigations, where necessary.

Proposed § 5.150 sets out the standards for cordials and liqueurs. Among other changes, TTB proposes to incorporate into this section the holding in Revenue Ruling 61–71, which prohibits the terms ''distilled,'' ''compound,'' or ''straight'' from appearing on labels for cordials and liqueurs. These terms imply original distillation; thus, they are deemed to be misleading on labels for cordials and liqueurs.

Certain cordials or liqueurs may be designated with a name known to consumers as referring to a cordial or liqueur and therefore need not use the word ''cordial'' or ''liqueur'' as part of their designation. Thus, pursuant to TTB's Beverage Alcohol Manual (TTB P 5110.7), several cordials and liqueurs—specifically, Kummel, Ouzo, Anise, Anisette, Sambuca, Peppermint Schnapps, Triple Sec, Curaçao, Goldwasser, and Crème de [predominant flavor]—currently may be designated by those names on the labels of those products. TTB proposes to codify this policy by adding these names as type designations under proposed § 5.150.

Proposed § 5.151 would establish ''flavored spirits'' as a revised and expanded class of distilled spirits consisting of spirits conforming to one of the standards of identity (the ''base spirits'') to which have been added nonbeverage flavors, wine, or nonalcoholic natural flavoring

materials, with or without the addition of sugar, and bottled at not less than 30 percent alcohol by volume (60 proof). This is a clarification of current TTB policy, which is that you may not add additional spirits to a base spirit in a flavored spirits product, even if the additional spirits are mixed into an intermediate product.

The TTB regulations currently list flavored brandy, flavored gin, flavored rum, flavored vodka, and flavored whisky as the class designations under Class 9. Other types or classes of distilled spirits that are flavored currently are treated as distilled spirits specialty products and the labels for such products must contain a statement of composition. While TTB allows for any spirit to appear as part of a truthful statement of composition, TTB does not believe that consumers perceive a distinction between, for example ''Orange Flavored Tequila''—which is how a flavored spirit would be designated under the proposed rule—and ''Tequila with Orange Flavor''—which is how the statement of composition would appear for a distilled spirits specialty product. TTB therefore believes it should allow any type of base spirit to be flavored in accordance with the flavored spirits standard instead of just brandy, gin, rum, vodka, and whisky, as permitted by the current regulations. Accordingly, proposed § 5.151 provides a class of flavored spirits that would allow any base spirit to be flavored when made in accordance with the standards of identity set forth in the regulation. TTB proposes to maintain a minimum alcohol content at bottling of 30 percent (60° proof) for this revised and expanded class. Flavored spirits may contain added wine. TTB proposes to maintain the requirement that wine content above 2½ percent (or 12½ percent for brandy) must be disclosed on a label.

One new provision that TTB addresses in the proposed text regarding standards of identity is the use of the term ''diluted.'' As set forth in ATF Ruling 75–32, TTB currently requires that distilled spirits bottled at below the specified alcohol content for that particular class be designated on the label as ''diluted'' in direct conjunction with the statement of class and type to which it refers. For example, under the standard of identity for vodka set forth at current § 5.22(a), vodka must be bottled at ''not less than 80 proof.'' As a result, a vodka bottled at 60 proof must bear the statement ''diluted vodka'' on the label. TTB proposes, in § 5.153, to incorporate this policy into the regulations by establishing a class of spirits known as ''diluted spirits.'' This applies to products that would otherwise meet one of the class or type designations specified in subpart I except that it does not meet the minimum alcohol content, usually because of reduction of proof through the addition of water. Although the ruling states that the word ''diluted'' must be readily legible and as conspicuous as the statement of class to which it refers and in no case smaller than 8-point Gothic caps (except on small bottles), TTB proposes to require that the word ''diluted'' appear in readily legible type at least half the size of the class and type designation to which it refers. For example, but for the fact that a product is 70 proof, it would be eligible to be designated as ''Vodka.'' Instead it must be designated as ''Diluted Vodka''.

Certain geographical designations may be used on distilled spirits as, or as part of, the designation on the label. In proposed § 5.154, TTB proposes to change the rules for geographical designations currently found in § 5.22(k) and (l). Specifically, TTB proposes to provide that geographical names that are not generic may be used on products made outside of the place indicated by the name, if TTB determines that the name represents a type of distilled spirits and if the designation includes a qualifier such as ''type'' or ''style'' or a statement indicating the true place of production.

For example, Ojén is a town in Spain, and ''Aguardiente de Ojén'' is a distilled spirits product associated with Spain. Thus, the current and proposed regulations provide that ''Ojen'' is an example of a distinctive type of distilled spirits with a geographical name that has not become generic. If Ojen were made in the United States, it could be designated as ''Ojen type'' or ''American Ojen'' or with another similar phrase.

TTB also proposes to list specific products that are associated with a particular place that have become generic. These products could be manufactured in any place, and the label would not be required to bear a qualifier such as ''type'' or ''style'' or any other dispelling statement. An example of a name that continues to be considered generic is ''Aquavit.'' Although this name was traditionally associated with the Scandinavian countries, TTB believes that by usage and common knowledge, this name has lost its geographical significance to the extent that it has become generic. Thus, TTB proposes to list Aquavit, along with Zubrovka, Arrack, Kummel, Amaretto, and Ouzo, as examples in this category.

Pursuant to Article 2.13.2 of the United States-Korea Free Trade Agreement, the United States agreed to recognize Andong Soju as a distinctive product of the Republic of Korea. See TTB Ruling 2012–3. Accordingly, TTB is proposing to add Andong Soju to the list of geographic names that have not become generic and that may not be used on distilled spirits made in any place outside the particular place or region indicated in the name. TTB is proposing to supersede TTB Ruling 2012–3.

In addition, TTB proposes to list Habanero, Sambuca, and Goldwasser as a category of designations that have not become generic, and could only be used on products produced outside of the places indicated by the names if the label contains a phrase clearly indicating the place of production. Examples of this usage include ''American Sambuca'' and ''Sambuca—Product of the United States.'' This proposal is not intended to change policy; current regulations in § 5.22(l)(2) provide Habanero as an example of a name for distilled spirits that are a distinctive product of a particular place, and the Distilled Spirits Beverage Alcohol Manual (TTB P 5110.7) recognizes Sambuca and Goldwasser as distinctive designations. TTB solicits comments addressing whether or not these terms should still be recognized as being distinctive of a particular geographical origin.

Under the current § 5.35(a), products that do not meet the definition of one of the specified classes or types of distilled spirits must be designated in accordance with trade and consumer understanding or, if no such understanding exists, by a distinctive or fanciful name followed by a truthful and adequate statement of composition. Proposed § 5.156 sets forth a new specific designation for a class of spirits called ''distilled spirits specialty products.'' By setting forth this new class, TTB intends to clarify the treatment of distilled spirits specialty products and the labeling requirements that apply to such products. Products within this class are not required to be labeled with the designation ''distilled spirits specialty product.'' Instead, the distinctive or fanciful name together with the statement of composition acts as the product designation on the label.

This classification would not make any substantive change except for labeling requirements for cocktails, highballs, and similar specialty products. The proposal would eliminate the rule allowing for a limited statement of composition consisting of only the spirits used in the manufacture of such

products. Over the years, TTB has seen an increase of cocktails recognized in bartenders' recipe books as the industry continued to innovate. Consumers are not fully informed when a label has only a cocktail name and the component spirit(s) because of the vast array of cocktails. Accordingly, TTB proposes to require a full statement of composition on such specialty products, and proposes to clarify that a cocktail name may be used as the distinctive or fanciful name on a distilled spirits specialty product.

Certain ingredients or processes can change the class and type of a distilled spirit. Proposed § 5.155 sets forth the rule for alteration of class and type as well as exceptions to the general rule regarding alteration. Much of this section is found in the current 27 CFR 5.23, but TTB proposes to add wine, when used in Canadian whisky in accordance with Canadian law, as an exception to the general rule to make it clear that Canadian producers may add more than 2 and one half of one percent wine without altering the class from whisky. TTB has also had a number of requests from industry members for guidance on labeling products that are stored in two different types of barrels. For example, whisky must be stored in oak containers, in accordance with the standard of identity. When a producer stores the whisky in oak containers and then stores it in a different type of container, such as a maple barrel, the spirit becomes a distilled spirits specialty product and must be labeled with a statement of composition, such as ''Bourbon Whisky finished in maple barrels.'' TTB proposes, in § 5.155(c), to add this requirement to the regulations.

Proposed § 5.166 sets forth the rules for the statement of composition as discussed in section II B of this document.

6. Subpart J—Formulas

The current regulations in subpart C of part 5 set forth requirements for formulas for distilled spirits. In the present rulemaking, TTB proposes to maintain the formula requirements with minor changes to reflect current policy as set forth in TTB Industry Circular 2007–4. However, TTB believes there may be formula requirements that no longer serve a labeling purpose. TTB seeks specific comments on whether certain formula requirements should be eliminated and the rationale for such a change. TTB may address these issues in the final rule or in a separate rulemaking document.

7. Subpart K—Standards of Fill and Authorized Container Sizes

Distilled spirits containers must be filled with certain specified amounts of the product. Additionally, the current regulations prescribe a maximum headspace for bottles so that consumers are not misled with regard to the quantity of spirits in the bottle. Over the years, alcohol beverage producers have greatly increased the number of brands and packages in the marketplace. TTB believes that if a product is bottled in a container that conforms to a standard of fill and is clearly marked with the net contents, the consumer is provided with sufficient information as to the amount of spirits in the bottle.

Currently, § 5.46(b) imposes a headspace requirement that applies to standard liquor bottles, and § 5.46(c) provides design requirements for standard liquor bottles. Pursuant to § 5.46(d), distinctive liquor bottles may be exempted from these requirements. A bottler or importer who intends to use a distinctive liquor bottle is currently required to apply for and obtain authorization for such use. Proposed § 5.202 incorporates these provision without substantive change.

TTB seeks comments on whether it should eliminate the current headspace and certain design requirements. TTB believes that eliminating the application requirement for distinctive liquor bottles would create efficiencies for both TTB and industry members by reducing application and review requirements. However, TTB is specifically interested in comments regarding any deleterious effect that eliminating the requirement might have on consumers.

E. Proposed Changes Specific to 27 CFR Part 7 (Malt Beverages)

In addition to the changes discussed above that apply to all commodities, TTB is proposing additional editorial and substantive changes specific to the malt beverage labeling regulations in 27 CFR part 7. This section will not repeat the changes already discussed in section II B of this preamble. Accordingly, if a proposed change is not discussed in this section, please consult section II B. The substantive changes that are unique to part 7 are described below, by subpart.

1. Subpart A—General Provisions

Proposed subpart A includes several sections that have general applicability to part 7, including a revised definitions section, a section that defines the territorial extent of the regulations, sections that set forth to whom and which products the regulations in part 7 apply, a section that identifies other regulations that relate to part 7, and sections addressing administrative items such as forms and delegations of the Administrator.

a. Definitions. Proposed § 7.1, which covers definitions of terms used in part 7, is largely consistent with the current regulatory text that appears in § 7.10, with some amendments in addition to those discussed in section II B of this preamble (relating to parts 4, 5 and 7).

The proposed text adds definitions for the terms ''keg collar'' and ''tap cover'' consistent with a proposed amendment, discussed later in this document, to allow mandatory label information to appear on keg collars and tap covers, subject to certain conditions. The proposed text amends the definition of the term ''bottler'' and removes the definition of ''packer,'' consistent with proposed amendments that would remove any distinction in name and address statements between ''bottling'' in containers of a capacity of one gallon or less and ''packing'' in containers in excess of one gallon.

The proposed text retains the current definition of ''malt beverage,'' which is based on the statutory definition set forth in the FAA Act at 27 U.S.C. 211(a)(7), and updates the cross reference to standards applying to the use of processing methods and flavors.

Prior to the issuance of TTB Ruling 2008–3, TTB and its predecessor agency had provided guidance on the minimum quantities of malted barley and hops required to be used in the production of malt beverages. In 1994, the Bureau of Alcohol, Tobacco and Firearms (ATF) issued ATF Compliance Matters 94–1, which provided that beers fermented from at least 25 percent malted barley (calculated as the percentage of malt, by weight, compared to the total dry weight of all ingredients contributing fermentable extract to the base product) and made with at least 7½ pounds of hops (or the equivalent thereof in hop extracts or hop oils) per 100 barrels were ''malt beverages'' under the FAA Act.

In TTB Ruling 2008–3, TTB announced that it was reconsidering this prior guidance, based on the fact that neither the FAA Act nor the implementing regulations in 27 CFR part 7 prescribed minimum standards for the amount of malted barley used in production of a malt beverage. The ruling also noted that TTB had determined that a beer containing a much lower amount of malted barley (one percent of the total dry weight of all ingredients contributing fermentable extract to the product) conformed to the definition of a ''malt beverage.'' The ruling stated that brewers and importers

should contact TTB's Advertising, Labeling, and Formulation Division with questions as to whether a particular product falls within the definition of a ''malt beverage'' and therefore is subject to the COLA and other requirements of the FAA Act.

In this rulemaking document, TTB is not proposing to set forth any minimum standards for the quantity of malted barley or hops used in the production of malt beverages. TTB solicits comments from all interested parties on whether the regulations in part 7 should address this issue.

b. Prohibitions and jurisdictional limits of the FAA Act. Proposed § 7.3, which sets forth the general requirements and prohibitions under 27 U.S.C. 205(e), repeats the essential elements of the prohibitions found in current § 7.20 and the misbranding provisions found in current § 7.21. Because the term ''misbranding'' is not used consistently in current part 7, proposed § 7.3 would replace that term with the requirement that malt beverage containers be labeled in accordance with the regulations in part 7.

Proposed § 7.4 sets forth the jurisdictional limits found in 27 U.S.C. 205. As referenced earlier, the first prohibition in 27 U.S.C. 205(e) applies to any persons engaged in business as a brewer, an importer, or a wholesaler of malt beverages, and it prohibits the sale or shipment or delivery for sale or shipment, or other introduction in interstate or foreign commerce, or receipt therein, or removal from customs custody for consumption, of any malt beverages in bottles, unless such products are bottled, packaged, and labeled in conformity with regulations issued by the Secretary of the Treasury with respect to the packaging, marking, branding, labeling, and size and fill of container. The penultimate paragraph of 27 U.S.C. 205 further limits this application, by providing that the provisions of section 205(e) ''shall apply to the labeling of malt beverages sold or shipped or delivered for shipment or otherwise introduced into or received in any State from any place outside thereof * * * only to the extent that the law of such State imposes similar requirements with respect to the labeling * * * of malt beverages not sold or shipped or delivered for shipment or otherwise introduced into or received in such State from any place outside thereof.''

Consistent with the language of current § 7.20(a) and (b), proposed § 7.4 sets out these jurisdictional limits. Paragraph (a)(1) essentially restates the provisions of the penultimate paragraph of 27 U.S.C. 205(f). Paragraph (a)(2) sets out the longstanding Bureau interpretation of what is ''similar'' State law, by stating that if the label in question does not violate the laws of the State or States into which the malt beverages are being shipped, it does not violate part 7. Finally, paragraph (a)(3) clarifies that the regulations in part 7 do not apply to domestically bottled malt beverages that are not and will not be sold or shipped, or delivered for sale or shipment, or otherwise introduced in interstate or foreign commerce.

c. Ingredients and processes. Proposed § 7.5 is derived from current § 7.11, and no substantive changes have been made. It should be noted that the current regulation authorizes the use of ''flavors and other nonbeverage ingredients containing alcohol'' in the production of malt beverages, subject to certain limitations. In the proposed regulation, the word ''nonbeverage'' has been inserted in front of the term ''flavors,'' simply to clarify that the regulation is intended to authorize only the use of nonbeverage flavors containing alcohol.

d. Brewery products that are not malt beverages. For the first time, TTB is proposing to include regulations in part 7 that explicitly refer readers to the regulations in part 4 for saké and similar products that meet the definition of ''wine'' under the FAA Act, and to the FDA food labeling regulations for alcohol beverage products that do not fall under the definition of malt beverages, wine, or distilled spirits under the FAA Act. TTB receives many inquiries about such products, and TTB believes that including this information in the regulatory text will be helpful.

Consistent with the guidance found in TTB Ruling 2008–3, proposed § 7.6 is a new provision that clarifies that certain brewery products are not subject to the labeling requirements of part 7 because they do not fall under the definition of a ''malt beverage'' under the FAA Act. As set forth in greater detail in the ruling, certain brewed products that are classified as ''beer'' under the IRC definition in 26 U.S.C. 5052(a) do not fall within the definition of a ''malt beverage'' in the FAA Act, as found in 27 U.S.C. 211(a)(7). The major differences between the terms are set forth as follows in the ruling:

> As indicated above, the definition of a ''beer'' under the IRC differs from the definition of a ''malt beverage'' under the FAA Act in several significant respects. First, the IRC does not require beer to be fermented from malted barley; instead, a beer may be brewed or produced from malt or ''from any substitute therefor.'' Second, the IRC does not require the use of hops in the production of beer. Third, the definition of ''beer'' in the IRC provides that the product must contain one-half of one percent or more of alcohol by volume, whereas there is no minimum alcohol content for a ''malt beverage'' under the FAA Act.
>
> Accordingly, a fermented beverage that is brewed from a substitute for malt (such as rice or corn) but without any malted barley may constitute a ''beer'' under the IRC but does not fall within the definition of a '' malt beverage'' under the FAA Act. Similarly, a fermented beverage that is not brewed with hops may fall within the IRC definition of ''beer'' but also falls outside of the definition of a ''malt beverage'' under the FAA Act.
>
> It should be noted that saké and similar products are included within the definition of ''beer'' under the IRC. See 26 U.S.C. 5052(a). However, saké is also included within the definition of a wine under the FAA Act, which, among other things, covers only wines with an alcohol content of at least seven percent alcohol by volume. See 27 U.S.C. 211(a)(6). Thus, saké and similar products with an alcohol content of at least seven percent alcohol by volume are subject to the labeling and other requirements of the FAA Act.

The ruling thus held that in cases where a brewery product (other than saké and similar products) failed to meet the definition of a ''malt beverage'' under the FAA Act, the product will be subject to ingredient and other labeling requirements administered by the FDA.

2. Subpart B—Certificates of Label Approval

As mentioned previously, TTB is proposing to consolidate the regulations related to applying for label approval in a revised subpart B. In addition to the changes already discussed, TTB is proposing to clarify the COLA requirements as they apply to brewers that are selling their domestically bottled malt beverages exclusively in the State in which the malt beverages were bottled. In TTB Ruling 2013–1, TTB issued guidance on this issue. TTB now proposes to make the regulations more clear and specific.

In proposed § 7.21(a), the regulations set forth the general requirement for a COLA. In proposed § 7.21(b), the regulations clarify that a COLA is required for malt beverages shipped into a State from outside of the State only where the laws or regulations of the State require that all malt beverages sold or otherwise disposed of in such State be labeled in conformity with the requirements of subparts D through I of part 7. This is consistent with the language in current § 7.40, with conforming changes to reflect the reorganization of part 7. Proposed § 7.21(b) goes on to explain that this requirement applies where the State has either adopted subparts D through I in their entirety or has adopted

requirements identical to those set forth in subparts D through I. This is consistent with the longstanding policy of TTB and its predecessor agencies.

Consistent with longstanding policy, proposed § 7.21(b) also notes that malt beverages that are not subject to the COLA requirements of current § 7.21 may still be subject to the substantive labeling provisions of subparts D through I, to the extent that the State into which the malt beverages are being shipped has similar State law or regulations. This is because a State may have certain State laws or regulations that are similar to the labeling regulations in part 7, but are not identical. In such a case, while the COLA requirement would not apply to malt beverages in containers that are shipped into that State, the substantive labeling provisions may apply to the extent that the state in question has similar state law.

As noted earlier, the FAA Act requires any brewer or wholesaler who bottles malt beverages to obtain a COLA prior to bottling. The FAA Act then goes on to state that malt beverages, like wines and distilled spirits, are exempt from the COLA requirements if, upon application to the Secretary, the bottler shows that the malt beverages to be bottled by the applicant are not to be sold, or offered for sale, or shipped or delivered for shipment, or otherwise introduced, in interstate or foreign commerce. TTB's predecessor agencies implemented this exemption for distilled spirits and wines by allowing for the issuance of a certificate of exemption for these products. However, with respect to malt beverages, the regulations did not require a COLA for products that were not to be entered in interstate commerce.

Prior to the issuance of TTB Ruling 2013–1, TTB received several inquiries from brewers who were not sure how the COLA requirements applied to their products. Accordingly, proposed § 7.21(c) specifically clarifies that persons bottling malt beverages that will not be shipped, or delivered for sale or shipment, in interstate or foreign commerce, are not required to obtain a COLA or a certificate of exemption from label approval, along with a note explaining what a certificate of exemption from label approval is.

The proposed regulations are thus consistent with current regulations in that they do not require a certificate of exemption for malt beverages that will not be shipped or otherwise introduced in interstate or foreign commerce. TTB believes that this is consistent with its overall goal of minimizing burdens on industry members. However, TTB recognizes that sometimes intrastate brewers need some type of certificate from TTB in order to satisfy State requirements. We solicit comments on whether the issuance of a certificate of exemption in such circumstances (for products that will not be sold outside of the State of the bottling brewery) would be useful, and whether the regulations should allow a certificate of exemption for such products.

3. Subpart D—Label Standards

Proposed subpart D contains regulations that govern the placement and other requirements applicable to mandatory information and additional information on labels and containers. As previously mentioned, TTB is proposing a new regulation for keg labels. Proposed § 7.51(a) provides, consistent with current regulations, that any label that is not an integral part of the container must be affixed to the container in such a way that it cannot be removed without thorough application of water or other solvents. However, proposed § 7.51(b) provides that a label on a keg with a capacity of 10 gallons or more that is in the form of a keg collar or a tap cover is not required to be firmly affixed, provided that the name of the brewer of the malt beverage is permanently or semi-permanently stated on the keg in the form of embossing, engraving, or stamping, or through the use of a sticker or ink jet method.

Brewers have asked for such an exception, asserting that the current requirement for firmly affixed labels is unduly burdensome when it comes to kegs. Because kegs are intended to be reused, brewers have argued that it takes considerable time and effort to scrape off the label each time a keg is to be reused. For this reason, brewers have requested permission to use a keg collar that is not firmly affixed to the keg, or a tap cover, to bear mandatory labeling information.

TTB believes that additional flexibility can be afforded with regard to the labeling of kegs without sacrificing consumer protection. For this reason, the proposed rule requires the name of the brewer to be permanently or semi-permanently stated on the keg in the form of embossing, engraving, or stamping, or through the use of a sticker or ink jet method. TTB notes that its IRC-based regulations in current 27 CFR 25.141 already require the name of the brewer to be permanently marked on each barrel or keg. TTB also notes that the proposed regulatory text specifically states that this exemption in no way affects the requirements in 27 CFR part 16 regarding the mandatory health warning statement, which would not be permitted to appear on a tap cover or on a keg collar that was not firmly affixed to the keg. TTB seeks comments from the public on whether the proposed rule would reduce burdens on brewers, and whether it could create any consumer protection issues.

4. Subpart E—Mandatory Label Information

a. Brand labels. Current § 7.22 requires that certain mandatory information appear on the brand label of a malt beverage, while other mandatory information, and any additional information, may appear on a label anywhere on the container. The brand label is defined in current § 7.10 as ''[t]he label carrying, in the usual distinctive design, the brand name of the malt beverage'' and, under current § 7.22, the brand name, class, name and address, net contents (except when blown, branded, or burned, on the container), and alcohol content (when required for certain malt beverages produced with flavors or other nonbeverage ingredients containing alcohol) are required to appear on the brand label.

In practice, however, a brand label may be a label that wraps entirely around a can or bottle. As a result, mandatory information may appear anywhere on certain cans or bottles. Such cans and bottles are common containers of malt beverages. Furthermore, if the label bearing the brand name is on the back of the container, then it is the brand label.

TTB believes that the current regulations requiring that certain mandatory information be placed on the brand label of malt beverage containers are unduly restrictive. Furthermore, the prevalence of wraparound labels significantly reduces the consumer protection otherwise provided by this rule. Finally, TTB believes that consumers are used to looking at the back and neck labels to find mandatory information on containers.

Accordingly, TTB is proposing, in proposed § 7.63, to amend the regulations to allow mandatory information to appear on any label on the malt beverage container.

b. Alcohol content. As previously noted, the FAA Act, which was enacted in 1935, prohibited alcohol content statements on malt beverage labels unless required by State law. See 27 U.S.C. 205(e)(2). That prohibition was overturned in 1995 by the U.S. Supreme Court in *Rubin* v. *Coors Brewing Company,* 514 U.S. 476 (1995).

Prior to the Supreme Court's decision in *Coors,* the malt beverage regulations

in § 7.26 reflected the statutory prohibition against alcohol content statements. After a ruling by the United States District Court for the District of Colorado in the *Coors* litigation, TTB's predecessor agency, ATF, issued an interim rule indefinitely suspending those regulations as of April 19, 1993. See T.D. ATF–339 (58 FR 21232, April 19, 1993). That interim rule also implemented new alcohol content regulations by adding current § 7.71, which allows alcohol content statements unless prohibited by State law. When the alcohol content is stated, and the manner of the statement is not required under State law, the provisions of current § 7.71 prescribe how the alcohol content may be stated. The 1993 regulations were issued as an interim rule and they have not been finalized.

In 2005, in T.D. TTB–21 (70 FR 194, January 3, 2005), TTB issued a final rule requiring alcohol content statements for those malt beverages that contain alcohol derived from added flavors or other added nonbeverage ingredients (other than hops extract) containing alcohol. TTB is retaining this provision in the proposed regulations, and TTB is proposing to finalize the interim alcohol content regulations in this rulemaking. In this proposed rule, current § 7.26 is removed, and the provisions of current § 7.71 are incorporated in proposed § 7.65 with some editorial changes for clarity, including a list of the acceptable ways to present an alcohol content statement on a label. Also, several substantive changes are proposed, as set forth below.

Proposed § 7.65(b)(1) specifically provides that statements other than a percentage of alcohol by volume, such as statements of alcohol by weight, may appear on the label if they are truthful, accurate, and specific factual representations of alcohol content, and if they appear together with, and as part of, the statement of alcohol content as a percentage of alcohol by volume. Among other things, this proposal is consistent with the policy adopted in TTB Ruling 2013–2, in which TTB allowed the use of voluntary Serving Facts statements on labels and in advertisements. A Serving Facts statement includes nutrient information and may, on an optional basis, also include alcohol content information. In the ruling, TTB held that if alcohol content is expressed as a percentage of alcohol by volume, the Serving Facts statement may also include a statement of the fluid ounces of pure ethyl alcohol per serving (rounded to the nearest tenth) as part of the alcohol by volume statement.

With regard to statements of alcohol content by weight, some States require alcohol content statements to be expressed in this form. The regulations have always allowed alcohol content statements to be made in accordance with State requirements, and will continue to do so. However, some brewers would like to put alcohol content as both a percentage of alcohol by volume and as a percentage of alcohol by weight on labels of products sold in all States, so that they can use the same label in the States that require alcohol content as a percentage of alcohol by weight and in other States that neither require nor prohibit alcohol content statements as a percentage of alcohol by weight.

TTB is proposing to allow this, but it solicits comments on whether allowing this information on labels would be confusing to consumers, or whether it would provide consumers with useful additional information. In particular, TTB seeks comments on whether permitting both formats on labels might confuse consumers as to the meaning of the different ways of expressing alcohol content. If so, does requiring the statements to appear together, as part of the same alcohol content statement, negate any potential confusion?

In addition, in proposed § 7.65(c), TTB proposes to expand the tolerance for alcohol content on malt beverage labels. Currently, for most malt beverages, the regulations allow a tolerance of 0.3 percentage points above or below the labeled alcohol content. TTB proposes to expand this tolerance to one percentage point above or below the labeled alcohol content. Some brewers, especially small brewers, have avoided putting an optional alcohol content statement on malt beverage labels because they have difficulty maintaining a precise alcohol content from batch to batch. TTB believes that increasing the tolerance level will encourage more brewers to include this important information on labels. Furthermore, TTB does not believe that a one percentage point variation from the labeled alcohol content will significantly impact consumers. We note that the wine regulations allow, with certain exceptions, tolerances of one percentage point for wines above 14 percent alcohol by volume and 1.5 percentage points for wines with an alcohol content of no more than 14 percent alcohol by volume.

Exceptions to the tolerance are maintained without change. For example, if a malt beverage label states that the beverage has an alcohol content above 0.5 percent, the actual content may not be below 0.5 percent, regardless of any tolerance that would otherwise be allowed.

Finally, this document does not propose to make alcohol content statements on malt beverage labels mandatory. In Notice No. 73 (72 FR 41860, July 31, 2007) TTB proposed requiring alcohol content statements for all malt beverage labels, but no final rule on that issue has been published. TTB is not proposing to address mandatory alcohol content statements for malt beverage containers in this rulemaking; TTB will address that issue in a separate rulemaking procedure.

c. Name and place where bottled on labels of domestically bottled malt beverages. The name and place where bottled informs the consumer as to who bottled the malt beverage, and where the bottling took place or where the bottler's principal place of business is. Proposed § 7.66 is derived from current § 7.25(a) and (c) and prescribes how the name and place where malt beverages are bottled must appear on containers of domestically bottled malt beverages. The proposed regulations differ from the current regulations in a few key ways.

First, the proposed regulations reflect agency policy stated in the Beverage Alcohol Manual for Malt Beverages (TTB P 5130.3), that a listing of all the brewer's locations may be provided on a label under certain conditions. This language is also consistent with labeling requirements for beer under TTB's IRC-based regulations in 27 CFR 25.142.

Second, the proposed regulations provide more guidance with regard to what is required when malt beverages are brewed and bottled for another person. For example, the proposed regulations provide that, if the same brand of malt beverages is brewed and bottled by two breweries that are not of the same ownership, the label for each brewery may set forth both locations where bottling takes place, as long as the label uses the actual locations (and not the principal place of business) and as long as the nature of the agreement is clearly set forth. Examples are provided in the regulatory text.

Third, the proposed regulations provide that the place of bottling and the address of the principal place of business of a brewer must be consistent with the city and State of the address reflected on the brewers notice. This change reflects TTB's current policy as stated in the Beverage Alcohol Manual.

d. Net contents. The current regulations allow for the use of U.S. standard measures but do not address whether metric contents may also be displayed. However, it is current TTB policy to allow net contents to be expressed in both formats. Proposed

§ 7.70 allows for the statement of net contents of metric measurements in addition to, but not in lieu of, the U.S. standard measures.

5. Subpart F—Restricted Labeling Statements; Use of the Term ''Draft''

The proposed regulations also address the use of the term ''draft'' on malt beverage labels. Longstanding Bureau policy is set forth in Industry Circular 65–1, which sets out standards for the use of the word ''draft'' on malt beverage labels. Proposed § 7.87 reflects this policy and provides that any malt beverage in a container of one gallon or more that dispenses through a tap, spigot, faucet, or similar device may be described as ''draft.'' Malt beverages packaged in customary bottles and cans may also be described as ''draft'' if they are unpasteurized and require refrigeration for preservation, or if the unpasteurized beverage has been sterile filtered and aseptically filled. Finally, the ruling provides that malt beverages packaged in customary bottles or cans that have been pasteurized may be described as ''draft brewed'', ''draft beer flavor'', ''old time on tap taste'' or with another similar phrase, only if the word ''pasteurized'' appears on the label.

As a matter of internal policy, TTB started to approve certain labels of pasteurized malt beverages using the term ''draft'' standing alone, if the word ''pasteurized'' also appears on the label. TTB is soliciting comments on whether this practice is misleading and should be changed. TTB is interested in comments specifically on whether it should continue to allow the use of any such terms on labels of pasteurized malt beverages. Please let TTB know if a change in these policies would impact existing labels.

6. Subpart H—Labeling Practices That Are Prohibited if They Are Misleading

a. Use of the term ''bonded.'' One currently prohibited practice is the use on malt beverage labels of the term ''bonded'' or similar terms that may imply governmental supervision over the production, bottling, or packing of the product. TTB believes that this implication (that such terms imply governmental supervision) is related to the use of those terms with regard to distilled spirits, and that such terms were historically prohibited because their use on malt beverage labels would mislead consumers by causing them to believe that the malt beverage was actually a distilled spirit. The text, at proposed § 7.131, does not differ from the text currently prohibiting such terms (in § 7.29(c)). However, TTB is requesting comments on whether such terms are likely to mislead consumers into believing a product was made under governmental supervision or into believing a malt beverage is a distilled spirit, and, as a result, whether TTB should continue to prohibit their use on malt beverage labels.

b. Strength claims. As previously mentioned, the FAA Act prohibits both statements of alcohol content and statements likely to be considered as statements of alcohol content from appearing on malt beverage labels, unless required by State law. See 27 U.S.C. 205(e)(2). Current §§ 7.29(f) and 7.29(g) both implement the statutory ban on statements that are likely to be considered statements of alcohol content on malt beverage labels. Current § 7.29(f) prohibits the use of the words ''strong,'' ''full strength,'' ''extra strength,'' ''high test,'' ''high proof,'' ''pre-war strength,'' ''full oldtime alcoholic strength,'' and similar words or statements that are likely to be considered as statements of alcohol content on labels of malt beverages. The proposed rule modernizes the language of these provisions by removing some terms (such as ''pre-war strength'' and ''full oldtime alcoholic strength'') that are not likely to be used by today's brewers.

7. Subpart I—Classes and Types of Malt Beverages

Part 7 does not prescribe standards of identity for malt beverages. Instead, current § 7.24(a) provides that statements of class and type for malt beverages shall conform to the designation of the product as known to the trade. If the product is not known to the trade under a particular designation, a distinctive or fanciful name, together with an adequate and truthful statement of composition of the product, shall be stated, and such statement is treated as a statement of class and type for purposes of part 7.

Current Section 7.24(d) states that no product containing less than one-half of one percent alcohol by volume shall bear the class designation ''beer,'' ''lager beer,'' ''lager,'' ''ale,'' ''porter,'' or ''stout.'' Further, current § 7.24(e) provides that no product other than a malt beverage fermented at comparatively high temperature, possessing the characteristics generally attributed to ''ale,'' ''porter,'' or ''stout'' and produced without the use of coloring or flavoring materials (other than those recognized in standard practices) shall bear any of those class designations.

In 1993, ATF, TTB's predecessor agency, sought comments on standards of identity for malt beverages, in particular malt liquors, in an advance notice of proposed rulemaking. See Notice No. 771 (58 FR. 21126, April 19, 1993). However, the regulations were not amended to include such standards. In Notice No. 771, ATF stated that its predecessor agency, the Federal Alcohol Administration (FAA), issued proposed regulations regarding standards of identity for malt beverages in 1935, but noted that there were differences of opinion in the brewing industry regarding the standards and definitions for certain designations. The FAA issued regulations in 1936 providing that products containing less than 5 percent alcohol by volume could not be designated as ale, porter, or stout. See Regulations No. 7, section 24 (1 FR 2013, November 21, 1936). The regulations were premised, in part, on the public perception that ale, porter, and stout were higher in alcohol content than beer. After more hearings, the FAA amended the regulations in 1938 to eliminate the list of classes and the minimum alcohol content requirements for ale, porter, and stout.

TTB does not propose now to include specific standards of identity. Proposed § 7.141 is derived from 27 CFR 7.24(a) and sets out standards for class and type designations on malt beverages. This section explains that the class of the malt beverage must be stated on the label. The type may optionally be stated. Statements of class and type must conform to the designation of the product as known to the trade. If the product is not known to the trade, the product must contain a distinctive or fanciful name as well as a statement of composition.

Proposed § 7.141 differs from the current regulations in that it proposes to define a ''malt beverage specialty'' as a malt beverage that does not fall under any of the class designations set forth in part 7 and is not known to the trade under a particular designation, usually because of the addition of ingredients such as colorings, flavorings, or food materials, or the use of certain types of production processes. Such beverages will not be designated as ''malt beverage specialties'' on the label, but the term reflects current usage and is a convenient way to refer to such products in the regulations.

Proposed § 7.142 sets out class designations. Any malt beverage may be designated simply as a ''malt beverage.'' The designations ''beer'', ''ale'', ''porter'', ''stout'', ''lager'', and ''malt liquor'' may be used to designate malt beverages that contain at least 0.5 percent alcohol by volume and that conform to the trade's understanding of those designations. TTB proposes to

allow these designations to be preceded or followed by descriptions of the color of the product (such as brown, red, or golden).

Proposed § 7.143 is largely consistent with existing regulations on class and type designations. There are new proposed provisions for ''ice beer,'' ''wheat beer,'' ''rye beer,'' and ''barley wine ale,'' consistent with existing TTB policy.

The proposed regulations in proposed §§ 7.143(h) and 7.144 reflect changes adopted in TTB Ruling 2014–4 with respect to the labeling of malt beverage products fermented or flavored with honey, certain fruits, and certain spices. Prior to the issuance of this ruling, the Brewers Association, a trade association representing small brewers, petitioned TTB to exempt certain malt beverages from the formula requirements under part 25, and to liberalize the labeling rules applicable to these products. The Brewers Association stated that ''[W]ell-known and widely-distributed products such as fruit beers and spiced beers'' were ''well known to the trade and consumers by their flavor designations: *e.g.,* fruit beers, spiced ales, honey porters, and so forth. Required statements of composition such as 'ale brewed with raspberry juice' or 'porter brewed with honey' simply are unnecessary, clutter labels, and provide no more information to the consumer than the readily-understood designations of 'raspberry ale' or 'honey porter.' ''

The petition also suggested that TTB abandon the distinction between fruit beers made with added fruits or juices and those fermented with such substances, but, instead, should allow brewers to make this distinction on their labels if they wish.

In TTB Ruling 2014–4, TTB adopted these changes for certain malt beverages designated in accordance with trade understanding. We are now proposing to codify these standards in the regulations. TTB seeks comments on whether additional ingredients should be recognized as traditional ingredients in the production of a fermented beverage designated as ''beer,'' ''ale,'' ''porter'', ''stout,'' ''lager,'' or ''malt liquor.''

The TTB regulations also provide for special rules for certain classes and types; these are currently found in § 7.24(b) through (e). TTB proposes, in §§ 7.143 and 7.144, to incorporate and partially supersede Ruling 94–3, which held that ice beer is not considered concentrated when it is produced by removing less than 0.5 percent of the volume of the beer in the form of ice crystals and retains beer characteristics. TTB also proposes to incorporate and supersede Ruling 76–13, which sets forth standards for cereal beverages, which are malt beverages that contain less than 0.5 percent alcohol by volume, and confirms that such beverages fall under the authority of the FAA Act.

Proposed § 7.146 sets forth the requirements for geographical names currently found in section 27 CFR 7.24(f) through (h) with clarifying changes. TTB proposes to clarify that distinctive names may be used in addition to, but not in lieu of a class designation. For example, Vienna Beer or Bavarian Stout may appear as designations.

Malt beverages that are not ''known to the trade'' are required to be labeled with a statement of composition. Proposed § 7.147 sets forth provisions for statements of composition on malt beverages. These provisions are new to the regulations and reflect current policy. Specifically, a statement of composition is required to appear on the label for malt beverage specialty products, as defined in proposed § 7.141(b), which are not known to the trade under a particular designation. For example, the addition of flavoring materials, colors, or artificial sweeteners may change the class and type of the malt beverage. The statement of composition along with a distinctive or fanciful name serves as the class and type designation for these products.

F. Proposed 27 CFR Part 14 (Advertising)

Currently the regulatory provisions that address the advertising of wine, distilled spirits, and malt beverages are set forth in parts 4, 5, and 7, respectively. As noted above, TTB proposes to add a new 27 CFR part 14, Advertising of Wine, Distilled Spirits, and Malt Beverages, to consolidate these provisions into one part. In general, the advertising regulations require that advertisements, like labels, are truthful, accurate, and not misleading. Where possible, TTB seeks to treat advertisements for wine, distilled spirits, and malt beverages consistently. TTB proposes to delete the advertisement regulations for wine, distilled and malt beverages from parts 4, 5, and 7, respectively, and consolidate them into the new part 14. Additionally, the proposed regulations are updated for clarity and to reflect changes in prohibited practices that mirror those proposed in the labeling regulations, where appropriate.

In the definitions section for part 14, TTB proposes to include several definitions that apply to advertising that currently appear in parts 4, 5, and 7, and to add definitions for ''consumer specialty item,'' and ''responsible advertiser.'' TTB also proposes to amend the definition of ''advertisement'' that is currently found in §§ 4.61, 5.62, and 7.51. Certain statements on container coverings, cartons, cases, carriers, or other packaging have traditionally been treated as advertising materials. As discussed in section II B of this preamble, TTB proposes to amend the labeling regulations, in proposed §§ 4.62, 5.62, and 7.62, to clarify that certain information must appear on packaging materials. These items would not be considered advertisements. However, items such as hang tags that accompany the bottle would continue to be considered advertisements and would be subject to the rules in part 14.

In proposed § 14.4, TTB sets forth the general requirement that advertisements must be in conformity with the TTB regulations found in part 14. TTB proposes to add a substantiation requirement to the regulation that mirrors the substantiation requirement for claims made on labels. Accordingly, industry members will be required to substantiate any claim made on an advertisement and a claim that cannot be adequately substantiated will be considered misleading. TTB also proposes to require that the responsible advertiser provide substantiation upon request for a period of five years from the time the advertisement was disseminated or published.

Certain information is required to appear on alcohol beverage advertisements. Specifically, the responsible advertiser's name and contact information must appear on the advertisement. Currently, the regulations require the name and address to appear on the advertisement. TTB proposes to liberalize that requirement so that any type of contact information may be used, such as a telephone number, website, or email address. Additionally, the class, class and type, or other designation for the product advertised must appear on the advertisement. The mandatory statements are prescribed in the proposed § 14.6.

In the current and proposed regulations, if an advertisement refers to a general alcohol beverage product line, the only information required is the name and address (or contact information, in the proposed rule) of the responsible advertiser. In some cases, TTB finds that a ''product line'' contains only two types of products, and it also finds administrative difficulty when enforcing the mandatory statements requirements on internet sites. TTB

seeks comments on whether TTB should modify this requirement and, if it does, how the public might be better informed when an internet site or other advertisement refers to more than one type of product.

The prohibited practices for advertisements contain a number of rules and prohibitions that conform to the rules for labels found in parts 4, 5, and 7. Generally, a statement or representation that is prohibited from appearing on a label is also prohibited from appearing on an advertisement. TTB proposes to set forth the rules that apply to alcohol beverage advertisements in subpart A. Sections 14.11 through 14.14 set forth the rules that apply to all alcohol beverage products. These are organized into sections that include related topics, in a similar organization to rules in parts 4, 5, and 7: Restricted practices, prohibited practices, and misleading statements or representations.

TTB proposes, in § 14.14(f) to prohibit statements or representations that create an impression that a product is a different commodity. For example, a malt beverage advertisement could not have a representation that leads the viewer to believe that the product is wine. This prohibition is similar to that proposed in the labeling regulations in parts 4, 5, and 7. As noted above, TTB is not proposing substantive changes to the rules on health-related statements on labels, and TTB similarly does not propose changes for such statements on advertisements at this time.

Sections 14.15, 14.16, and 14.17 set forth the rules specific to advertisements for wine, distilled spirits, and malt beverages, respectively. In § 14.16, TTB proposes to incorporate the modified rules for the use of ''double distilled,'' ''triple distilled,'' and similar terms, to conform to the updated rules for using the terms on labels of distilled spirits, as described above. TTB also proposes, in § 14.17, to update the rules on strength claims on malt beverages, so that strength claims are only prohibited if the claims imply that products should be purchased on the basis of alcohol strength. Consistent with current policy, TTB proposes to remove the existing restrictions on alcohol content statements in advertisements for wine and malt beverages, in light of the Supreme Court's decision in *Coors,* which was discussed earlier in this document. Although the *Coors* decision related to labels, not advertisements, TTB does not believe that the advertising regulations should prohibit truthful, specific and numerical claims about the alcohol content of those products.

In subpart C, TTB proposes to include references to various provisions of the FAA Act. Proposed § 14.21 states that a violation of the advertising provisions of 27 U.S.C. 205(e) is punishable as a misdemeanor and refers readers to 27 U.S.C. 207 for the statutory provisions relating to criminal penalties, consent decrees, and injunctions. Proposed § 14.22 provides that basic permits are conditioned upon compliance with the provisions of 27 U.S.C. 205, including the advertising provisions of part 14, and that a willful violation of the conditions of a basic permit provides grounds for the revocation or suspension of the permit, as applicable, as set forth in 27 CFR part 1. Proposed § 14.23 sets forth TTB's authority to compromise liability for a violation of 27 U.S.C. 205 upon payment of a sum not in excess of $500 for each offense. This sum is to be collected by the appropriate TTB officer and deposited into the Treasury as miscellaneous receipts.

By proposing to place these provisions in the regulations, TTB is making it easier for a person to locate the penalties for violating the FAA Act and the regulations implementing the FAA Act. These proposed regulations will not change the criminal penalty and compromise provisions, which are set forth in the statute.

The Office of Management and Budget (OMB) assigns control numbers to TTB's information collection requirements. In subpart D, TTB proposes to list those sections that impose an information collection requirement along with the assigned OMB control number. TTB believes that industry members will have an easier time locating OMB control numbers for information collection requirements if they are listed in one location.

G. Impact on Public Guidance Documents

The chart below describes the impact of this proposed rule on rulings, industry circulars, and other public guidance documents issued over the years by TTB and its various predecessor agencies. The following public guidance documents will be superseded by the publication of a final rule:

Document No.	Subject	Incorporated into proposed sections at:
	Cross Cutting	
Industry Circular 1963–23	Use of Disparaging Themes or References in Alcoholic Beverage Advertising is Prohibited.	Not incorporated.
TTB Guidance 2011–5	Personalized Labels	§§ 4.29, 5.29, and 7.29.
TTB Ruling 2012–3	Recognition of Andong Soju and Gyeongju Beopju as Distinctive Products of Korea.	§§ 4.148 and 5.154.
	Wine	
Revenue Ruling 54–250	Vintage Date	§ 4.95.
Revenue Ruling 54–418	Aperitif Wine	§ 4.147.
Revenue Ruling 55–618	Wine Labels	Not incorporated.
Revenue Ruling 71–535	Labels on Imported Alcohol Beverages	§ 4.68.
ATF Ruling 73–5	Spanish Wines Labeled with Semi-generic Designations	§ 4.174.
ATF Ruling 73–6	Spanish Wines Labeled with Grape Type Designations	Not incorporated.
ATF Ruling 78–4	Use of Descriptive Terms on Wine Labels	§ 4.94.
ATF Ruling 82–4	Use of Descriptive Terms on Wine Labels	§ 4.94.
ATF Ruling 85–14	Labeling of Wine Bearing Generic or Semi-generic Designation	Not incorporated.
ATF Ruling 91–1	Multistate Appellations of Origin for Contiguous States	§ 4.90.
ATF Ruling 2002–7	Wine made from grapes frozen after harvest may not be labeled with the term ''ice wine'' or any variation thereof, and if the wine is labeled to suggest it was made from frozen grapes, the label must be qualified to show that the grapes were frozen post-harvest.	§ 4.94.

Document No.	Subject	Incorporated into proposed sections at:
TTB Ruling 2008–1	Standards of Identity and the Use of Semi-generic Designations and Retsina on Certain European Wines Imported into the United States.	§ 4.174.
	Distilled Spirits	
Revenue Ruling 54–592	Relabeling Tax Paid Distilled Spirits	§ 5.42.
Revenue Ruling 55–399	Straight Whiskey	Not Incorporated.
Revenue Ruling 55–552	Grain Neutral Spirits Stored in Wood may not be Labeled as Vodka	§ 5.142.
Revenue Ruling 55–740	Neutral Spirits Subjected to Vodka Process but Stored in Reused Whiskey Barrels may not be Designated or Labeled as Vodka.	§ 5.142.
Revenue Ruling 56–98	Flavored Vodka	§ 5.142.
Revenue Ruling 59–408	Addition of Caramel	§ 5.156.
Revenue Ruling 61–15	Labeling of Scotch Whisky	§ 5.90(b).
Revenue Ruling 61–25	Distilled Spirits Labeling	§§ 5.141 and 5.143.
Revenue Ruling 61–71	Use of the Word Straight in Labeling and Advertising of Liqueurs or Cordials	§ 5.150(a).
Revenue Ruling 62–224	Relabeling by Wholesale Liquor Dealer	§ 5.42.
Revenue Ruling 68–502	Light Whisky from Kentucky	§ 5.66(f)(3).
Revenue Ruling 69–58	Age statements	Not Incorporated.
Revenue Ruling 71–188	Whisky Classification as White	§ 5.113.
Revenue Ruling 71–535	Labels on Imported Alcohol Beverages	§ 5.68.
ATF Ruling 75–32	Labeling of Diluted Spirits	§ 5.153.
ATF Ruling 76–3	Labeling of Vodka Treated with Activated Carbon as ''Charcoal Filtered''	§ 5.142.
ATF Ruling 79–9	Distilled Spirits Labels	§ 5.67.
ATF Ruling 88–1	Alcohol Content on Labels and in Advertisements of Distilled Spirits	§ 5.44(b)(5).
ATF Ruling 93–3	Age Statements on Grappa Brandy	§ 5.74(c).
ATF Ruling 94–5	Geographical Names	§ 5.143 and § 5.145(c)(2)–(5).
ATF Ruling 97–1	Use of a ''Trace Amount'' of Citric Acid in the Production of Vodka without Changing its Designation as Vodka.	§ 5.142.
ATF Ruling 2001–2	Country of Origin Statements on Distilled Spirits Labels	§ 5.69.
Industry Circular 1971–7	Protection of Names of Bourbon Whiskey and Certain French Brandies	§§ 5.143 and 5.145.
Industry Circular 76–28	Production of New Charred Barrels using Used Heads	Not Incorporated.
Industry Circular 2007–5	Use of the Term Absinthe for Distilled Spirits	§ 5.149.
	Malt Beverages	
Revenue Ruling 54–513	Labeling and Advertising of Malt Beverages	Not incorporated.
Revenue Ruling 71–535	Labels on Imported Alcohol Beverages	§ 7.68.
ATF Ruling 76–13	Malt Beverages of Less Than ½ of 1% Alcohol by Volume Subject to FAA Act	§ 7.145.
ATF Ruling 94–3 (superseded only with respect to the provisions related to part 7. The part 25 provisions remain in effect.).	Ice Beer	§ 7.143.
ATF Procedure 98–1	Labeling of Imported Malt Beverages Bottled or Packed in the United States, and Labeling of Blends of Imported and Domestic Malt Beverages Bottled or Packed in the United States.	§§ 7.67 and 7.69.
TTB Ruling 2008–3	Classification of Brewed Products	§ 7.6.
TTB Ruling 2013–1	Malt Beverages Sold Exclusively in Intrastate Commerce	§§ 7.4 and 7.21.
TTB Ruling 2015–1	Ingredients and Processes Used in the Production of Beer Not Subject to Formula Requirements.	§§ 7.143 and 7.144.
Industry Circular 1965–1	Use of the Term ''Draft Beer'' on Labels and in Advertising of Beer	§ 7.87.

III. Derivation Tables for Proposed Parts 4, 5, 7, and 14

27 CFR Part 4	
Requirements in new section:	Are derived from current section:
4.0	4.1.
Subpart A—General Provisions	
4.1	4.10.
4.2	4.2.
4.3	4.30(a) and New.
4.4	Reserved.
4.5	New.
4.6	New.
4.7	New.
4.8	4.80.
4.9	New.
4.10	4.5.
4.11	4.3.
4.12	4.4.
Subpart B—Certificates of Label Approval and Certificates of Exemption of Label Approval	
4.21	4.50(a) and (b).
4.22	New.
4.23	4.50(b).
4.24	4.40.
4.25	New.
4.27	4.51.
4.28	4.38(h) and New.
4.29	New.
4.30	4.45.
Subpart C—Alteration of Labels, Relabeling, and Adding Information to Containers	
4.41	4.30(b).

27 CFR Part 4

Requirements in new section:	Are derived from current section:
4.42	4.30(b).
4.43	4.30(b).
4.44	4.30(b) and New.
Subpart D—Label Standards	
4.51	4.38(e).
4.52	4.38(a).
4.53	4.38(b).
4.54	New.
4.55	4.38(c).
4.56	4.38(f).
Subpart E—Mandatory Label Information	
4.61	New.
4.62	4.38a and New.
4.63	4.32.
4.64	4.33; 4.39(i) and (j).
4.65	4.36.
4.66	4.35(a) and (c); New.
4.67	4.35(b) and (c).
4.68	4.35.
4.69	New.
4.70	4.37.
Subpart F—Restricted Labeling Statements	
4.81	New.
4.82	4.32a.
4.83	4.32b.
4.84	4.101.
4.85	New.
4.86	4.39(e)(2).
4.87	4.39(m).
4.88	4.25(a).
4.89	4.25(b).
4.90	4.25(c) and (d).
4.91	4.25(e).
4.92	4.26.
4.93	New.
4.94	New.
4.95	4.27.
4.96	4.25(a).
4.97	4.25(b).
4.98	4.25(c) and (d).
Subpart G—Prohibited Labeling Practices	
4.101	New.
4.102	4.39(a)(1).
4.103	4.39(a)(3).
4.104	4.39(a)(7).
Subpart H—Labeling Practices That Are Prohibited if They Are Misleading	
4.121	New.
4.122	4.39(a)(1).
4.123	4.39(a)(5).
4.124	4.39(a)(2).
4.125	4.39(a)(4).
4.126	4.39(g).
4.127	4.39(e).
4.128	4.39(a)(7).
4.129	4.39(h).
4.130	4.39(a)(6).
4.131	4.39(f).
4.132 Reserved	N/A.
4.133	4.39(a)(8).
4.134	4.39(b)–(d).

27 CFR Part 4

Requirements in new section:	Are derived from current section:
4.135	4.39(k).
4.136	4.39(n).
Subpart I—The Standards of Identity for Wine	
4.141	4.20 and 4.34.
4.142	4.21(a).
4.143	4.21(b).
4.144	4.21(c).
4.145	4.21(d) and (e).
4.146	4.21(f).
4.147	4.21(g).
4.148	(New).
4.149	4.21(i).
4.150	4.21(h).
4.151	New.
4.152 & 4.153 Reserved.	N/A.
4.154	4.22.
4.155 Reserved	N/A.
4.156	4.23.
4.157	4.28.
4.158–4.172 Reserved.	N/A.
4.173	4.24(a).
4.174	4.24(b).
4.175	4.24(c)(1)–(c)(2).
Subpart J—American Grape Variety Names	
4.191	4.93.
4.192	4.91.
4.193	4.92.
Subpart K—Standards for Wine Containers and Authorized Container Sizes	
4.201	4.70.
4.202	4.71.
4.203	4.72.
4.204	New.
Subpart L—Recordkeeping and Substantiation Requirements	
4.211	New.
4.212	New.
Subpart M—Penalties and Compromise of Liability	
4.221	New.
4.222	New.
4.224	New.
Subpart N—Paperwork Reduction Act	
4.231	New.

27 CFR Part 5

Requirements of new section:	Are derived from current section:
5.0	5.1.
Subpart A—General Provisions	
5.1	5.11.
5.2	5.1.

27 CFR Part 5

Requirements of new section:	Are derived from current section:
5.3	New.
5.4	[reserved].
5.5	[reserved].
5.6	[reserved].
5.7	New.
5.8	New.
5.9	New.
5.10	5.2.
5.11	5.3.
5.12	5.4.
Subpart B—Certificates of Label Approval and Certificates of Exemption From Label Approval	
5.21	5.31(a).
5.22	5.55.
5.23	5.55(b).
5.24	5.51(a).
5.25	5.51.
5.27	5.51 and 5.55.
5.28	5.33(g).
5.29	New.
5.30	5.52.
Subpart C—Alteration of Labels, Relabeling and Adding Information to Containers	
5.41	5.31(b).
5.42	5.31(b).
5.43	
Subpart D—Label Standards	
5.51	5.33(e).
5.52	5.33(a).
5.53	5.33(b)(5) and (6).
5.54	New.
5.55	5.33(c).
5.56	5.33(f).
Subpart E—Mandatory Label Information	
5.61	New.
5.62	5.41 and New.
5.63	5.32.
5.64	5.34.
5.65	5.37.
5.66	5.36.
5.67	5.36.
5.68	5.36.
5.69	5.36(e).
5.70	5.38.
5.71	5.39(a).
5.72	5.39(b).
5.73	5.39(c).
5.74	5.40.
Subpart F—Restricted Labeling Statements	
5.81	New.
5.82	5.32a.
5.83	5.32b.
5.84	5.71.
5.85	New.
5.86	Reserved.
5.87	New.
5.88	5.42(b)(4).
5.89	5.42(b)(6).
5.90	5.22(k)(4).

27 CFR Part 5

Requirements of new section:	Are derived from current section:
5.91	5.42(b)(5).
Subpart G—Prohibited Labeling Practices	
5.101	New.
5.102	5.42(a)(1).
5.103	5.42(a)(3).
Subpart H—Labeling Practices That Are Prohibited if They Are Misleading	
5.121	New.
5.122	5.42(a)(1).
5.123	5.42(a)(5).
5.124	5.42(a)(2).
5.125	5.42(a)(4).
5.126	5.42(b)(7).
5.127	5.42.
5.128	New.
5.129	5.42(b)(8).
5.130	5.42(a)(6).
Subpart I—The Standards of Identity for Distilled Spirits	
5.141	5.22.
5.142	5.22(a).
5.143	5.22(b) and 5.35(c).
5.144	5.22(c).
5.145	5.22(d).
5.146	5.22(e).
5.147	5.22(f).
5.148	New.
5.149	New.
5.150	5.22(h).
5.151	5.22(i).
5.152	5.22(j).
5.153	New.
5.154	5.22(k) and (l).
5.156	5.23.
5.166	New.
Subpart J—Formulas	
5.191	5.25.
5.192	5.26.
5.193	5.27.
5.194	5.28.
Subpart K—Distilled Spirits Containers and Authorized Container Sizes	
5.201	5.45.
5.202	5.46.
5.203	5.47a.
5.204	New.
5.205	New.
Subpart L—Recordkeeping and Substantiation Requirements	
5.211	New.
5.212	New.
5.213	5.33(g).
Subpart M—Penalties and Compromise of Liability	
5.221	New.
5.222	New.
5.223	New.

27 CFR Part 5

Requirements of new section:	Are derived from current section:
Subpart N—Paperwork Reduction Act	
5.231	New.

27 CFR Part 7

Requirements of new section:	Are derived from current section:
7.0	7.1.
Subpart A—General Provisions	
7.1	7.10.
7.2	7.2.
7.3	7.20(b) and (c).
7.4	7.20(a) and New.
7.5	New.
7.6	New.
7.7	New.
7.8	7.60.
7.9	New.
7.10	7.4.
7.11	7.3.
7.12	7.5.
Subpart B—Certificates of Label Approval	
7.21	7.20(b), 7.40 and 7.41.
7.22	7.40 and 7.41.
7.23	[reserved].
7.24	7.30 and 7.31(b).
7.25	7.30 and 7.31.
7.27	7.42.
7.28	7.31(d).
7.29	New.
Subpart C—Alteration of Labels, Relabeling, and Adding Information to Containers	
7.41	7.20(c)(1).
7.42	7.20(c)(2).
7.43	New.
7.44	New.
Subpart D—Label Standards	
7.51	7.28(d).
7.52	7.28(a).
7.53	7.28(b).
7.54	New.
7.55	7.28(c).
7.56	7.28(e).
Subpart E—Mandatory Label Information	
7.61	New.
7.62	New.
7.63	7.22.
7.64	7.23.
7.65	7.71.
7.66	7.25(a) and (c).
7.67	7.25(b).
7.68	7.25.
7.69	7.New.
7.70	7.27.

27 CFR Part 7

Requirements of new section:	Are derived from current section:
Subpart F—Restricted Labeling Statements	
7.81	New.
7.82	7.22a.
7.83	7.22b.
7.84	7.81.
7.85	New.
7.86	Reserved.
7.87	New.
Subpart G—Prohibited Labeling Practices	
7.101	New.
7.102	7.29(a)(1).
7.103	7.29(a)(3).
Subpart H—Labeling Practices That Are Prohibited if They Are Misleading	
7.121	New.
7.122	7.29(a)(1) and New.
7.123	7.29(a)(5).
7.124	7.29(a)(2).
7.125	7.29(a)(4).
7.126	7.29(d).
7.127	7.29(b).
7.129	7.29(e).
7.130	7.29(a)(6).
7.131	7.29(c).
7.132	7.29(f).
Subpart I—Classes and Types of Malt beverages	
7.141	7.24(a).
7.142	7.24(e).
7.143	7.24(b) and New.
7.144	New.
7.145	7.24(d).
7.146	7.24(g), (f), and (h).
7.147	New.
Subpart L—Recordkeeping and Substantiation Requirements	
7.211	New.
7.212	New.
Subpart M—Penalties and Compromise of Liability	
7.221	New.
7.222	New.
7.223	New.
Subpart N—Paperwork Reduction Act	
7.231	New.

27 CFR Part 14

Requirements of new section:	Are derived from current section:
14.0	New and 7.50.
Subpart A—General Provisions	
14.1	4.11, 4.61, 5.11, 5.61, 7.11, 7.51.
14.2	4.2, 5.1, 7.2.

27 CFR Part 14	
Requirements of new section:	Are derived from current section:
14.3	4.4, 5.4, 7.5.
14.4	4.60, 5.61, 7.50.
14.5	4.62, 5.63, 7.52.
14.6	4.63, 5.64, 7.53.
Subpart B—Rules Related to Specific Practices in Advertisements	
14.11	New.
14.12	4.64(b), 4.65, 5.65(b), 5.66, 7.54(b), 7.55.
14.13	4.64, 5.65, 7.54.
14.14	4.64, 5.65, 7.54, and New.
14.15	4.64.
14.16	5.65.
14.17	7.54.
Subpart C—Penalties and Compromise of Liability	
14.21	New.
14.22	New.
14.23	New.
Subpart D—Paperwork Reduction Act	
14.31	New.

IV. Public Participation

A. Comments Sought

TTB requests comments from the public and all interested parties on the regulatory proposals contained in this document. TTB is particularly interested in comments that address whether the proposed revisions to the labeling and advertising regulations will continue to protect the consumer by prohibiting false or misleading statements and requiring that labels provide the consumer with adequate information about the identity and quality of the product. Where TTB proposes substantive changes, TTB seeks comments on the proposals for further appropriate improvements. With respect to the few proposed changes that may require changes in current labeling or advertising practices, TTB seeks comments on the impact that the proposed changes will have on industry members and any suggestions as to how to minimize any negative impact.

TTB also seeks comments on whether more significant changes to the label approval process, such as expanding the categories of optional information that may be revised without TTB approval or limiting the scope of TTB's prior review of labels to certain mandatory information, should be considered. As noted earlier in this document, the FAA Act generally requires the submission of applications for label approval before bottlers or importers introduce their products into interstate commerce. As part of its label review process, TTB reviews both optional and mandatory information on labels. With regard to optional information, TTB's main goal is to ensure that such information does not mislead consumers.

TTB also solicits comments from consumers, industry members, and the public on whether such changes would adequately protect consumers. Any regulatory proposals put forward by TTB on this issue would, of course, have to be consistent with the statutory requirements of the FAA Act.

B. Submitting Comments

You may submit comments on the proposals contained in this document by using one of the following three methods:

- *Federal e-Rulemaking Portal:* You may send comments via the online comment form posted with this document within Docket No. TTB–2018–0007 on ''*Regulations.gov*,'' the Federal e-rulemaking portal, at *https://www.regulations.gov.* A direct link to that docket is available under Notice No. 176 on the TTB website at *https://www.ttb.gov/regulations_laws/all_rulemaking.shtml.* Supplemental files may be attached to comments submitted via *Regulations.gov*. For complete instructions on how to use *Regulations.gov*, visit the site and click on the ''Help'' tab.
- *U.S. Mail:* You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005.
- *Hand Delivery/Courier:* You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Suite 400, Washington, DC 20005.

Please submit your comments by the closing date shown above in this document. Your comments must reference Notice No. 176 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. TTB does not acknowledge receipt of comments, and TTB considers all comments as originals.

In your comment, please clearly state if you are commenting for yourself or on behalf of an association, business, or other entity. If you are commenting on behalf of an entity, your comment must include the entity's name as well as your name and position title. If you comment via *Regulations.gov*, please enter the entity's name in the ''Organization'' blank of the online comment form. If you comment via postal mail or hand delivery/courier, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

C. Confidentiality

All submitted comments and attachments are part of the public record and are subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

D. Public Disclosure

TTB will post, and you may view, copies of this document, selected supporting materials, and any online, mailed, or hand-delivered comments received about this proposal within Docket No. TTB–2018–0007 on the Federal e-rulemaking portal, *Regulations.gov*, at *https://www.regulations.gov.* A direct link to that docket is available on the TTB website at *https://www.ttb.gov/regulations_laws/all_rulemaking.shtml* under Notice No. 176. You may also reach the relevant docket through the *Regulations.gov* search page at *https://www.regulations.gov*. For information on how to use *Regulations.gov*, click on the site's ''Help'' tab.

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including email addresses. TTB may omit voluminous attachments or material that the Bureau considers unsuitable for posting.

You may also view copies of this document, all supporting materials, and any online, mailed, or hand-delivered comments that TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street NW, Washington, DC 20005. You may also obtain copies at 20 cents per 8.5 x 11-inch page. Contact TTB's **Federal Register** liaision officer at the above address or by telephone at 202–453–2135 to schedule an appointment or to request copies of comments or other materials.

V. Regulatory Analysis and Notices

A. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), TTB has analyzed the potential economic effects of this action on small

entities. In lieu of the initial regulatory flexibility analysis required to accompany proposed rules under 5 U.S.C. 603, section 605 allows the head of an agency to certify that a rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The following analysis provides the factual basis for TTB's certification under section 605.

1. Small Businesses in the Alcohol Beverage Industry

TTB recognizes that the vast majority of producers, bottlers, and importers of alcohol beverages are small entities. The Small Business Administration (SBA) sets out size standards based on the North American Industry Classification System (NAICS) under which an entity can be considered small for the purposes of Regulatory Flexibility Act analysis.[1] Breweries and wineries are considered small if they have fewer than 500 employees; distillers are considered small if they have fewer than 750 employees.

The U.S. Census Bureau's Statistics of U.S. Businesses data include data on employment among establishments within NAICS codes. The most recent data are from 2011. TTB used these data to calculate what proportion of entities classified within each relevant NAICS code could be considered small. TTB also looked at the data from 2005 to try to find changes over time.

SMALL-ENTITY SIZE STANDARDS FOR POTENTIALLY AFFECTED INDUSTRIES AND PROPORTIONS OF SMALL ENTITIES WITHIN THOSE INDUSTRIES

Industry (NAICS code)	Small-entity size standard	Proportion of small entities (2005)	Proportion of small entities (2011)
Breweries (NAICS 312120)	Fewer than 500 employees	92.3 percent (352 small entities of 381 total establishments).	95.6 percent (696 small entities of 728 total establishments).
Wineries (NAICS 312130)	Fewer than 500 employees	95.2 percent (1559 of 1637)	97.0 percent (2613 of 2694).
Distilleries (NAICS 312140)	Fewer than 750 employees	77.0 percent (57 of 74) [1]	91.0 percent (193 of 212).[1]

[1] This is the proportion of entities with under 500 employees; the Statistics of U.S. Businesses data do not include employment at the 750-employee threshold. The true percentage and number of small entities are thus potentially higher than those listed here.

Source: SBA standards, Statistics of U.S. Businesses (see *https://www.census.gov/econ/susb/*).

2. Effect of the Proposed Rule

The vast majority of businesses subject to the proposed rule are small businesses, but the changes proposed in this document will not have a significant impact on those small entities. The production, bottling, importation, and distribution of alcohol beverages is an industry subject to extensive Federal, State, and local regulation. As mentioned earlier in this document, the labeling and advertising regulations under the FAA Act have been in place since 1936. The proposed rule thus largely restates existing requirements, but clarifies and updates these regulations to make them easier to understand and to incorporate agency policies. The proposed regulations take into account modern business practices and contemporary consumer understanding in order to modernize the regulations, and TTB is seeking comments from all interested parties on ways in which the regulations may be improved.

The changes in the proposed rule can be divided into three classes with respect to their impact on small entities: (1) Clarifying changes that do not allow or prohibit any new conduct but improve the clarity and organization of TTB's FAA Act requirements; (2) liberalizing changes that will potentially give regulated entities new options to fulfill requirements; and (3) changes that impose new requirements or require changes to current labels.

a. Clarifying changes: Many of the changes in this proposal are clarifying in nature. They are designed to make TTB's requirements for alcohol beverage labeling easier to read and use. These proposed changes would not have any impact on small businesses, other than making it easier for them to understand the existing requirements of the regulation. Examples of clarifying changes include the following:

- Adding examples in the regulations of how certain requirements may be satisfied;
- Adding to the regulations guidance that had previously been provided in rulings, Industry Circulars, or other documents separate from the regulations;
- Addressing questions the public frequently asks TTB;
- Making definitions, organization, numbering of sections, and phrasing of requirements within the regulations consistent across 27 CFR parts 4, 5, and 7 to the extent possible;
- Breaking large subparts and large sections into small subparts and small sections to increase readability; and
- Providing more cross references in the regulations to relevant regulations and statutes.

These changes benefit all regulated entities, especially small entities, which typically do not have as many resources for complying with the regulations as larger entities. In addition to these proposed changes, TTB would also add some requirements to the regulations that reflect TTB policy by:

- Making it explicit that mandatory information may not be obscured in whole or in part;
- Codifying various TTB policies regarding statements of composition;
- Codifying TTB policy on using aggregate packaging to satisfy standards of fill for wine and distilled spirits;
- Changing the definition of a certificate of label approval (COLA) to incorporate TTB's current policy of expanding the allowable revisions that may be made to already approved labels through the issuance of guidance documents;
- Codifying TTB's current policy that any wines, distilled spirits, or malt beverages that are adulterated under the Federal Food, Drug, and Cosmetic Act are mislabeled under the FAA Act;
- Codifying TTB's current policy that compliance with the labeling regulations issued under the FAA Act does not relieve industry members of their responsibility to comply with FDA regulations regarding the safety of additives and ingredients, as well as FDA regulations regarding the safe use of materials in containers;
- Codifying TTB's current policy, as stated on the label application form, that the issuance of a COLA does not confer trademark protection or relieve the certificate holder from liability for violations of the FAA Act, the IRC, ABLA, or related regulations, and that products covered by a COLA may still

[1] See *http://www.sba.gov/content/small-business-size-standards.*

be mislabeled if the label contains statements that are false or misleading when applied to the beverage in the container;

- Codifying in the regulations the current requirement that containers covered by a certificate of exemption must bear a labeling statement that the product is ''For sale in [name of State] only'';
- Codifying current TTB guidance with respect to the use of a COLA by an importer other than the permittee to whom the COLA was issued;
- Codifying TTB's current policy with respect to the approval of the use of ''personalized labels'' by bottlers without having to resubmit applications for label approval;
- Amending the regulations on the use of semi-generic designations for consistency with amendments made to the IRC in 2006;
- Codifying current policy with respect to the required name and address statement on labels for wines, distilled spirits, and malt beverages that have been subject to certain production activities after importation in bulk;
- Codifying current policy with respect to the allowed use of certain non-misleading labeling claims about environmental and sustainability practices;
- Codifying current policy that allows truthful and non-misleading comparisons on labels and in advertisements without violating the prohibition against ''disparaging'' statements;
- Providing that the prohibition against the use of flags and other symbols of a government applies whenever the label may create a misleading impression that the product is endorsed by, or otherwise affiliated with, that government;
- Removing outdated provisions in the tax laws from the labeling regulations;
- Providing that certain alcohol beverage products do not meet the definition of a wine, distilled spirit, or malt beverage under the FAA Act, and must accordingly be labeled in accordance with FDA labeling regulations for food;
- Codifying longstanding policy that products containing less than 0.5 percent alcohol by volume are not distilled spirits under the FAA Act;
- Specifying how the FAA Act applies to the labeling of malt beverages under the penultimate paragraph of 27 U.S.C. 205(f); and
- For purposes of aging distilled spirits, defining an oak barrel as a cylindrical oak drum of approximately 50 gallons used to age bulk spirits.

These provisions reflect current TTB policy, and thus no existing labels should need to be changed to come into compliance with these requirements.

b. Liberalizing changes: Liberalizing changes will not require entities that are currently in compliance with the regulations to make any changes, but may provide regulated entities with additional options they can choose to use. Any effect on small entities from these changes is likely to be positive. Key examples include:

- Allowing greater flexibility in the placement of mandatory information on labels by eliminating the requirement that mandatory information appear on the ''brand label'';
- Liberalizing the requirements for the use of a type designation consisting of multiple grape varieties, thus allowing greater flexibility in the blending of wines;
- Allowing the use of truthful, accurate, specific, and non-misleading. additional information on the label about the grape varieties used to make a still grape wine, sparkling grape wine, or carbonated grape wine, provided that the information includes every grape variety used to make the wine, listed in descending order of predominance;
- Liberalizing the requirements for the use of multicounty or multistate appellations on wine labels, thus allowing more producers and importers to claim an appellation of origin for these wines;
- Allowing the use of vintage dates on wines bottled in the United States that had been imported in bulk containers under certain conditions;
- Allowing the use of ''estate grown'' on labels of grape wines that do not meet all of the requirements for an ''estate bottled'' claim, but where the producing winery grew all of the grapes used to make the wine on land owned or controlled by the producing winery, and met certain other conditions;
- Allowing certain statements of alcohol content, other than alcohol as a percentage of alcohol by volume, as additional information on labels already containing a mandatory alcohol content statement;
- Superseding the Industry Circular that required pre-approval laboratory testing for products containing wormwood;
- Modifying the standard of identity for whisky to provide for ''white whisky'' and ''unaged whisky,'' in response to market demand for these types of products;
- Adding ''agave spirits'' as a class of distilled spirits and recognizing ''Mezcal'' as a type within that class;
- Expanding the allowable alcohol content tolerance for distilled spirits;
- Allowing wholesalers and retailers to relabel distilled spirits when necessary and when approved by TTB;
- Incorporating Ruling 2015–1 by allowing the use of designations in accordance with trade understanding, rather than statements of composition, in the labeling of malt beverage specialty products that are flavored or fermented with ingredients that TTB has determined are generally recognized as traditional ingredients in the production of a fermented beverage designated as ''beer,'' ''ale,'' ''porter,'' ''stout,'' ''lager,'' or ''malt liquor'';
- Allowing certain mandatory information to appear on the keg collar or tap cover of malt beverage kegs with a capacity of 10 gallons or more, subject to certain requirements; and
- Allowing the use of alternate contact information (such as the telephone number, website, or email address) together with the name of the responsible advertiser in advertisements.

c. Potentially restrictive changes: Potentially restrictive proposed changes may require some industry members to either change the labeling of their products or to change the formulation of the product to avoid labeling changes. TTB believes that most of these proposed changes will not impact many products, but solicits comments on the impact that the proposed changes will have. These changes include:

- Adopting consistent language with regard to what type of products intended for exportation are exempt from the labeling requirements of parts 4, 5, and 7.
- Cross-referencing CBP regulations that require a country of origin statement on labels of imported wines and malt beverages. Such a statement is required for distilled spirits under current TTB regulations. TTB does not believe this will impact many labels, as such a statement is already required for imported wines and malt beverages under CBP regulations, and TTB's proposed regulation is simply a cross-reference to existing CBP requirements.
- Specifying that statements of composition and standards of identity for distilled spirits products must be determined based on the finished product itself, without regard to whether components are added to the product directly or through intermediates. This may require the relabeling of certain specialty products to disclose the use of wine and spirits that were used in the formulation of intermediate products, but will ensure that consumers have truthful and

adequate information about the identity of the product.

- Prohibiting the use of labeling and advertising statements and representations that create a misleading impression that the product is a different commodity. This may require the relabeling of certain products that are marketed using terms associated with different commodities, if such terms create a misleading impression as to the identity of the product. TTB believes that this will protect consumers from misleading representations as to the identity of the product.
- Eliminating the ''citrus wine'' designation, which TTB believes is rarely used on wine labels.
- Codifying in the regulations that grape wine and fruit wine must meet the standards for ''natural wine'' under the IRC.
- Defining a distillation as a single run through a pot still or one run through a single distillation column of a column (reflux) still. Although this change is clarifying in nature, it may impact labels that currently claim that the spirits have been distilled for a certain number of times, but use a different definition of ''distillation.''
- Revising the current requirement that certain whisky products distilled in the United States must include the State of distillation on the label by providing that a bottling address within the State does not suffice unless it includes a representation as to distillation;
- Requiring that statements of composition for distilled spirits list the spirits or wine used in the manufacture of the distilled spirits in order of predominance. This may require changes to some labels, but will provide consumers with more clear information about the composition of distilled spirits specialty products.
- Requiring distilled spirits cocktails to bear a full statement of composition instead of an abbreviated one that just lists the types of spirits used in the manufacture of the cocktail. This may require changes to some labels, but will provide consumers with better information about the identity of the product.
- Requiring whisky (other than Tennessee Whisky) that meets the standard for a type of whisky to be designated with that type name, rather than as ''whisky.'' TTB does not believe that this will impact many products, but some labels may have to be changed.

3. Delayed Compliance Date

As mentioned earlier in this document, TTB is proposing to give all regulated entities three years to come into compliance with the proposed regulations, should they be finalized.

The label redesign, printing, and administrative costs associated with making a labeling change are on a ''stock-keeping unit'' (or ''SKU'') basis rather than a formulation basis. To examine costs associated with label redesign, TTB referred to the FDA's Labeling Cost Model,[2] which incorporates assumptions about the proportion of SKUs that would be changed together with a scheduled label change.

Under the FDA's Labeling Cost Model, the longer the implementation period, the more likely it is that affected industry members can coordinate new labeling requirements with scheduled labeling changes. This leads to cost estimates that fall significantly as the time allowed for the new labeling requirements increases. In other words, the longer the period of time industry is given to comply with the new labeling requirements, the lower the costs.

As previously mentioned, TTB does not believe that the changes proposed by this notice would have a significant impact on many industry members. To the extent that some labels may have to be revised to comply with the proposed changes, TTB believes that the vast majority of industry members that would be affected by these changes would be able to coordinate labeling changes as a result of the proposed regulatory requirements with their scheduled labeling changes.

The FDA model assumes that for a three-year delayed compliance date, required modifications to 100 percent of brand name product labels and 67 percent of private product labels can be coordinated with regularly scheduled label changes. Thus, according to this model, there would be no additional costs for branded products; however there may be incremental relabeling, printing, and administrative costs for 33 percent of the private label SKUs because their producers may not be able to coordinate the required changes with their regularly scheduled labeling changes.

TTB does not know how many entities, large or small, would be affected by the proposed changes to labeling requirements. However, the Bureau estimates that these changes will affect only a small percentage of current labels. Thus, TTB expects that the proposed changes would not affect many labels, and also that the three-year delayed compliance date would allow most affected entities to come into compliance with the changes in conjunction with regularly scheduled label changes.

4. Other Changes

TTB is also proposing to clarify and somewhat expand existing requirements with regard to ''packaging'' of wine, distilled spirits, and malt beverage containers. This includes coverings, cartons, cases, carriers, and other packaging used for sale at retail, but does not include shipping cartons or cases not intended to accompany the container to the consumer.

Existing regulations already prohibit certain false or misleading representations on packaging, and the existing wine and distilled spirits regulations already require certain mandatory information on closed ''opaque'' individual coverings or containers. For the reasons set forth in the preamble, the proposed rule expands this requirement to include malt beverages and to require that ''closed packaging'' of wine, distilled spirits, and malt beverages bear all the mandatory information required on the label. The term ''closed packaging'' would include sealed opaque coverings and cases. Packaging is not considered closed if the consumer could view all the mandatory information on the label by merely lifting the container up, or if the packaging is transparent or designed in a way that the mandatory information on the label can be easily read by the consumer without having to open, rip, untie, unzip or otherwise manipulate the package. This requirement would also be subject to the three-year delayed compliance date.

TTB believes that alcohol beverage producers who use outer packaging update their packaging more than once every three years, similar to labels. The three-year delayed compliance date will give producers the opportunity to use up existing stocks of packaging. In addition, outer packaging is typically large enough to accommodate the mandatory information. TTB solicits comments on the impact that this proposed change would have on existing packaging materials.

5. Recordkeeping

TTB is proposing to provide further details in the proposed labeling and advertising regulations regarding recordkeeping and substantiation requirements under the FAA Act for bottlers and importers. Current regulations (27 CFR 4.51, 5.55, and 7.42) require bottlers holding an original or duplicate original of a COLA or a certificate of exemption to exhibit such certificates, upon demand, to a duly

[2] *http://www.fda.gov/ohrms/dockets/dockets/04n0382/04n-0382-bkg0001-Tab-05-01-vol1.pdf.*

authorized representative of the United States Government. Current regulations (27 CFR 4.40, 5.51, and 7.31) also require importers to provide a copy of the applicable COLA upon the request of the appropriate TTB officer or a customs officer. However, these regulations do not state how long industry members should retain their COLAs. Furthermore, since these regulations were originally drafted, TTB has implemented the electronic filing of applications for label approval. Now, over 90 percent of new applications for label approval are submitted electronically, and the rest are processed electronically by TTB. Industry members have asked for clarification as to whether they have to retain paper copies of certificates that were processed electronically. Finally, because industry members may make certain specified revisions to approved labels without obtaining a new COLA, it is important that the industry members keep track of which label approval they are using when they make such revisions.

Accordingly, the proposed regulations provide that, upon request by the appropriate TTB officer, bottlers and importers must provide evidence of label approval for a label used on an alcohol beverage container that is subject to the COLA requirements of the applicable part. This requirement may be satisfied by providing original COLAs, photocopies or electronic copies of COLAs, or records identifying the TTB identification number assigned to the COLA. Where labels on containers reflect revisions to the approved label that have been made in compliance with allowable revisions authorized on the COLA form or otherwise authorized by TTB, the bottler or importer must be able to identify the COLA covering the product, upon request by the appropriate TTB officer. Bottlers and importers must be able to provide this information for a period of five years from the date the products covered by the COLAs were removed from the bottler's premises or from customs custody, as applicable.

TTB believes that five years is a reasonable period of time for record retention because there is a five-year statute of limitations for criminal violations of the FAA Act. TTB notes that the proposed rule does not require industry members to retain paper copies of each COLA; they should simply be able to track a particular removal to a particular COLA, and they may rely on electronic copies of COLAs, including copies contained in the TTB Public COLA Registry. TTB believes that industry members already retain records in this manner in the ordinary course of their business, but seeks comments on the impact of this proposal.

The proposed regulations also set forth specific substantiation requirements, which are new to the regulations, but which reflect TTB's current expectations as to the level of evidence industry members should have to support labeling claims. The proposed regulations provide that all claims, whether implicit or explicit, must have a reasonable basis in fact. Claims that contain express or implied statements regarding the amount of support for the claim (*e.g.,* ''tests provide,'' or ''studies show'') must have the level of substantiation that is claimed.

Furthermore, the proposed regulations provide for the first time that any labeling claim that does not have a reasonable basis in fact, or cannot be adequately substantiated upon the request of the appropriate TTB officer, will be considered misleading. The regulations in subpart H are similarly amended to include the same requirement. TTB believes that this provision, which is very similar to the Federal Trade Commission's policy on substantiation of advertising claims, will clarify that industry members are responsible for ensuring that all labeling and advertising claims have adequate substantiation. See ''FTC Policy Statement Regarding Advertising Substantiation'' (Appended to *Thompson Medical Co.,* 104 F.T.C. 648, 839 (1984), *aff'd,* 791 F.2d 189 (D.C. Cir. 1986), *cert. denied,* 479 U.S. 1086 (1987)). TTB also believes that the records necessary to substantiate label and advertising claims are already retained by industry members in the ordinary course of business.

TTB also proposes to require the use of TTB Form 5100.51 for the submission of formulas under parts 4, 5, and 7, rather than allowing other forms or letterhead statements. Because of the growing use of online formula submissions and because industry members may find that use of this form is easier than submitting letterhead applications, TTB believes that this will assist in the standardization of formula information.

Finally, TTB is also asking for comments on several issues that are discussed in the proposal but that are not the subject of any specific proposed regulatory changes. TTB especially welcomes comments from small entities on these issues. Small entities may have found market niches making products that could be affected by these changes. They may also have fewer resources to change existing products, labels, or advertisements in response to changes to the regulations. TTB will carefully consider all comments on these issues before proceeding with any changes.

In conclusion, while the industries affected by the proposed rule include a substantial number of small entities, the effects of the changes in this proposed rule are likely to be small and positive. Making the regulations easier to understand and comply with will promote compliance, and liberalizing changes will give all regulated parties additional options for complying with the regulations or undertaking new lines of business. Most of the restrictive changes TTB is proposing apply to labels, and TTB expects that small entities will be able to comply with them in the course of their normal business cycle. Producers of alcohol beverages must already keep records in the ordinary course of business; the proposed rule would clarify what recordkeeping TTB expects from regulated entities, and the proposed recordkeeping requirements do not go beyond what could reasonably be expected based on the statute of limitations for criminal enforcement of the FAA Act.

6. Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), TTB certifies that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. The proposed rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The proposed rule is not expected to have significant secondary or incidental effects on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. Pursuant to 26 U.S.C. 7805(f), TTB will submit the proposed regulations to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of the proposed regulations on small businesses.

B. Executive Order 12866

It has been determined that this notice is not a significant regulatory action as defined in Executive Order 12866 of September 30, 1993. Therefore a regulatory assessment is not necessary.

C. Paperwork Reduction Act

This proposed rule contains ten information collections, old and new. Nine of the collections of information contained in the regulatory sections affected by this proposed rule have been

previously reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3507) and assigned control numbers 1513–0020, 1513–0046, 1513—0064, 1513–0084, 1513–0085, 1513–0087, 1513–0111, 1513–0121 and 1513–0122. The specific regulatory sections in this proposed rule that contain approved collections of information are §§ 4.21–4.28, 4.30, 4.62, 4.63, 4.81–4.98, 4.121–4.136, 5.21–5.27, 5.28, 5.30, 5.62, 5.63, 5.81–5.90, 5.121–5.130, 5.192–5.194, 7.21, 7.22, 7.24–7.27, 7.28, 7.63, 7.66, 7.67, 7.81–7.85, 7.87, 7.121–7.132, 14.6, 14.12, 14.14, 14.15, 14.16, and 14.17. In this proposed rule, TTB is not proposing any changes to eight of the nine current information collection or recordkeeping requirements of, or burdens associated with, these existing information collections.

TTB is amending OMB control number 1513–0087 to include proposed regulations in §§ 4.62, 5.62, and 7.62, which provide that closed packaging, including sealed opaque coverings, cartons, cases, carriers, or other packaging used for sale at retail, must include all mandatory information required to appear on the label. This proposed requirement is consistent with existing regulations in §§ 4.38a and 5.41 for wine and distilled spirits, respectively, but is new in part 7 for malt beverages. TTB believes this requirement is necessary to protect the consumer. TTB does not believe that this proposal will increase the estimated burden of this information collection because the required information is already collected and disclosed for the purposes of labeling under OMB control number 1513–0087. TTB also believes that most malt beverage industry members currently place all mandatory information that is required to appear on the label on closed packages. Thus, TTB believes that the current burden hours for OMB control number 1513–0087, which are set forth below, will not change.

Estimated number of respondents: 9,552.

Estimated average total annual burden hours: 9,552.

In this proposed rule, TTB also is proposing new recordkeeping requirements, and TTB is seeking OMB approval of these requirements under one OMB control number. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The proposed new recordkeeping requirements are contained in proposed §§ 4.211, 4.212, 5.211, 5.212, 7.211, 7.212, and 14.4.

The new recordkeeping requirement in proposed §§ 4.211, 5.211, and 7.211 provides that, upon request by the appropriate TTB officer, bottlers and importers must provide evidence of label approval for a label used on an alcohol beverage container that is subject to the COLA requirements of the applicable part. This requirement may be satisfied by providing original COLAs, photocopies or electronic copies of COLAs, or records identifying the TTB identification number assigned to the COLA. Where labels on containers reflect revisions to the approved label that have been made in compliance with allowable revisions authorized on the COLA form or otherwise authorized by TTB, the bottler or importer must be able to identify the COLA covering the product. Bottlers and importers are required to keep records identifying each COLA for a period of five years from the date the products covered by the COLA were removed from the bottler's premises or from customs custody, as applicable.

The new recordkeeping requirement in proposed §§ 4.212, 5.212, 7.212, and 14.4 sets forth specific substantiation requirements that apply to any claim made on any label or container subject to the requirements of part 4, 5, or 7, or any claim made in an advertisement subject to part 14. These substantiation requirements are new to the regulations, but they reflect TTB's current expectations as to the level of evidence that industry members should have to support labeling claims. Proposed §§ 4.212, 5.212, and 7.212 provide that the appropriate TTB officer may request that bottlers and importers provide evidence that labeling claims are adequately substantiated at any time within five years from the time the alcohol beverage was removed from the bottling premises or from customs custody, as applicable. Proposed § 14.4(c) provides that the appropriate TTB officer may request that the responsible advertiser provide evidence that advertising claims are adequately substantiated at any time within a period of five years from the time the advertisement was last disseminated or published.

TTB believes that these COLA use and label and advertising claim substantiation records are necessary to ensure that:

- Importers using a COLA that was not issued to them have received authorization to use the COLA from the person to whom the COLA was issued (certificate holder);
- Labels applied to alcohol beverage containers are covered by a COLA; and
- Claims made on the labels of alcohol beverage containers and claims made in advertisements for alcohol beverages are truthful, accurate, and not misleading and do not contain any prohibited practices.

The retention requirement for records the certificate holder must maintain of other importers authorized to use its COLA is five years from the date of the authorization. The retention requirement for records identifying each COLA is five years after the COLA is last used to remove a product from the bottler's premises or from customs custody, as applicable. The retention requirement for records substantiating claims made in advertisements is five years from the time the advertisement was last disseminated or published. TTB believes that all these records are currently maintained during the usual and customary course of business.

Estimated number of respondents: 10,982.

Estimated average total annual burden hours: 1 (one).

The new and revised recordkeeping requirements have been submitted to the OMB for review. Comments on these new and revised recordkeeping requirements should be sent to OMB at Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503 or by email to *OIRA_submissions@omb.eop.gov.* A copy should also be sent to TTB by any of the methods previously described. Comments on the information collections should be submitted no later than January 25, 2019.

TTB specifically requests comments concerning:

- Whether the proposed recordkeeping collections are necessary for the proper performance of the functions of TTB, including whether the information will have practical utility;
- How to enhance the quality, utility, and clarity of the information to be collected;
- How to minimize the burden of complying with the collections of information; and

Estimates of capital and start-up costs and costs of operation, maintenance, and purchase of services to maintain records.

VI. Drafting Information

Christopher M. Thiemann and Kara T. Fontaine of the Regulations and Rulings Division drafted this document, along with several other employees of the

Alcohol and Tobacco Tax and Trade Bureau.

List of Subjects

27 CFR Part 4

Advertising, Alcohol and alcoholic beverages, Customs duties and inspection, Food additives, Imports, International agreements, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices, Wine.

27 CFR Part 5

Advertising, Alcohol and alcoholic beverages, Customs duties and inspection, Food additives, Grains, Imports, International agreements, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Trade practices.

27 CFR Part 7

Advertising, Alcohol and alcoholic beverages, Beer, Customs duties and inspection, Food additives, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices.

27 CFR Part 14

Advertising, Alcohol and alcoholic beverages, Beer, Consumer protection, Liquors, Packaging and containers, Trade practices, Wine.

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations (Government agencies), Caribbean Basin initiative, Chemicals, Claims, Customs duties and inspection, Electronic funds transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Stills, Surety bonds, Transportation, Vinegar, Virgin Islands, Warehouses, Wine.

Authority and Issuance

For the reasons discussed in the preamble, TTB proposes to amend 27 CFR, chapter I as follows:

■ 1. Revise part 4 to read as follows:

PART 4—LABELING OF WINE

Authority: 27 U.S.C. 205, unless otherwise noted.

§ 4.04.0 Scope.

This part sets forth requirements that apply to the labeling and packaging of wines in containers, including requirements for label approval and rules regarding mandatory, regulated, and prohibited labeling statements.

Subpart A—General Provisions

§ 4.14.1 Definitions.

When used in this part and on forms prescribed under this part, the following terms have the meaning assigned to them in this section, unless the terms appear in a context that requires a different meaning. Any other term defined in the Federal Alcohol Administration Act (FAA Act) and used in this part has the same meaning assigned to it by the FAA Act.

Administrator. The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury.

American. A descriptive term referring to the 50 States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any function relating to the administration or enforcement of this part by the current version of TTB Order 1135.4, Delegation of the Administrator's Authorities, in 27 CFR part 4, Labeling of Wine.

Bottler. Any producer or blender of wine, proprietor of bonded wine premises, or proprietor of a taxpaid wine bottling house, who places wine in containers.

Brand name. The name under which a wine or line of wine is sold.

Brix. The quantity of dissolved solids expressed as grams of sucrose in 100 grams of solution (percent by weight of sugar) at 68 degrees Fahrenheit (20 degrees Celsius).

Certificate holder. The permittee or brewer whose name, address, and basic permit number, plant registry number, or brewer's notice number appears on an approved TTB Form 5100.31.

Certificate of exemption from label approval. A certificate issued on TTB Form 5100.31, which authorizes the bottling of wine or distilled spirits, under the condition that the product will under no circumstances be sold, offered for sale, shipped, delivered for shipment, or otherwise introduced by the applicant, directly or indirectly, into interstate or foreign commerce.

Certificate of label approval (COLA). A certificate issued on TTB Form 5100.31 that authorizes the bottling of wine, distilled spirits, and malt beverages, or the removal of bottled wine, distilled spirits, and malt beverages from customs custody for introduction into commerce, as long as the product bears labels identical to the labels appearing on the face of the certificate, or labels with changes authorized by TTB on the certificate or otherwise.

Container. Any can, bottle, box with an internal bladder, cask, keg, barrel, or other closed receptacle, in any size or material, that is for use in the sale of wine at retail. See subpart K of this part for rules regarding authorized standards of fill for containers.

County. Includes a county or a political subdivision recognized by the State as a county equivalent.

Customs officer. An officer of U.S. Customs and Border Protection (CBP) or any agent or other person authorized by law to perform the duties of such an officer.

Distinctive or fanciful name. A descriptive name or phrase chosen to identify a wine product on the label. It does not include a brand name, class or type designation, or statement of composition.

FAA Act. The Federal Alcohol Administration Act.

Fully finished. Ready to be bottled, except that it may be further subject to the practices authorized in § 4.154(c) and blending that does not result in an alteration of class or type under § 4.154(b).

Gallon. A U.S. gallon of 231 cubic inches at 60 degrees Fahrenheit.

Grape wine. When used without further modification, the term ''grape wine'' includes still grape wine, sparkling grape wine, and carbonated grape wine. As set forth in § 4.142, however, the term ''grape wine'' by itself may be used to designate only still grape wine.

Interstate or foreign commerce. Commerce between any State and any place outside of that State or commerce within the District of Columbia or commerce between points within the same State but through any place outside of that State.

Liter or litre. A metric unit of capacity equal to 1,000 cubic centimeters or 1,000 milliliters (mL) of wine at 20 degrees Celsius (68 degrees Fahrenheit),

and equivalent to 33.814 U.S. fluid ounces.

Net contents. The amount, by volume, of wine held in a container.

Permittee. Any person holding a basic permit under the FAA Act.

Person. Any individual, corporation, partnership, association, joint-stock company, business trust, limited liability company, or other form of business enterprise, including a receiver, trustee, or liquidating agent and including an officer or employee of any agency of a State or political subdivision of a State.

Pure condensed must. The dehydrated juice or must of sound, ripe grapes, or other fruit or agricultural products, concentrated to not more than 80° brix, the composition thereof remaining unaltered except for removal of water.

Restored pure condensed must. Pure condensed must to which has been added an amount of water not exceeding the amount removed in the dehydration process.

State. One of the 50 States of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

Total solids. The degrees Brix of the dealcoholized wine restored to its original volume with water.

TTB. The Alcohol and Tobacco Tax and Trade Bureau of the Department of the Treasury.

United States (U.S.). The 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

Wine. Section 117(a) of the Federal Alcohol Administration Act (27 U.S.C. 211(a)) defines ''wine'' as any of the following products for nonindustrial use that contain not less than 7 percent and not more than 24 percent alcohol by volume:

(1) Wine as defined in section 610 and section 617 of the Revenue Act of 1918 (26 U.S.C. 5381–5392); and

(2) Other alcoholic beverages not so defined, but made in the manner of wine, including sparkling and carbonated wine, wine made from condensed grape must, wine made from other agricultural products than the juice of sound, ripe grapes, imitation wine, compounds sold as wine, vermouth, cider, perry, and saké.

§ 4.24.2 Territorial extent.

The provisions of this part apply to the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 4.34.3 General requirements and prohibitions under the FAA Act.

(a) *Certificates of label approval (COLAs).* Subject to the requirements and exceptions set forth in the regulations in subpart B of this part, any bottler of wine, and any person who removes wine in containers from customs custody for sale or any other commercial purpose, is required to first obtain from TTB a COLA covering the label(s) on each container.

(b) *Alteration, mutilation, destruction, obliteration, or removal of labels.* Subject to the requirements and exceptions set forth in the regulations in subpart C of this part, it is unlawful to alter, mutilate, destroy, obliterate, or remove labels on wine containers. This prohibition applies to any person, including retailers, holding wine for sale in interstate or foreign commerce or any person holding wine for sale after shipment in interstate or foreign commerce.

(c) *Labeling requirements for wine.* It is unlawful for any person engaged in business as a producer, blender, importer, or wholesaler of wine, directly or indirectly, or through an affiliate, to sell or ship, or deliver for sale or shipment, or otherwise introduce or receive, in interstate or foreign commerce, or remove from customs custody, any wine in containers, unless the wine is bottled in containers, and the containers are marked, branded, and labeled, in conformity with the regulations in this part.

(d) *Labeled in accordance with this part.* In order to be labeled in accordance with the regulations in this part, a container of wine must be in compliance with the following requirements:

(1) It must bear one or more labels meeting the standards for ''labels'' set forth in subpart D of this part;

(2) One or more of the labels on a container must include the mandatory information set forth in subpart E of this part;

(3) Claims on any label(s), container, or packaging (as defined in § 4.81) must comply with the rules for regulated label statements, as applicable, set forth in subpart F of this part;

(4) Statements or any other representations on any wine label, container, or packaging (as defined in §§ 4.101 and 4.121) may not violate the regulations in subparts G and H of this part regarding certain practices on labeling of wine;

(5) The class and type designation on the label(s), as well as any designation appearing on containers or packaging, must comply with the standards of identity set forth in subpart I of this part; and

(6) The wine in the container must not be adulterated within the meaning of the Federal Food, Drug, and Cosmetic Act.

(e) *Bottled in accordance with this part.* In order to be bottled in accordance with the regulations in this part, the wine must be bottled in authorized standards of fill in containers that meet the requirements of subpart K.

§ 4.44.4 [Reserved]

§ 4.54.5 Wines covered by this part.

The regulations in this part apply to wine containing not less than 7 percent and not more than 24 percent alcohol by volume.

§ 4.64.6 Products produced as wine that are not covered by this part.

Certain wine products do not fall within the definition of a ''wine'' under the FAA Act and are thus not subject to this part. See § 4.7 for related TTB regulations that may apply to these products. See §§ 24.10 and 27.11 of this chapter for the definition of ''wine'' under the Internal Revenue Code.

(a) *Products containing less than 7 percent alcohol by volume.* The regulations in this part do not cover products that would otherwise meet the definition of wine except that they contain less than 7 percent alcohol by volume. Bottlers and importers of alcohol beverages that do not fall within the definition of malt beverages, wine, or distilled spirits under the FAA Act should refer to the applicable labeling regulations for foods issued by the U.S. Food and Drug Administration. See 21 CFR part 101.

(b) *Products containing more than 24 percent alcohol by volume.* Products that would otherwise meet the definition of wine except that they contain more than 24 percent alcohol by volume are classified as distilled spirits and must be labeled in accordance with part 5 of this chapter.

§ 4.74.7 Other TTB labeling regulations that apply to wine.

In addition to the regulations in this part, wine must also comply with the TTB labeling regulations in paragraphs (a) and (b) of this section:

(a) *Health warning statement.* Alcoholic beverages, including wine, that contain at least one-half of one percent alcohol by volume, must be labeled with a health warning statement in accordance with the Alcoholic Beverage Labeling Act of 1988 (ABLA). The regulations implementing the ABLA are contained in 27 CFR part 16.

(b) *Internal Revenue Code requirements.* The labeling and marking requirements for wine under the Internal Revenue Code are found in 27 CFR part 24, subpart L (for domestic

wine premises) and 27 CFR part 27, subpart E (for imports).

§ 4.84.8 Wine for export.

Wine that is exported in bond without payment of tax directly from a bonded wine premises or from customs custody is not subject to this part. For purposes of this section, direct exportation in bond does not include exportation after wine has been removed for consumption or sale in the United States, with appropriate tax determination or payment.

§ 4.94.9 Compliance with Federal and State requirements.

(a) *General.* Compliance with the requirements of this part relating to the labeling and bottling of wine does not relieve industry members from responsibility for complying with other applicable Federal and State requirements, including but not limited to those highlighted in paragraphs (b) and (c) of this section.

(b) *Ingredient safety.* While it remains the responsibility of the industry member to ensure that any ingredient used in production of wine complies fully with all applicable U.S. Food and Drug Administration (FDA) regulations pertaining to the safety of food ingredients and additives, the appropriate TTB officer may at any time request documentation to establish such compliance. As set forth in § 4.3(d), wines that are adulterated under the Federal Food, Drug, and Cosmetic Act are not labeled in accordance with this part.

(c) *Containers.* While it remains the responsibility of the industry member to ensure that containers are made of suitable materials that comply with all applicable FDA health and safety regulations for the packaging of beverages for consumption, the appropriate TTB officer may at any time request documentation to establish such compliance.

§ 4.10 Other related regulations.

(a) *TTB regulations.* Other TTB regulations that relate to wine are listed in paragraphs (a)(1) through (11) of this section:

(1) 27 CFR Part 1—Basic Permit Requirements Under the Federal Alcohol Administration Act, Nonindustrial Use of Distilled Spirits and Wine, Bulk Sales and Bottling of Distilled Spirits;

(2) 27 CFR Part 9—American Viticultural Areas;

(3) 27 CFR Part 12—Foreign Nongeneric Names of Geographic Significance Used in the Designation of Wines;

(4) 27 CFR Part 13—Labeling Proceedings;

(5) 27 CFR Part 14—Advertising of Alcohol Beverage Products;

(6) 27 CFR Part 16—Alcoholic Beverage Health Warning Statement;

(7) 27 CFR Part 24—Wine;

(8) 27 CFR Part 26—Liquors and Articles From Puerto Rico and the Virgin Islands;

(9) 27 CFR Part 27—Importation of Distilled Spirits, Wines, and Beer;

(10) 27 CFR Part 28—Exportation of Alcohol; and

(11) 27 CFR Part 71—Rules of Practice in Permit Proceedings.

(b) *Other Federal regulations.* The regulations listed in paragraphs (b)(1) through (9) of this section issued by other Federal agencies also may apply:

(1) 7 CFR Part 205—National Organic Program;

(2) 19 CFR Part 11—Packing and Stamping; Marking;

(3) 19 CFR Part 102—Rules of Origin;

(4) 19 CFR Part 134—Country of Origin Marking;

(5) 21 CFR Part 1—General Enforcement Provisions, Subpart H, Registration of Food Facilities, and Subpart I, Prior Notice of Imported Food;

(6) 21 CFR Parts 70–82, which pertain to food and color additives;

(7) 21 CFR Part 101—Food Labeling;

(8) 21 CFR Part 110—Current Good Manufacturing Practice in Manufacturing Packing, or Holding Human Food; and

(9) 21 CFR Parts 170–189, which pertain to food additives and secondary direct food additives.

§ 4.11 Forms.

(a) *General.* TTB prescribes and makes available all forms required by this part. Any person completing a form must provide all of the information required by each form as indicated by the headings on the form and the instructions for the form. Each form must be filed in accordance with this part and the instructions for the form.

(b) *Electronically filing forms.* The forms required by this part can be filed electronically by using TTB's online filing systems: COLAs Online and Formulas Online. Anyone who intends to use one of these online filing systems must first register to use the system by accessing the TTB website at *https://www.ttb.gov.*

(c) *Obtaining paper forms.* Forms required by this part are available for printing through the TTB website (*https://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 8002, Cincinnati, OH 45202.

§ 4.12 Delegations of the Administrator.

Most of the regulatory authorities of the Administrator contained in this part are delegated to ''appropriate TTB officers.'' To find out which officers have been delegated specific authorities, see the current version of TTB Order 1135.4, Delegation of the Administrator's Authorities in 27 CFR part 4, Labeling of Wine. Copies of this order can be obtained by accessing the TTB website (*https://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 8002, Cincinnati, OH 45202.

Subpart B—Certificates of Label Approval and Certificates of Exemption From Label Approval

Requirements for Wine Bottled in the United States

§ 4.21 Requirement for certificates of label approval (COLAs) for wine bottled in the United States.

(a) This section applies to wine bottled in the United States, outside of customs custody.

(b) No person may bottle wine without first applying for and obtaining a certificate of label approval issued by the appropriate TTB officer. This requirement applies to wine produced and bottled in the United States and to wine imported in bulk and bottled in the United States. Bottlers may obtain an exemption from this requirement only if they satisfy the conditions set forth in § 4.23.

§ 4.22 Rules regarding certificates of label approval (COLAs) for wine bottled in the United States.

(a) *What a COLA authorizes.* An approved TTB Form 5100.31 authorizes the bottling of a wine covered by the COLA as long as the container bears labels identical to the labels appearing on the face of the COLA, or labels with changes authorized by TTB on the COLA or otherwise. The list of allowable changes can be found at *https://www.ttb.gov.*

(b) *What a COLA does not do.* Among other things, the issuance of a COLA does not:

(1) Confer trademark protection;

(2) Relieve the certificate holder from its responsibility to ensure that all ingredients used in the production of the wine comply with applicable requirements of the U.S. Food and Drug Administration with regard to ingredient safety; or

(3) Relieve the certificate holder from liability for violations of the FAA Act, the Alcoholic Beverage Labeling Act,

the Internal Revenue Code, or related regulations and rulings.

(i) The issuance of a COLA does not mean that TTB has verified the accuracy of any representations or claims made on the label with respect to the product in the container. It is the responsibility of the applicant to ensure that all information on the application is true and correct, and that all labeling representations and claims are truthful, accurate, and not misleading with respect to the product in the container.

(ii) A wine may be mislabeled even when the label is covered by a COLA. For example, if the label on the container contains representations that are false or misleading when applied to the product in the container, the wine is not labeled in accordance with the regulations in this part, even if it is covered by a COLA.

(c) *When to obtain a COLA.* The COLA must be obtained prior to bottling. No producer or blender of wine, proprietor of bonded wine premises or proprietor of a taxpaid wine bottling house may bottle wine, or remove wine from the premises where bottled, unless a COLA has been obtained.

(d) *Application for a COLA.* The bottler may apply for a COLA by submitting an application to TTB on Form 5100.31, in accordance with the instructions on the form. The bottler may apply for a COLA either electronically by accessing TTB's online system, COLAs Online, at TTB's website (*https://www.ttb.gov*) or by submitting the paper form. For procedures regarding the issuance of COLAs, see part 13 of this chapter.

§ 4.23 Application for exemption from label approval for wines bottled in the United States.

(a) *Exemption.* A producer or blender of wine, proprietor of bonded wine premises, or proprietor of a taxpaid wine bottling house may apply for exemption from the labeling requirements of this part, if the bottler shows, to the satisfaction of the appropriate TTB officer, that the wine to be bottled will be offered for sale only within the State in which it is bottled and will not be sold, offered for sale, or shipped or delivered for shipment, or otherwise introduced, in interstate or foreign commerce.

(b) *Application required.* The bottler must file an application on TTB Form 5100.31 for exemption from label approval before bottling the wine. The bottler may apply for a certificate of exemption from label approval either electronically, by accessing TTB's online system, COLAs Online, at *https://www.ttb.gov,* or by using the paper form. For procedures regarding the issuance of certificates of exemption from label approval, see part 13 of this chapter.

(c) *Labeling of wines covered by certificate of exemption.* The application for a certificate of exemption from label approval requires that the applicant identify the State in which the product will be sold. As a condition of receiving exemption from label approval, the label covered by an approved certificate of exemption must include the statement ''For sale in [name of State] only.'' See § 24.257 of this chapter for additional labeling rules that apply to wines covered by a certificate of exemption.

Requirements for Wine Imported in Containers

§ 4.24 Certificates of label approval (COLAs) for wine imported in containers.

(a) *Application requirement.* Any person removing wine in containers from customs custody for consumption must first apply for and obtain a COLA covering the wine from the appropriate TTB officer.

(b) *Release of wine from customs custody.* Wine imported in containers is not eligible for release from customs custody for consumption, and no person may remove such wine from customs custody for consumption, unless the person removing the wine has obtained and is in possession of a COLA covering the wine.

(c) *Filling requirements.* If filing electronically, the importer must file with U.S. Customs and Border Protection (CBP), at the time of filing the customs entry, the TTB-assigned identification number of the valid COLA that corresponds to the label on the brand or lot of wine to be imported. If the importer is not filing electronically, the importer must provide a copy of the COLA to CBP at the time of entry. In addition, the importer must provide a copy of the applicable COLA, and proof of the certificate holder's authorization if applicable, upon request by the appropriate TTB officer or a customs officer.

(d) *Scope of this section.* The COLA requirement imposed by this section applies only to wine that is removed for sale or any other commercial purpose. Wine that is imported in containers is not eligible for a certificate of exemption from label approval. See 27 CFR 27.49, 27.74, and 27.75 for labeling exemptions applicable to certain imported samples of wine.

(e) *Relabeling in customs custody.* Containers of wine in customs custody that are required to be covered by a COLA but are not labeled in conformity with a COLA must be relabeled, under the supervision and direction of customs officers, prior to their removal from customs custody for consumption.

§ 4.25 Rules regarding certificates of label approval (COLAs) for wine imported in containers.

(a) *What a COLA authorizes.* An approved TTB Form 5100.31 authorizes the use of the labels covered by the COLA on containers of wine, as long as the container bears labels identical to the labels appearing on the face of the COLA, or labels with changes authorized by the form or otherwise authorized by TTB.

(b) *What a COLA does not do.* Among other things, the issuance of a COLA does not:

(1) Confer trademark protection;

(2) Relieve the certificate holder from its responsibility to ensure that all ingredients used in the production of the wine comply with applicable requirements of the U.S. Food and Drug Administration with regard to ingredient safety; or

(3) Relieve the certificate holder from liability for violations of the FAA Act, the Alcoholic Beverage Labeling Act, the Internal Revenue Code, or related regulations and rulings.

(i) The issuance of a COLA does not mean that TTB has verified the accuracy of any representations or claims made on the label with respect to the product in the container. It is the responsibility of the applicant to ensure that all information on the application is true and correct and that all labeling representations and claims are truthful, accurate, and not misleading with respect to the product in the container.

(ii) A wine may be mislabeled even when the label is covered by a COLA. For example, if the label on the container contains representations that are false or misleading when applied to the product in the container, the wine is not labeled in accordance with the regulations in this part, even if it is covered by a COLA.

(c) *When to obtain a COLA.* The COLA must be obtained prior to the removal of wine in containers from customs custody for consumption.

(d) *Application for a COLA.* The person responsible for the importation of wine must obtain approval of the labels by submitting an application to TTB on Form 5100.31. A person may apply for a COLA either electronically by accessing TTB's online system, COLAs Online, at TTB's website (*https://www.ttb.gov*) or by submitting the paper form. For procedures

regarding the issuance of COLAs, see part 13 of this chapter.

Administrative Rules

§ 4.27 Presenting Certificates of Label Approval (COLAs) to Government officials.

A certificate holder must present the original or a paper or electronic copy of the appropriate COLA upon the request of any duly authorized representative of the United States Government.

§ 4.28 Formulas, samples, and documentation.

(a) Prior to or in conjunction with the review of an application for a COLA on TTB Form 5100.31, the appropriate TTB officer may require a bottler or importer to submit a formula, the results of laboratory testing of the wine, or a sample of any wine or ingredients used in producing a wine. The appropriate TTB officer also may request such information or samples after the issuance of such COLA, or in connection with any wine that is required to be covered by a COLA. A formula may be filed electronically by using Formulas Online, or it may be submitted on paper on Form 5100.51. See § 4.11 for more information on forms and Formulas Online.

(b) Upon request of the appropriate TTB officer, a bottler or importer must submit a full and accurate statement of the contents of any container to which labels are to be or have been affixed, as well as any other documentation on any issue pertaining to whether the wine is labeled in accordance with this part.

§ 4.29 Personalized labels.

(a) *General.* Applicants for label approval may obtain permission from TTB to make certain changes in order to personalize labels without having to resubmit labels for TTB approval. Personalized labels may contain a personal message, picture, or other artwork that is specific to the consumer who is purchasing the product. For example, a winery may offer individual or corporate customers labels that commemorate an event such as a wedding or grand opening.

(b) *Application.* Any person who intends to offer personalized labels must submit a template for the personalized label with the application for label approval, and must note on the application a description of the specific personalized information that may change.

(c) *Approval of personalized label.* If the application complies with the regulations, TTB will issue a certificate of label approval (COLA) with a qualification allowing the personalization of labels. The qualification will allow the certificate holder to add or change items on the personalized label such as salutations, names, graphics, artwork, congratulatory dates and names, or event dates without applying for a new COLA. All of these items on personalized labels must comply with the regulations of this part.

(d) *Changes not allowed to personalized labels.* Approval of an application to personalize labels does not authorize the addition of any information that discusses either the alcohol beverage or characteristics of the alcohol beverage or that is inconsistent with or in violation of the provisions of this part or any other applicable provision of law or regulations.

§ 4.30 Certificates of origin, identity, and proper cellar treatment of wine.

(a) *Certificate of origin and identity.* Wine imported in containers is not eligible for release from customs custody for consumption, and no person may remove such wine from customs custody for consumption, unless that person has obtained and is in possession of an invoice accompanied by a certificate of origin issued by an official duly authorized by the appropriate foreign government, if that country requires the issuance of such a certificate for wine exported from that country. The certificate must certify as to the identity of the wine and that the wine has been produced in compliance with the laws of the foreign country regulating the production of the wine for home consumption.

(b) *Certification of proper cellar treatment of natural wine*—(1) *General.* An importer of wine may be required to have in its possession at the time of release of the wine from customs custody a certification, or may have to comply with other conditions prescribed in § 27.140 of this chapter, regarding proper cellar treatment. If certification is required for imported wine under § 27.140 of this chapter, the importer must provide a copy of that certification to TTB as follows:

(i) The importer must include a copy of the certification with the application for a certificate of label approval (COLA) for the wine that is submitted under § 13.21 of this chapter; or

(ii) If a certification for the wine in question was not available when the importer submitted the application for label approval, the importer must submit a copy of the certification to the appropriate TTB officer before the first shipment of the wine is released from customs custody.

(2) *Validity of certification.* A certification submitted under paragraph (b)(1) of this section is valid for multiple shipments of imported wine as long as the wine is of the same brand and class or type; was made by the same producer; was subjected to the same cellar treatment; and conforms to the statements made on the certification. Accordingly, if the cellar treatment applied to the wine changes and a new certification under § 27.140 of this chapter is required, the importer must submit a new certification to TTB even if a new COLA is not required.

(3) *Use of certification.* TTB may use the information from a certification for purposes of verifying the appropriate class and type designation of the wine under the labeling provisions of this part. TTB will make certifications submitted under paragraph (b)(1) of this section available to the public on the TTB website at *https://www.ttb.gov.*

(c) *Retention of certificates—wine imported in containers.* The importer of wine imported in containers must retain for five years following the date of the removal of the bottled wine from customs custody copies of the certificates (and accompanying invoices, if required) required by paragraphs (a) and (b) of this section, and must provide them upon request of the appropriate TTB officer or a customs officer.

(d) *Wine imported in bulk for bottling in the United States.* Wine that would be required under paragraphs (a) and (b) of this section to be covered by a certificate of origin and identity and/or a certification of proper cellar treatment and that is imported in bulk for bottling in the United States may be removed from the premises where bottled only if the bottler possesses a certificate of origin and identity and/or a certification of proper cellar treatment of natural wine applicable to the wine, issued by the appropriate entity as set forth in paragraphs (a) and (b) of this section and § 27.140 of this chapter respectively, applicable to the wine that provides the same information as a certificate required under paragraphs (a) and (b) of this section and § 27.140 of this chapter, would provide for like wine imported in bottles.

(e) *Retention of wine certificates—wine in bulk.* The bottler of wine imported in bulk must retain, for five years following the removal of such wine from the premises where bottled, copies of the certificates required by paragraphs (a) and (b) of this section, and must provide them upon request of the appropriate TTB officer.

Subpart C—Alteration of Labels, Relabeling, and Adding Information to Containers

§ 4.41 Alteration of labels.

(a) *Prohibition.* It is unlawful for any person to alter, mutilate, destroy, obliterate or remove any mark, brand, or label on wine in containers held for sale in interstate or foreign commerce, or held for sale after shipment in interstate or foreign commerce, except as authorized by § 4.42, § 4.43, or § 4.44, or as otherwise authorized by Federal law.

(b) *Authorized relabeling.* For purposes of the relabeling activities authorized by this subpart, the term ''relabel'' includes the alteration, mutilation, destruction, obliteration, or removal of any existing mark, brand, or label on the container, as well as the addition of a new label (such as a sticker that adds information about the product or information engraved on the container) to the container, and the replacement of a label with a new label bearing identical information.

(c) *Obligation to comply with other requirements.* Authorization to relabel under this subpart in no way authorizes the placement of labels on containers that do not accurately reflect the brand, bottler, identity, or other characteristics of the product; nor does it relieve the person conducting the relabeling operations from any obligation to comply the regulations in this part and with State or local law, or to obtain permission from the owner of the brand where otherwise required.

§ 4.42 Authorized relabeling activities by proprietors of bonded wine premises and importers.

(a) *Relabeling at bonded wine premises.* Proprietors of bonded wine premises may relabel domestically bottled wine prior to removal from, and after return to bond at, the bonded wine premises, with labels covered by a certificate of label approval (COLA) without obtaining separate permission from TTB for the relabeling activity.

(b) *Relabeling after removal from bonded wine premises.* Proprietors of bonded wine premises may relabel domestically bottled wine after removal from bonded wine premises with labels covered by a COLA, without obtaining separate permission from TTB for the relabeling activity.

(c) *Relabeling in customs custody.* Under the supervision of customs officers, imported wine in containers in customs custody may be relabeled without obtaining separate permission from TTB for the relabeling activity. Such containers must bear labels covered by a COLA upon their removal from customs custody for consumption. See § 4.24(b).

(d) *Relabeling after removal from customs custody.* Imported wine in containers may be relabeled by the importer thereof after removal from customs custody without obtaining separate permission from TTB for the relabeling activity, as long as the labels are covered by a COLA.

§ 4.43 Relabeling activities that require separate written authorization from TTB.

Any persons holding wine for sale who need to relabel the containers but are not eligible to obtain a certificate of label approval to cover the labels that they wish to affix to the containers may apply for written permission for the relabeling of wine containers. The appropriate TTB officer may permit relabeling of wine in containers if the facts show that the relabeling is for the purpose of compliance with the requirements of this part or State law. The written application must include copies of the original and proposed new labels; the circumstances of the request, including the reason for relabeling; the number of containers to be relabeled; the location where the relabeling will take place; and the name and address of the person who will be conducting the relabeling operations.

§ 4.44 Adding a label or other information to a container that identifies the wholesaler, retailer, or consumer.

Any label or other information that identifies the wholesaler, retailer, or consumer of the wine may be added to containers (by the addition of stickers, engraving, stenciling, etc.) without prior approval from TTB and without being covered by a certificate of label approval or certificate of exemption from label approval. Such information may be added before or after the containers have been removed from bonded wine premises or released from customs custody. The information added:

(a) May not violate the provisions of subpart F, G, or H of this part;

(b) May not contain any reference to the characteristics of the product; and

(c) May not be added to the container in such a way that it obscures any other labels on the container.

Subpart D—Label Standards

§ 4.51 Firmly affixed requirements.

Any label that is not an integral part of the container must be affixed to the container in such a way that it cannot be removed without thorough application of water or other solvents.

§ 4.52 Legibility and other requirements for mandatory information on labels.

(a) *Readily legible.* Mandatory information on labels must be readily legible to potential consumers under ordinary conditions.

(b) *Separate and apart.* Mandatory information on labels, except brand names, must be separate and apart from any additional information. This does not preclude the addition of brief optional phrases of additional information as part of the class or type designation (such as, ''premium wine''), the name and address statement (such as, ''Proudly produced and bottled by ABC Winemaking Co. in Napa, CA, for over 30 years'') or other information required by § 4.63(a) and (b), as long as the additional information does not detract from the prominence of the mandatory information. The statements required by § 4.63(c) may not include additional information.

(c) *Contrasting background.* Mandatory information must appear in a color that contrasts with the background on which it appears, except that if the net contents are blown into a glass container, they need not be contrasting. The color of the container and of the wine must be taken into account if the label is transparent or if mandatory label information is etched, engraved, sandblasted, or otherwise carved into the surface of the container or is branded, stenciled, painted, printed, or otherwise directly applied on to the surface of the container. Examples of acceptable contrasts are:

(1) Black lettering appearing on a white or cream background; or

(2) White or cream lettering appearing on a black background.

(d) *Capitalization.* Except for the aspartame statement when required by § 4.63(b)(4), which must appear in all capital letters, mandatory information prescribed by this part may appear in all capital letters, in all lower-case letters, or in mixed-case using both capital and lower-case letters.

§ 4.53 Type size of mandatory information.

All capital and lowercase letters in statements of mandatory information on labels must meet the following type size requirements:

(a) *Minimum type size*—(1) *Containers of more than 187 milliliters.* All mandatory information (including the alcohol content statement) must be in script, type, or printing that is at least two millimeters in height.

(2) *Containers of 187 milliliters or less.* All mandatory information (including the alcohol content statement) must be in script, type, or

printing that is at least one millimeter in height.

(b) *Maximum type size for alcohol content statement.* The alcohol content statement on containers of five liters or less may not appear in script, type, or printing that is more than three millimeters in height.

§ 4.54 Visibility of mandatory information.

Mandatory information on a label must be readily visible and may not be covered or obscured in whole or in part. See § 4.62 for rules regarding packaging of containers (including cartons, coverings, and cases). See part 14 of this chapter for regulations pertaining to advertising materials.

§ 4.55 Language requirements.

(a) *General.* Mandatory information must appear in the English language, with the exception of the brand name and except as provided in paragraphs (c) and (d) of this section.

(b) *Foreign languages.* Additional statements in a foreign language, including translations of mandatory information that appears elsewhere in English on the label, are allowed on labels and containers as long as they do not in any way conflict with, or contradict, the requirements of this part.

(c) *Wine for consumption in the Commonwealth of Puerto Rico.* Mandatory information may be stated solely in the Spanish language on labels of wine bottled for consumption within the Commonwealth of Puerto Rico.

(d) *Exception for country of origin.* The country or countries of origin may appear in a language other than English when allowed by U.S. Customs and Border Protection regulations.

§ 4.56 Additional information.

Information (other than mandatory information) that is truthful, accurate, and specific, and that does not violate subpart F, G, or H of this part, may appear on labels. Such additional information may not conflict with, modify, qualify or restrict mandatory information in any manner.

Subpart E—Mandatory Label Information

§ 4.61 What constitutes a label for purposes of mandatory information.

(a) *Label.* Certain information as outlined in § 4.63, must appear on a label. When used in this part for purposes of determining where mandatory information must appear, the term ''label'' includes:

(1) Material affixed to the container, whether made of paper, plastic film, or other matter;

(2) For purposes of the net contents statement and the name and address statement only, information blown, embossed, or molded into the container as part of the process of manufacturing the container;

(3) Information etched, engraved, sandblasted, or otherwise carved into the surface of the container; and

(4) Information branded, stenciled, painted, printed, or otherwise directly applied onto the surface of the container.

(b) I*nformation appearing elsewhere on the container.* Information appearing on the following parts of the container is subject to all of the restrictions and prohibitions set forth in subparts F, G, and H of this part, but will not satisfy any requirements for mandatory information that must appear on labels in this part:

(1) Material affixed to, or information appearing on, the bottom surface of the container;

(2) Caps, corks, or other closures unless authorized to bear mandatory information by the appropriate TTB officer; and

(3) Foil or heat shrink bottle capsules.

(c) *Materials not firmly affixed to the container.* Any materials that accompany the container to the consumer but are not firmly affixed to the container, including booklets, leaflets, and hang tags, are not ''labels'' for purposes of this part. Such materials are instead subject to the advertising regulations in part 14 of this chapter.

§ 4.62 Packaging (cartons, coverings, and cases).

(a) *General.* The term ''packaging'' includes any covering, carton, case, carrier, or other packaging of wine containers used for sale at retail, but does not include shipping cartons or cases that are not intended to accompany the container to the consumer.

(b) *Prohibition.* Any packaging of wine containers may not contain any statement, design, device, or graphic, pictorial, or emblematic representation that violates the provisions of subpart F, G, or H of this part.

(c) *Requirements for closed packaging.* If containers are enclosed in closed packaging, including sealed opaque coverings, cartons, cases, carriers, or other packaging used for sale at retail, such packaging must bear all mandatory label information required on the label under § 4.63.

(1) Packaging is considered closed if the consumer must open, rip, untie, unzip, or otherwise manipulate the package to remove the container in order to view any of the mandatory information.

(2) Packaging is not considered closed if a consumer could view all of the mandatory information on the container by merely lifting the container up, or if the packaging is transparent or designed in a way that all of the mandatory information can be easily read by the consumer without having to open, rip, untie, unzip, or otherwise manipulate the package.

(d) *Packaging that is not closed.* The following requirements apply to packaging that is not closed.

(1) The packaging may display any information that is not in conflict with the label on the container that is inside the packaging.

(2) If the packaging displays a brand name, it must display the brand name in its entirety. For example, if a brand name is required to be modified with additional information on the container, the packaging must also display the same modifying language.

(3) If the packaging displays a class or type designation, it must be identical to the class or type designation appearing on the container. For example, if the packaging displays a class or type designation for a specialty product for which a statement of composition is required on the container, the packaging must include the statement of composition as well.

(e) *Labeling of containers within the packaging.* The container within the packaging is subject to all labeling requirements of this part, including mandatory labeling information requirements, regardless of whether the packaging bears such information.

§ 4.63 Mandatory label information.

(a) *Mandatory information.* Wine containers must bear a label or labels (as defined in § 4.61(a)) containing the following information:

(1) Brand name in accordance with § 4.64;

(2) Class, type, or other designation, in accordance with subpart I of this part;

(3) Alcohol content, in accordance with § 4.65;

(4) A statement of the origin and percentage by volume of imported wine on blends of American and imported wine, if any reference is made to the presence of imported wine on the container;

(5) Name and address of the bottler or importer, in accordance with § 4.66, § 4.67, or § 4.68 as applicable; and

(6) Net contents (which may be blown, embossed, or molded into the container as part of the process of manufacturing the container) in accordance with § 4.70.

(b) *Appellations of origin.* An appellation of origin in accordance with §§ 4.88 through 4.91 of this part must be stated on the label of each container in the same field of vision as the class, type, or other designation prescribed by paragraph (a)(2) of this section if:

(1) A grape wine is labeled with a class, type or other designation pursuant to § 4.62(a)(2) that is:

(i) A varietal (grape type), as provided for in § 4.156;

(ii) A type designation of varietal significance, as provided in § 4.157;

(iii) A semi-generic type designation, as provided in § 4.184; or

(2) The wine is labeled with a vintage date, pursuant to § 4.95.

(c) *Disclosure of certain ingredients.* Certain ingredients must be declared on a label, without the inclusion of any additional information as part of the statement, as follows:

(1) *FD&C Yellow No. 5.* If a wine contains the coloring material FD&C Yellow No. 5, the label must include a statement to that effect, such as ''''FD&C Yellow No. 5'' or ''Contains FD&C Yellow No. 5.''

(2) *Cochineal extract or carmine.* If a wine contains the color additive cochineal extract or the color additive carmine, the label must include a statement to that effect, using the respective common or usual name (such as, ''contains cochineal extract'' or ''contains carmine''). This requirement applies to labels when either of the coloring materials is used in wine that is removed from bottling premises or from customs custody on or after April 16, 2013.

(3) *Sulfites.* If a wine contains 10 or more parts per million of sulfur dioxide or other sulfiting agent measured as total sulfur dioxide, the label must include a statement to that effect. Examples of acceptable statements are ''Contains sulfites'' or ''Contains (a) sulfiting agent(s)'' or a statement identifying the specific sulfiting agent. The alternative terms ''sulphites'' or ''sulphiting'' may be used.

(4) *Aspartame.* If the wine contains aspartame, the label must include the following statement, in capital letters, separate and apart from all other information: ''PHENYLKETONURICS: CONTAINS PHENYLALANINE.''

§ 4.64 Brand name.

(a) *Requirement.* The wine label must include a brand name. If the wine is not sold under a brand name, the name of the bottler or importer, as applicable, appearing in the name and address statement is treated as the brand name.

(b) *Misleading brand names.* Labels may not include any misleading brand names. A brand name is misleading if it creates (by itself or in association with other printed or graphic matter) any erroneous impression or inference as to the age, origin, identity, or other characteristics of the wine. A brand name may be found to be misleading by itself or in association with other printed or graphic matter. With the exception of geographic brand names discussed in paragraph (c) of this section, a brand name that would otherwise be misleading may be qualified with the word ''brand'' or with some other qualification that adequately dispels any misleading impression that might otherwise be created.

(c) *Geographic brand names.* (1) Except as otherwise provided in paragraph (c)(2) of this section, a wine container may not bear a brand name of viticultural significance unless the wine meets the appellation of origin requirements for the geographic area named. (See §§ 4.88–4.91 and §§ 4.96–4.98 for the appellation of origin requirements.)

(2) For brand names of viticultural significance used in COLAs issued prior to July 7, 1986, such a brand name may appear on a wine container if:

(i) The wine meets the appellation of origin requirements for the geographic area named;

(ii) The wine is labeled with an appellation of origin, in accordance with §§ 4.88–4.91 and §§ 4.96–4.98, that is:

(A) A county or a viticultural area, if the brand name bears the name of a geographic area smaller than a State; or

(B) A State, county, or a viticultural area, if the brand name bears a State name; or

(iii) The wine is labeled with some other statement that the appropriate TTB officer finds to be sufficient to dispel the impression that the geographic area suggested by the brand name is indicative of the origin of the wine.

(3) A name has viticultural significance when it is the name of a State or county (or of the foreign equivalent of a State or county), when it is approved as the name of a viticultural area under part 9 of this chapter, when it is approved by a foreign government, or when it is found to have viticultural significance by the appropriate TTB officer. Unless determined otherwise by the appropriate TTB officer, a name that is a county name will be considered to have viticultural significance only when the word ''county'' follows the name. For example, while ''Clark County'' has viticultural significance, the word ''Clark'' does not.

§ 4.65 Alcohol content.

(a) *General.* In the case of wine containing 14 percent or less of alcohol by volume, the percentage of alcohol by volume must be stated unless the type designation ''table'' wine (or ''light'' wine) appears on the label. In the case of wines containing more than 14 percent of alcohol by volume, the percentage of alcohol by volume must be stated. Mandatory and optional statements of alcohol content as a percentage of alcohol by volume must be made as prescribed in paragraph (b) or (c) of this section. Other truthful, accurate, and specific factual representations of alcohol content, such as alcohol by weight, may be made, as long as they appear together with, and as part of, the statement of alcohol content as a percentage of alcohol by volume.

(b) *Format of the alcohol content statement*—(1) *General.* Except as provided in paragraph (c) of this section, the alcohol by volume statement must be expressed in one of the following formats:

(i) ''Alcohol ____ percent by volume'';

(ii) ''____ percent alcohol by volume''; or

(iii) ''Alcohol by volume: ____ percent''.

(2) *Formatting rules.* Any of the words or symbols may be enclosed in parentheses and authorized abbreviations may be used with or without a period. The alcohol content statement does not have to appear with quotation marks.

(3) *Optional abbreviations.* The statements listed in paragraph (b) of this section must appear as shown, except that the following abbreviations may be used: Alcohol may be abbreviated as ''alc''; percent may be represented by the percent symbol ''%''; alcohol and volume may be separated by a slash ''/'' in lieu of the word ''by''; and volume may be abbreviated as ''vol.''

(4) *Examples.* The following are examples of alcohol content statements that comply with the requirements of this part:

(i) ''13.2% alc/vol'';

(ii) ''Alc. 13.0 percent by vol.'';

(iii) ''Alc 13% by vol''; and

(iv) ''15.0% Alcohol by Volume.''

(c) *Use of a range as the alcohol content statement*—(1) *General.* The alcohol content statement may be expressed as a range in accordance with the provisions of paragraph (c)(2) of this section. For wine containing 14 percent alcohol by volume or less, the alcohol content may be stated as a range of three percentage points. For wine containing more than 14 percent alcohol by volume

the alcohol content may be stated as a range of two percentage points.

(2) *Format of the alcohol content statement using a range.* If the alcohol content statement is expressed as a range, it must be made in one of the following formats:

(i) Alcohol ____ percent to ____ percent by volume,

(ii) ____ to ____ percent alcohol by volume, or

(iii) Alcohol by volume: ____ to ____ percent.

(3) *Optional marks.* Any of the words or symbols may be enclosed in parentheses, and authorized abbreviations may be used with or without a period.

(4) *Optional abbreviations.* Alcohol may be abbreviated as ''alc''; percent may be represented by the percent symbol ''%''; alcohol and volume may be separated by a slash ''/'' in lieu of the word ''by''; the two alcohol content numbers may be separated by a dash ''–'' instead of the word ''to''; and volume may be abbreviated by ''vol''.

(5) *Examples.* The following are examples of alcohol content statements that comply with the requirements of this part: ''10 to 12 percent alcohol by volume,'' ''10–12% (alc) by volume,'' and ''10 to 12 percent alc./vol.''

(d) *Tolerances for wine containing no more than 14 percent alcohol by volume.* For specific statements of alcohol content for wines containing no more than 14 percent alcohol by volume, except as provided for in paragraph (f) of this section, the alcohol by volume statement on the label must be within 1.5 percentage points above or below the actual alcohol content. For example, an alcohol beverage with an actual alcohol content of 10 percent alcohol by volume would comply with this tolerance if it were labeled with an alcohol content statement between 8.5 and 11.5 percent alcohol by volume.

(e) *Alcohol content statement tolerances for wine containing more than 14 percent alcohol by volume.* For specific numeric statements of alcohol content for wines containing more than 14 percent alcohol by volume, except as provided for in paragraph (f) of this section, the alcohol by volume statement on the label must be within one percentage point above or below the actual alcohol content. For example, an alcohol beverage with an actual alcohol content of 16 percent alcohol by volume would comply with this tolerance if it were labeled with an alcohol content statement between 15 and 17 percent alcohol by volume.

(f) *Tolerances must not cut across tax classes*—(1) *General.* Regardless of the type of statement used and regardless of tolerances normally permitted in direct statements, and ranges normally permitted in maximum and minimum statements, alcohol content statements must correctly indicate the tax class of the wine so labeled. Nothing in this section shall be construed as authorizing the appearance upon the labels of any wine of an alcohol content statement in terms of maximum and minimum percentages that overlaps a prescribed limitation on the alcohol content of any tax class.

(2) *Tax classes and certain class and type designations.* The tolerances set forth in this section shall not apply where a minimum or maximum alcohol content requirement is set forth in either a tax classification of the product (found in 26 U.S.C. 5041) or a class or type designation in this part that reflects a minimum or maximum alcohol content requirement consistent with limits set forth in a tax class. For example, the class designation for ''table wine'' in this part includes a maximum alcohol content of 14 percent alcohol by volume, which is consistent with the maximum alcohol content for a class of still wines under 26 U.S.C. 5041(b)(1). Thus, a still grape wine that contains 14.2 percent alcohol by volume may not be labeled as either a ''table wine'' or with an alcohol content of 14 percent or less, regardless of the tolerance prescribed in this section.

§ 4.66 Name and address for domestically bottled wine that was wholly fermented in the United States.

(a) *General.* Domestically bottled wine that was wholly fermented in the United States and contains no imported wine must be labeled in accordance with this section. (See §§ 4.67 and 4.68 for name and address requirements applicable to wine that is not wholly fermented in the United States.)

(b) *Mandatory statement.* The label on containers must state the name of the bottler and the city and State where bottled, preceded by the phrases ''bottled by,'' ''canned by,'' ''packed by,'' or ''filled by,'' followed by the name of the bottler and the place where bottled.

(c) *Optional statements.* In addition to the statement required by paragraph (b) of this section, the label may also:

(1) State the name and address of any other person for whom the wine was bottled, immediately preceded by the words ''bottled for'' ''canned for,'' ''packed for,'' or ''filled for'' or ''distributed by'';

(2) Contain additional words, as specified and defined in paragraphs (d) through (f) of this section. The use of two or more of these words with the conjunction ''and'' and the use of any of these words with the words ''bottled by'' ''canned by,'' ''packed by,'' or ''filled by'' is permissible only if the same person performed the defined operation at the same address. More than one name statement must appear if the defined operation was performed by a person other than the bottler, and more than one address statement must appear if the defined operation was performed at a different address.

(d) *Produced* or *Made.* The terms ''Produced'' or ''Made'' mean that the named winery:

(1) Fermented not less than 75 percent of the wine at the stated address, or

(2) Changed the class or type of the wine by addition of wine spirits, brandy, flavors, colors, or artificial carbonation at the stated address, or

(3) Produced sparkling wine by secondary fermentation at the stated address,

(e) *Blended.* The term ''Blended'' means that the named winery mixed the wine with other wines of the same class and type at the stated address,

(f) *Cellared, Vinted,* and *Prepared.* The terms ''Cellared,'' ''Vinted'' and ''Prepared'' mean that the named winery, at the stated address, subjected the wine to cellar treatment in accordance with § 4.154(c) of this part.

(g) *Use of trade name.* (1) A trade name that appears on the basic permit or other qualifying documentation may be used only if the use of that name would not create a misleading impression as to the age, origin, or identity of the product. For example, when a bottler authorizes the use of its trade name by another bottler that is not under the same ownership, that trade name may not be used on a label in a way that tends to mislead consumers as to the identity or location of the bottler.

(2) If the same brand of wine is bottled by two bottlers that are not under the same ownership, and each has adopted the same trade name on its basic permit pursuant to a contractual arrangement, the name and address statement must be worded in such a way that the label does not create a misleading impression as to the identity or location of the bottling winery or taxpaid wine bottling house.

(h) *Form of address.* (1) The address consists of the city and State where the referenced activity occurred, and must be consistent with the address reflected on the basic permit or other qualifying documentation of the premises where the activity occurred. Addresses may, but are not required to, include additional information such as street names, counties, zip codes, phone numbers, and website addresses.

(2) The address for each activity that is designated on the label must also be shown. An example for a wine produced in the United States would be ''Produced at Gilroy, California, and bottled at San Mateo, California, by XYZ Winery.''

(3) No additional places or addresses may be stated for the same person unless:

(i) That person is actively engaged in the conduct of an additional bona fide and actual alcohol beverage business at such additional place or address, and

(ii) The label also contains immediately adjacent to the address appropriate descriptive material indicating the function occurring at each additional place or address in connection with the particular product.

(4) The postal abbreviation of the State name may be used; for example, California may be abbreviated as CA.

§ 4.67 Name and address for domestically bottled wine that was bottled after importation.

(a) *General.* This section applies to domestically bottled wine that was bottled after importation. See § 4.68 for name and address requirements applicable to imported wine that is imported in a container. See 19 CFR parts 102 and 134 for U.S. Customs and Border Protection country of origin marking requirements.

(b) *Domestically bottled wine that was produced, made, or blended in the United States.* Domestically bottled wine that was produced, made, or blended (in accordance with the definitions set forth in § 4.66) in the United States after the wine (or a wine in a blend of wines) was imported must be labeled in accordance with the rules set forth in § 4.66 regarding mandatory and optional labeling statements.

(c) *Wine bottled after importation without blending or production activities.* The label on wine that is bottled in the United States after importation without being produced, made or blended (in accordance with the definitions set forth in § 4.66) in the United States after the wine was imported must state must state the words ''imported by'' or a similar appropriate phrase, followed by the name and address of the importer. The label must also state the words ''bottled by'' or ''packed by,'' followed by the name and address of the bottler, except that the following phrases are acceptable in lieu of the name and address of the bottler under the circumstances set forth below:

(1) If the wine was bottled for the person responsible for the importation, the words ''imported by and bottled (canned, packed, or filled) in the United States for'' (or a similar appropriate phrase) followed by the name and address of the principal place of business in the United States of the person responsible for the importation; or

(2) If the wine was bottled by the person responsible for the importation, the words ''imported and bottled by'' followed by the name and address of the principal place of business in the United States of the person responsible for the importation.

(3) In the situations set forth in paragraphs (c)(1) and (2) of this section, the address shown on the label may be that of the principal place of business of the importer who is also the bottler, provided that the address shown is a location where bottling takes place.

(d) *Use of trade name.* (1) A trade name that appears on the basic permit or other qualifying documentation may be used only if the use of that name would not create a misleading impression as to the age, origin, or identity of the product. For example, when a bottler authorizes the use of its trade name by another bottler that is not under the same ownership, that trade name may not be used on a label in a way that tends to mislead consumers as to the identity or location of the bottler.

(2) If the same brand of wine is bottled by two bottlers that are not under the same ownership, and each has adopted the same trade name on its basic permit pursuant to a contractual arrangement, the name and address statement must be worded in such a way that the label does not create a misleading impression as to the identity or location of the bottling winery or taxpaid wine bottling house.

(e) *Form of address.* (1) The address consists of the city and State where the referenced activity occurred, and must be consistent with the address reflected on the basic permit or other qualifying documentation of the premises where the activity occurred. Addresses may, but are not required to, include additional information such as street names, counties, zip codes, phone numbers, and website addresses.

(2) The postal abbreviation of the State name may be used; for example, California may be abbreviated as CA.

§ 4.68 Name and address for wine that was imported in a container.

(a) *General.* This section applies to wine that is imported in a container, as defined in § 4.1 of this part. See § 4.67 for rules regarding name and address requirements applicable to wine that is domestically bottled after importation. See 19 CFR parts 102 and 134 for U.S. Customs and Border Protection country of origin marking requirements.

(b) *Mandatory labeling statement.* The labels on wines imported in containers, as defined in § 4.1, must state the words ''imported by'' or a similar appropriate phrase and, immediately thereafter, the name and address of the importer.

(1) For purposes of this section, the importer is the holder of the importer's basic permit that either makes the original Customs entry or is the person for which such entry is made, or the holder of the importer's basic permit that is the agent, distributor, or franchise holder for the particular brand of imported alcohol beverages and that places the order abroad.

(2) The address of the importer must be stated as the city and State of the principal place of business and must be consistent with the address reflected on the importer's basic permit. Addresses may, but are not required to, include additional information such as street names, counties, zip codes, phone numbers, and website addresses. The postal abbreviation of the State name may be used; for example, California may be abbreviated as CA.

(c) *Wine bottled in a foreign country other than the country of origin.* If the wine was blended, bottled or packed in a foreign country other than the country of origin, and the label identifies the country of origin, the label must state ''blended by,'' ''bottled by,'' or other appropriate statement, followed by the name of the blender or bottler and the place where the wine was blended, bottled or packed.

(d) *Optional statements.* In addition to the statements required by paragraph (a)(1) of this section, the label may also state the name and address of the principal place of business of the foreign producer. Other words, or their English-language equivalents, denoting winemaking operations may be used in accordance with the requirements of the country of origin, for wines sold within the country of origin for home consumption.

(e) *Form of address.* The ''place'' stated must be the city and State, shown on the basic permit or other qualifying document, of the premises at which the operations took place; and the place for each operation that is designated on the label must be shown.

(2) The postal abbreviation of the State name may be used; for example, California may be abbreviated as CA.

(f) *Trade or operating names.* A trade name may be used if the trade name is listed on the basic permit or other qualifying documentation and if its use on the label would not create any

misleading impression as to the age, origin, or identity of the product.

§ 4.69 Country of origin.

(a) Pursuant to U.S. Customs and Border Protection (CBP) regulations at 19 CFR parts 102 and 134, a country of origin statement must appear on the container of wine imported in containers or bottled in the United States after importation. Labeling statements with regard to the country of origin must be consistent with CBP regulations. The determination of the country (or countries) of origin, for imported wines, as well as for blends of imported wine with domestically fermented wine, must comply with CBP regulations.

(b) It is the responsibility of the importer or bottler, as appropriate, to ensure compliance with the country of origin marking requirement, both when wine is imported in containers and when imported wines are subject to bottling, blending, or production activities in the United States. Industry members may seek a ruling from CBP for a determination of the country of origin for their product.

§ 4.70 Net contents.

The requirements of this section apply to the net contents statement required by § 4.63.

(a) *Standard containers.* The net contents for wine for which a standard of fill is prescribed in § 4.203 must be stated in the same manner and form as specified in the standard of fill.

(b) *Aggregately packaged containers*—(1) *External containers.* The net contents of the external container for wine packaged in an aggregate package under the provisions of § 4.214 must be stated in accordance with that section.

(2) *Internal containers.* The net contents for the internal containers of an aggregate package must be stated in milliliters.

(c) *Wine not subject to standards of fill.* The net contents of wine that is not subject to standards of fill prescribed in § 4.203, under the rules set forth in § 4.201(b), must be stated as follows:

(1) If the container has a capacity of more than one liter, the net contents must be stated in liters and in decimal portions of a liter accurate to the nearest one-hundredth of a liter; and

(2) If the container has a capacity of less than one liter, the net contents shall be stated in milliliters.

(d) *Optional statement of U.S. equivalent net contents.* Net contents in U.S. equivalents may appear on a label along with the required metric net contents statement. If used, the U.S. equivalent volume must be shown as follows:

(1) For the metric standards of fill:
(i) 3 liters (101 fl. oz.);
(ii) 1.5 liters (50.7 fl. oz.);
(iii) 1 liter (33.8 fl. oz.);
(iv) 750 mL (25.4 fl. oz.);
(v) 500 mL (16.9 fl. oz.);
(vi) 375 mL (12.7 fl. oz.);
(vii) 187 mL (6.3 fl. oz.);
(viii) 100 mL (3.4 fl. oz.); and
(ix) 50 mL (1.7 fl. oz.).

(2) If the container is exempt from a standard of fill as described in paragraph (c) of this section:

(i) Equivalent volumes of less than 100 fluid ounces must be stated in fluid ounces, accurate to the nearest one-tenth of a fluid ounce, for example: 600 mL (20.3 fl. oz.); and

(ii) Equivalent volumes of 100 fluid ounces or more must be stated in fluid ounces only, accurate to the nearest whole fluid ounce, for example: 6 liters (203 fl. oz.).

(e) *Tolerances.* A statement of net contents must indicate the exact volume of wine in the container, except that the following tolerances shall be allowed:

(1) Discrepancies due exclusively to errors in measuring that occur in filling conducted in compliance with good commercial practice;

(2) Discrepancies due exclusively to differences in the capacity of containers, resulting solely from unavoidable difficulties in manufacturing the containers so as to be of uniform capacity, provided that the discrepancy does not result from a bottle design that prevents the manufacture of bottles of an approximately uniform capacity; and

(3) Discrepancies in measure due to differences in atmospheric conditions in various places, including discrepancies resulting from the ordinary and customary exposure of alcohol beverages in containers to evaporation, provided that the discrepancy is determined to be reasonable on a case-by-case basis.

Subpart F—Restricted Labeling Statements

§ 4.81 General.

(a) *Application.* The labeling practices, statements, and representations in this subpart may be used on wine labels only when used in compliance with this subpart. In addition, if any of the practices, statements, or representations in this subpart are used elsewhere on containers or in packaging, they must comply with the requirements of this subpart. For purposes of this subpart:

(1) The term ''label'' includes all labels on wine containers on which mandatory information may appear, as set forth in § 4.61(a), as well as any other label on the container.

(2) The term ''container'' includes all parts of the wine container, including any part of a wine container on which mandatory information may appear, as well as those parts of the container on which information does not satisfy mandatory labeling requirements, as set forth in § 4.61(b).

(3) The term ''packaging'' includes any carton, case, carrier, individual covering or other packaging of such containers used for sale at retail, but does not include shipping cartons or cases that are not intended to accompany the container to the consumer.

(b) *Statement or representation.* For purposes of this subpart, the term ''statement or representation'' includes any statement, design, device, or representation, and includes pictorial or graphic designs or representations as well as written ones. The term ''statement or representation'' includes explicit and implicit statements and representations.

Food Allergen Labeling

§ 4.82 Voluntary disclosure of major food allergens.

(a) *Definitions.* For purposes of this section, the following terms or phrases have the meanings indicated.

(1) *Major food allergen* means any of the following:

(i) Milk, egg, fish (for example, bass, flounder, or cod), Crustacean shellfish (for example, crab, lobster, or shrimp), tree nuts (for example, almonds, pecans, or walnuts), wheat, peanuts, and soybeans; or

(ii) A food ingredient that contains protein derived from a food specified in paragraph (a)(1)(i) of this section, except:

(A) Any highly refined oil derived from a food specified in paragraph (a)(1)(i) of this section and any ingredient derived from such highly refined oil; or

(B) A food ingredient that is exempt from major food allergen labeling requirements pursuant to a petition for exemption approved by the Food and Drug Administration (FDA) under 21 U.S.C. 343(w)(6) or pursuant to a notice submitted to the FDA under 21 U.S.C. 343(w)(7), provided that the food ingredient meets the terms or conditions, if any, specified for that exemption.

(2) *Name of the food source from which each major food allergen is derived.* ''Name of the food source from which each major food allergen is

derived'' means the name of the food as listed in paragraph (a)(1)(i) of this section, except that:

(i) In the case of a tree nut, it means the name of the specific type of nut (for example, almonds, pecans, or walnuts);

(ii) In the case of Crustacean shellfish, it means the name of the species of Crustacean shellfish (for example, crab, lobster, or shrimp); and

(iii) The names ''egg'' and ''peanuts,'' as well as the names of the different types of tree nuts, may be expressed in either the singular or plural form, and the names ''soy,'' ''soybean,'' or ''soya'' may be used instead of ''soybeans.''

(b) *Voluntary labeling standards.* Major food allergens used in the production of a wine product may, on a voluntary basis, be declared on a label or container. However, if any one major food allergen is voluntarily declared, all major food allergens used in production of the wine product, including major food allergens used as fining or processing agents, must be declared, except when covered by a petition for exemption approved by the appropriate TTB officer under § 4.83. The major food allergens declaration must consist of the word ''Contains'' followed by a colon and the name of the food source from which each major food allergen is derived (for example, ''Contains: egg'').

(c) *Cross reference.* For mandatory labeling requirements applicable to wine products containing FD&C Yellow No. 5, sulfites, aspartame, and cochineal extract or carmine, see § 4.63(b).

§ 4.83 Petitions for exemption from major food allergen labeling.

(a) *Submission of petition.* Any person may petition the appropriate TTB officer to exempt a particular product or class of products from the labeling requirements of § 4.82. The burden is on the petitioner to provide scientific evidence (as well as the analytical method used to produce the evidence) that demonstrates that the finished product or class of products, as derived by the method specified in the petition, either:

(1) Does not cause an allergic response that poses a risk to human health; or

(2) Does not contain allergenic protein derived from one of the foods identified in § 4.82(a)(1)(i), even though a major food allergen was used in production.

(b) *Decision on petition.* TTB will approve or deny a petition for exemption submitted under paragraph (a) of this section in writing within 180 days of receipt of the petition. If TTB does not provide a written response to the petitioner within that 180-day period, the petition will be deemed denied, unless an extension of time for decision is mutually agreed upon by the appropriate TTB officer and the petitioner. TTB may confer with the Food and Drug Administration (FDA) on petitions for exemption, as appropriate and as FDA resources permit. TTB may require the submission of product samples and other additional information in support of a petition; however, unless required by TTB, the submission of samples or additional information by the petitioner after submission of the petition will be treated as the withdrawal of the initial petition and the submission of a new petition. An approval or denial under this section will constitute final agency action.

(c) *Resubmission of a petition.* After a petition for exemption is denied under this section, the petitioner may resubmit the petition along with supporting materials for reconsideration at any time. TTB will treat this submission as a new petition.

(d) *Availability of information*—(1) *General.* TTB will promptly post to its website, *https://www.ttb.gov,* all petitions received under this section, as well as TTB's responses to those petitions. Any information submitted in support of the petition that is not posted to the TTB website will be available to the public pursuant to the Freedom of Information Act (5 U.S.C. 552), except where a request for confidential treatment is granted under paragraph (d)(2) of this section.

(2) *Requests for confidential treatment of business information.* A person who provides trade secrets or other commercial or financial information in connection with a petition for exemption under this section may request that TTB give confidential treatment to that information. A failure to request confidential treatment at the time the information in question is submitted to TTB will constitute a waiver of confidential treatment. A request for confidential treatment of information under this section must conform to the following standards:

(i) The request must be in writing;

(ii) The request must clearly identify the information to be kept confidential;

(iii) The request must relate to information that constitutes trade secrets or other confidential commercial or financial information regarding the business transactions of an interested person, the disclosure of which would cause substantial harm to the competitive position of that person;

(iv) The request must set forth the reasons why the information should not be disclosed, including the reasons the disclosure of the information would prejudice the competitive position of the interested person; and

(v) The request must be supported by a signed statement by the interested person, or by an authorized officer or employee of that person, certifying that the information in question is a trade secret or other confidential commercial or financial information and that the information is not already in the public domain.

Production Claims

§ 4.84 Use of the term "organic."

Use of the term ''organic'' is permitted if any such use complies with United States Department of Agriculture (USDA) National Organic Program rules (7 CFR part 205), as interpreted by the USDA.

§ 4.85 Environmental, sustainability, and similar statements.

Statements related to environmental or sustainable agricultural practices, social justice principles, and other similar statements (such as, ''Produced using 100% solar energy'' or ''Carbon Neutral'') may appear as long as the statements are truthful, specific, and not misleading. Statements or logos indicating environmental, sustainable agricultural, or social justice certification (such as, ''Biodyvin,'' ''Salmon-Safe,'' or ''Fair Trade Certified'') may appear on wines that are actually certified by the appropriate organization.

§ 4.86 Use of TTB permit numbers on labels.

Wine labels, containers, and packaging may bear TTB issued permit numbers as long as those permit numbers are located immediately adjacent to the name and address of the person operating the bonded wine cellar or winery. No additional reference may be made that may convey the impression that the wine was made or matured under government supervision or in accordance with government standards.

§ 4.87 Use of vineyard, orchard, farm, or ranch name as a claim or as additional information.

(a) *General.* Except as provided in paragraph (b) of this section, the name of a vineyard, orchard, farm, or ranch may not appear on a wine label, container, or packaging unless 95 percent of the wine in the container is produced from primary winemaking material grown on the named vineyard, orchard, farm, or ranch.

(b) *Exception.* (1) A vineyard, orchard, farm, or ranch name may be used without complying with the

requirements of paragraph (a) of this section if the vineyard, orchard, farm, or ranch name is part of an operating name or trade name that appears in the mandatory name and address statement. In such a case, the vineyard, orchard, farm, or ranch name that appears in the name and address statement may also appear in the brand name, as long as use of the name does not make a claim as to the origin of the winemaking materials.

(2) *Vineyard, orchard, farm, or ranch name having geographic significance.* When used in a brand name, a vineyard, orchard, farm, or ranch name having geographical or viticultural significance is subject to the requirements of § 4.64(b) and (c).

Appellations of Origin for Grape Wine

§ 4.88 Appellations of origin for grape wine in general.

(a) *General.* An appellation of origin for grape wine is the name of a place where grapes used to produce a specified minimum percentage of wine for still grape wine, sparkling grape wine, and carbonated grape wine were grown. The requirements in this section and §§ 4.89 through 4.91 apply to the use of appellations of origin. All parts of the appellation must be in the same type size and immediately adjacent to each other.

(b) *Definition of ''appellation of origin'' for American wine.* An American appellation of origin is the name (or names) of:

(1) (The) United States or America (American);

(2) A State;

(3) Two or three States;

(4) A county (which must be identified with the word ''county'' or other appropriate term for a county equivalent, where applicable, printed in the same font and type size as the name of the county);

(5) Two or three counties in the same State; or

(6) A viticultural area (as defined in § 4.91).

(c) *Definition of appellation of origin for imported wine.* An appellation of origin for imported wine is the name (or names) of:

(1) A country;

(2) A state, province, territory, or similar political subdivision of a country equivalent to a state or county;

(3) Two or three states, provinces, territories, or similar political subdivisions of a country equivalent to a state;

(4) Two or three counties; or

(5) A viticultural area (as defined in § 4.91).

(d) *When an appellation of origin must be used.* An appellation of origin in accordance with §§ 4.88 through 4.91, disclosing the true place of origin of the wine, must appear if:

(1) A varietal (grape type) designation is used as provided in § 4.156;

(2) A type designation of varietal significance is used as provided in § 4.157;

(3) A semi-generic type designation is used as the class and type designation of the wine, as provided in § 4.174;

(6) The wine is labeled with a vintage date, and otherwise conforms with the provisions of § 4.95.

§ 4.89 Eligibility for the use of an appellation of origin for grape wine.

(a) *Appellations of origin for American wine.* An American wine is entitled to use the name of a single county, State, or country (the United States or America[n]) as an appellation of origin if:

(1) At least 75 percent of the volume of wine is derived from grapes grown in the named county, State or country;

(2) The wine has been fully finished (as defined in § 4.1):

(i) In the United States, if labeled ''[the] United States'' or ''America[n]'';

(ii) Within the labeled State or an adjacent State if labeled with a State appellation; or

(iii) Within the State in which the labeled county is located, if labeled with a county appellation; and

(3) The wine conforms to the laws and regulations of the named appellation area that govern the composition, method of production, and designation of wines made in such area.

(b) *Appellations of origin for imported wine.* An imported wine is entitled to use the name of a single country or a single State, province, territory, or similar political subdivision of a country equivalent to a state or county as an appellation of origin if:

(1) At least 75 percent of the volume of the wine is derived from grapes grown in the area indicated by the appellation of origin; and

(2) The wine conforms to the requirements of the foreign laws and regulations that govern the composition, method of production, and designation of wines available for consumption within the country of origin.

§ 4.90 Multicounty and multistate appellations of origin for grape wine.

(a) *Multicounty appellations of origin for American wine.* An appellation of origin comprising the names of two or three counties in the same State may be used if:

(1) At least 85 percent of the volume of the wine is derived from grapes grown in the counties included in the appellation;

(2) The wine derived from grapes grown in each county included in the appellation is in greater proportion than wine derived from grapes grown in any county that is not listed; and

(3) The counties must be listed in descending order of predominance, based on the percentage of wine derived from grapes grown in each county.

(b) *Multicounty appellations of origin for imported wine.* An appellation of origin comprising the names of two or three states, provinces, territories, or similar political subdivisions of a country equivalent to a county, all of which are in the same country, may be used if:

(1) At least 85 percent of the volume of the wine is derived from grapes grown in the counties included in the appellation;

(2) The wine derived from grapes grown in each county included in the appellation is in greater proportion than wine derived from grapes grown in any county that is not listed;

(3) The counties must be listed in descending order of predominance, based on the percentage of wine derived from grapes grown in each county; and

(4) The wine conforms to the requirements of the foreign laws and regulations that govern the composition, method of production, and designation of wines available for consumption within the country of origin.

(c) *Multistate appellations of origin for American wine.* An appellation of origin comprising the names of two or three States may be used if:

(1) At least 85 percent of the volume of the wine is derived from grapes grown in the States included in the appellation;

(2) The wine derived from grapes grown in each State included in the appellation is in greater proportion than wine derived from grapes grown in any State that is not listed;

(3) The States are listed in a descending order of predominance, based on the percentage of wine derived from grapes grown in each State;

(4) The wine has been fully finished (as defined in § 4.1) in one of the labeled States; and

(5) The wine conforms to the laws and regulations that govern the composition, method of manufacture, and designation of wines in all of the States listed in the appellation.

(d) *Multistate appellations of origin for imported wine.* An appellation of origin comprising the names of two or three states, provinces, territories, or similar political subdivisions of a country equivalent to a state, all of

which are in the same country, may be used if:

(1) At least 85 percent of the volume of the wine is derived from grapes grown in the states, provinces, territories, or similar political subdivisions of a country equivalent to a state that are included in the appellation;

(2) The wine derived from grapes grown in each state, province, territory, or similar political subdivision included in the appellation is in greater proportion than wine derived from grapes grown in any such area not listed on the label;

(3) The states, provinces, territories, or similar political subdivisions are listed in a descending order of predominance, based on the percentage of wine derived from grapes grown in each; and

(4) The wine conforms to the requirements of the foreign laws and regulations that govern the composition, method of production, and designation of wines available for consumption within the country of origin.

§ 4.91 Viticultural areas.

(a) *Definition of viticultural area for American wine.* An American viticultural area is a delimited grape-growing region having a name, distinguishing features, and a delineated boundary as established in part 9 of this chapter.

(b) *Definition of viticultural area for imported wine.* A viticultural area for imported wine is a delimited place or region (other than a place or region (such as a county or state) defined in § 4.88(c)(1), (2), or (3)) the boundaries of which have been recognized and defined by the country of origin for use on labels of wine available for consumption within the country of origin.

(c) *Establishment of American viticultural areas.* A petition for the establishment of an American viticultural area may be submitted by any interested party, pursuant to part 9 and § 70.701(c) of this chapter. The petition must be made in written form and must contain the information specified in § 9.12 of this chapter.

(d) *Requirements for use.* A wine may be labeled with the name of a viticultural area if:

(1) The appellation has been approved under part 9 of this chapter in the case of domestic wine or by the appropriate foreign government in the case of imported wine;

(2) Not less than 85 percent of the wine is derived from grapes grown within the boundaries of the viticultural area;

(3) In the case of foreign wine, it conforms to the requirements of the foreign laws and regulations that govern the composition, method of production, and designation of wines available for consumption within the country of origin; and

(4) In the case of American wine, it has been fully finished (as defined in § 4.1) within the State, or one of the States, within which the labeled viticultural area is located.

(e) *More than one viticultural area.* A wine may be labeled with more than one viticultural area if:

(1) The indicated viticultural areas overlap; and

(2) Not less than 85 percent of the volume of the wine is derived from grapes grown in the overlapping area.

Claims About Grape Wine

§ 4.92 Estate bottled.

(a) *Conditions for use.* The term ''Estate bottled'' may appear on a wine label only if the wine is labeled with a viticultural area appellation of origin and the bottling winery:

(1) Is located within the labeled viticultural area;

(2) Grew all of the grapes used to make the wine on land owned or controlled by the winery within the boundaries of the labeled viticultural area; and

(3) Crushed the grapes, fermented the resulting must, and fully finished, aged, and bottled the wine in a continuous process (the wine at no time having left the premises of the bottling winery).

(b) *Special rule for cooperatives.* Grapes grown by the members of a single cooperative bottling winery are considered to be grown by the bottling winery.

(c) *Use of other terms.* No term other than ''Estate bottled'' may appear on a label to indicate combined growing and bottling conditions.

(d) *Definitions.* For purposes of this section, *land controlled* by the winery refers to property on which the producing winery has the legal right to perform, and does perform, all of the acts common to viticulture under the terms of a lease or similar agreement of at least three years duration.

§ 4.93 Estate grown.

(a) *Conditions for use.* The term ''Estate(s) grown'' may appear on a wine label only if all of the following conditions are met:

(1) The wine is labeled with an appellation of origin;

(2) The producing winery is located within the appellation of origin;

(3) The producing winery grew all of the grapes used to make the wine on land owned or controlled by the producing winery within the boundaries of the appellation of origin, and fermented 100 percent of the wine from those grapes; and

(4) If the bottling winery is not the producing winery, the label must clarify that the wine was ''estate grown'' by the producing winery, and the name and address of both wineries must appear on the label. An acceptable labeling statement would be ''Estate grown and produced by ABC Winery, Seattle, Washington. Bottled by XYZ Winery, Tacoma, Washington.''

(b) *Special rule for cooperatives.* Grapes grown by the members of a single cooperative bottling winery are considered to be grown by the bottling winery.

(c) *Definition.* For purposes of this section, *land controlled* by the winery refers to property on which the producing winery has the legal right to perform, and does perform, all of the acts common to viticulture under the terms of a lease or similar agreement of at least 3 years duration.

§ 4.94 Claims on grape wine labels for viticultural practices that result in sweet wine.

(a) *General.* The claims set forth in paragraphs (b) through (d) of this section about viticultural practices that result in sweet wine may be used on labels of grape wine subject to the rules set forth in this section. In all such cases, the wine must also be labeled with the amount of sugar contained in the grapes at the time of harvest and the amount of residual sugar in the finished wine. The amount of sugar may be stated in degrees Brix, percent by weight, grams per 100 mL or grams per liter. Harvest or picking dates may not be stated on the label unless the wine is labeled with a vintage date in accordance with § 4.95.

(b) *Ice wine.* The term ''ice wine'' (or ''icewine,'' or ''ice-wine'') may be used only to describe wines produced exclusively from grapes that have been harvested after they have naturally frozen on the vine. Wine that is ameliorated, concentrated, fortified, or produced from concentrate may not be labeled as ''ice wine.'' Wine produced from grapes that were frozen post-harvest may not be labeled as ''ice wine'' but may be labeled with a statement such as ''made from grapes frozen post-harvest.''

(c) *Late harvest or late picked.* The term ''late harvest'' or ''late picked'' may not be used on the label of a wine that is ameliorated, concentrated, fortified, or produced from concentrate.

(d) *Botrytis Infected or Pourriture Noble.* Grape wine produced from grapes that have been infected with the botrytis cinerea mold may be labeled with a term such as ''Botrytis Infected,'' ''Pourriture Noble,'' or another name for infection by the botrytis cinerea mold.

§ 4.95 Vintage date.

(a) *General.* Grape wine may be labeled with the vintage date (which is the calendar year in which the grapes used to make the wine were harvested) only if the wine is also labeled with an appellation of origin as defined in § 4.88. The requirements in paragraphs (a)(1) through (3) of this section apply to the use of vintage dates on American and imported wines:

(1) If wine is labeled with a viticultural area as defined in § 4.91, at least 95 percent of the wine must have been derived from grapes harvested in the labeled calendar year.

(2) If a wine is labeled with an appellation of origin other than a viticultural area, at least 85 percent of the wine must have been derived from grapes harvested in the labeled calendar year.

(3) A wine may be labeled with only one vintage date.

(b) *Imported wine.* Imported wine may bear a vintage date if all of the following conditions are met:

(1) The wine is made in compliance with the production standards referenced in paragraph (a) of this section, except that the year of harvest for an imported wine will be determined in accordance with the laws and regulations governing vintage date labeling of wines available for consumption within the country of origin.

(2) The wine is of the vintage shown, the laws of the country of origin regulate the appearance of vintage dates upon the labels of wine produced for consumption within the country of origin, the wine has been produced in conformity with those laws, and the wine would be entitled to bear the vintage date if it had been sold within the country of origin. The importer of the wine imported in bottles or the domestic bottler of wine imported in bulk and bottled in the United States must be able to demonstrate, upon request by the appropriate TTB officer or a customs officer, that the wine is entitled to be labeled with the vintage date.

Appellations of Origin for Fruit Wine, Agricultural Wine, and Rice Wine

§ 4.96 Appellations of origin for fruit wine, agricultural wine, and rice wine in general.

(a) *General.* An appellation of origin for fruit wine, agricultural wine, or rice wine is the name of a place where the fruit (other than grapes), agricultural products, or rice, respectively, used to produce a specified minimum percentage of the fruit wine, agricultural wine, or rice wine, as prescribed in subpart I of this part, are grown. In the case of honey wine, eligibility for use of an appellation of origin is based on the place where the source plants for the honey were grown. The requirements in this section and §§ 4.97 and 4.98, apply to the use of appellations of origin. All parts of the appellation must be in the same type size and immediately adjacent to each other.

(b) *Definition of ''appellation of origin'' for American wine.* An American appellation of origin is the name (or names) of:

(1) (The) United States or America (American);

(2) A State (including the District of Columbia and the Commonwealth of Puerto Rico);

(3) Two or no more than three States;

(4) A county (which must be identified with the word ''county'' or other appropriate term for a county equivalent, where applicable, printed in the same font and type size as the name of the county); or

(5) Two or no more than three counties in the same State.

(c) *Definition of appellation of origin for imported wine.* An appellation of origin for imported wine is the name (or names) of:

(1) A country;

(2) A state, province, territory, or similar political subdivision of a country equivalent to a state or county; or

(3) Two or three states, provinces, territories, or similar political subdivisions of a country equivalent to a state.

§ 4.97 Eligibility for use of an appellation of origin for fruit wine, agricultural wine, and rice wine.

(a) *Appellations of origin for American wine.* An American fruit, agricultural, or rice wine is entitled to use the name of a single county, State, or country (the United States or America[n]) as an appellation of origin if:

(1) At least 75 percent of the volume of wine is derived from fruit or agricultural products grown in the stated appellation of origin;

(2) The wine has been fully finished (as defined in § 4.1):

(i) In the United States, if labeled ''[the] United States'' or ''America[n]'';

(ii) Within the labeled State or an adjacent State if labeled with a State appellation; or

(iii) Within the State in which the labeled county is located, if labeled with a county appellation; and

(3) The wine conforms to the laws and regulations of the named appellation area that govern the composition, method of production, and designation of wines made in such place.

(b) *Appellations of origin for imported wine.* An imported wine is entitled to use the name of a single country or a single State, province, territory, or similar political subdivision of a country equivalent to a state or county as an appellation of origin if:

(1) At least 75 percent of the volume of the wine is derived from fruit or other agricultural products grown in the area indicated by the appellation of origin; and

(2) The wine conforms to the requirements of the foreign laws and regulations that govern the composition, method of production, and designation of wines available for consumption within the country of origin.

§ 4.98 Multicounty and multistate appellations of origin for fruit wine, agricultural wine, and rice wine.

(a) *Multicounty appellations of origin.* An appellation of origin comprising the names of two or three counties in the same State may be used if:

(1) At least 85 percent of the volume of the wine is derived from fruit or other agricultural products grown in the counties included in the appellation;

(2) The wine derived from fruit or other agricultural products grown in each county included in the appellation is in greater proportion than wine derived from fruit or other agricultural products grown in any county that is not listed; and

(3) The counties are listed in descending order of predominance, based on the percentage of wine derived from fruit or other agricultural products grown or harvested in each county.

(b) *Multistate appellations for American wine.* An appellation of origin comprising the names of two or three States may be used, if:

(1) At least 85 percent of the volume of the wine is derived from fruit or other agricultural products grown in the States indicated;

(2) The wine derived from fruit or other agricultural products grown or harvested in each State listed on the label is in greater proportion than wine

derived from fruit or other agricultural products grown in any State that is not listed;

(3) The States must be listed in a descending order of predominance, based on the percentage of wine derived from fruit or other agricultural products grown or harvested in each State;

(4) The wine has been fully finished (as defined in § 4.1) in one of the labeled States; and

(5) The wine conforms to the laws and regulations that govern the composition, method of manufacture, and designation of wines in all of the States listed in the appellation.

(c) *Multistate appellations of origin for imported wine.* An appellation of origin comprising the names of two or three states, provinces, territories, or similar political subdivisions of a country equivalent to a state, all of which are in the same country, may be used if:

(1) At least 85 percent of the volume of the wine is derived from fruit or other agricultural products grown or harvested in the states, provinces, territories, or similar political subdivisions of a country equivalent to a state that are included in the appellation;

(2) The wine derived from fruit or agricultural products grown or harvested in each named state, province, territory, or similar political subdivisions must be listed in a descending order of predominance, based on the percentage of wine derived from fruit or other agricultural products grown or harvested in each;

(3) The wine derived from fruit or other agricultural products grown or harvested in each state, province, territory, or similar political subdivision must be in greater proportion than wine derived from fruit or other agricultural products grown or harvested in any such area not listed on the label; and

(4) The wine conforms to the requirements of the foreign laws and regulations that govern the composition, method of production, and designation of wines available for consumption within the country of origin.

Subpart G—Prohibited Labeling Practices

§ 4.101 General.

(a) *Application.* The prohibitions set forth in this subpart apply to any wine label, container, or packaging. For purposes of this subpart:

(1) The term ''label'' includes all labels on wine containers on which mandatory information may appear, as set forth in § 4.61(a), as well as any other label on the container;

(2) The term ''container'' includes all parts of the wine container, including any part of a wine container on which mandatory information may appear, as well as those parts of the container on which information does not satisfy mandatory labeling requirements, as set forth in § 4.61(b); and

(3) The term ''packaging'' includes any carton, case, carrier, individual covering or other packaging of such containers used for sale at retail, but does not include shipping cartons or cases that are not intended to accompany the container to the consumer.

(b) *Statement or representation.* For purposes of the prohibited practices in this subpart, the term ''statement or representation'' includes any statement, design, device, or representation, and includes pictorial or graphic designs or representations as well as written ones. The term ''statement or representation'' includes explicit and implicit statements and representations.

§ 4.102 False or untrue statements.

Wine labels, containers, or packaging may not contain any statement or representation that is false or untrue in any particular.

§ 4.103 Obscene or indecent depictions.

Wine labels, containers, or packaging may not contain any statement or representation that is obscene or indecent.

Subpart H—Labeling Practices That Are Prohibited If They Are Misleading

§ 4.121 General.

(a) *Application.* The labeling practices that are prohibited if misleading set forth in this subpart apply to any wine label, container, or packaging. For purposes of this subpart:

(1) The term ''label'' includes all labels on wine containers on which mandatory information may appear, as set forth in § 4.61(a), as well as any other label on the container;

(2) The term ''container'' includes all parts of the wine container, including any part of a wine container on which mandatory information may appear, as well as those parts of the container on which information does not satisfy mandatory labeling requirements, as set forth in § 4.61(b); and

(3) The term ''packaging'' includes any carton, case, carrier, individual covering or other packaging of such containers used for sale at retail, but does not include shipping cartons or cases that are not intended to accompany the container to the consumer.

(b) *Statement or representation.* For purposes of this subpart, the term ''statement or representation'' includes any statement, design, device, or representation, and includes pictorial or graphic designs or representations as well as written ones. The term ''statement or representation'' includes explicit and implicit statements and representations.

§ 4.122 Misleading statements or representations.

(a) *General prohibition.* Wine labels, containers, or packaging may not contain any statement or representation, irrespective of falsity, that is misleading to consumers as to the age, origin, identity, or other characteristics of the wine, or with regard to any other material factor.

(b) *Ways in which statements or representations may be misleading.* (1) A statement or representation is prohibited, irrespective of falsity, if it directly creates a misleading impression, or if it does so indirectly through ambiguity, omission, inference, or by the addition of irrelevant, scientific, or technical matter. For example, an otherwise truthful statement may be misleading because of the omission of material information, the disclosure of which is necessary to prevent the statement from being misleading.

(2) As set forth in § 4.212(b), all claims, whether implicit or explicit, must have a reasonable basis in fact. Any claim on wine labels, containers, or packaging that does not have a reasonable basis in fact, or cannot be adequately substantiated upon the request of the appropriate TTB officer, is considered misleading.

§ 4.123 Guarantees.

Wine labels, containers, or packaging may not contain any statement relating to guarantees if the appropriate TTB officer finds it is likely to mislead the consumer. However, money-back guarantees are not prohibited.

§ 4.124 Disparaging statements.

(a) *General.* Wine labels, containers, or packaging may not contain any false or misleading statement that explicitly or implicitly disparages a competitor's product.

(b) *Examples.* (1) An example of an explicit statement that falsely disparages a competitor's product is, ''Brand X is not aged in oak barrels,'' when such statement is not true.

(2) An example of an implicit statement that disparages competitors' products in a misleading fashion is, ''We do not add arsenic to our wine,''

where such a claim is true but it may lead consumers to falsely believe that other winemakers do add arsenic to their wine.

(c) *Truthful and accurate comparisons.* This section does not prevent truthful and accurate comparisons between products (such as, ''Our wine contains more grapes than Brand X'') or statements of opinion (such as, ''We think our wine tastes better than any other wine on the market'').

§ 4.125 Tests or analyses.

Wine labels, containers, or packaging may not contain any statement or representation of or relating to analyses, standards, or tests, whether or not it is true, that is likely to mislead the consumer. An example of such a misleading statement is ''tested and approved by our research laboratories'' if the testing and approval does not in fact have any significance.

§ 4.126 Depictions of government symbols.

(a) *Representations of the armed forces and flags.* Wine labels, containers, or packaging may not show an image of any government's flag or any representation related to the armed forces of the United States if the representation, standing alone or considered together with any additional language or symbols on the label, creates a false or misleading impression that the product was endorsed by, made by, used by, or made under the supervision of, the government represented by that flag or the armed forces of the United States. This section does not prohibit the use of a flag as part of a claim of American origin or another country of origin.

(b) *Government seals.* Wine labels, containers, or packaging may not contain any government seal or other insignia that is likely create a false or misleading impression that the product has been endorsed by, made by, used by, or produced for, or under the supervision of, or in accordance with the specification of, that government. Seals required or specifically authorized by applicable law or regulations and used in accordance with such law or regulations are not prohibited.

§ 4.127 Depictions simulating government stamps or relating to supervision.

(a) Wine labels, containers, or packaging may not contain any statements or representations that mislead consumers to believe that the wine is manufactured or processed under government authority. Wine labels, containers, or packaging may not contain images or designs resembling a stamp of the U.S. Government or any State or foreign government, and may not contain statements or indications that the wine is produced, blended, bottled, packed or sold under, or in accordance with, any municipal, State, Federal, or foreign authorization, law, or regulations, unless such statement is required or specifically authorized by applicable law or regulations. If a municipal, State, or Federal Government permit number is stated on a label, containers, or packaging, it may not be accompanied by any additional statement relating to that permit number with the exception of the name and address of the person associated with that permit number.

(b) If imported wines are covered by a certificate of origin and/or a certificate of vintage date issued by an official duly authorized by the appropriate foreign government, the container, except where prohibited by the foreign government, may refer to that certificate or to the fact of that certification, but the container must not contain any additional statements relating to the certificate or certification. Any reference to such a certificate or certification must be in substantially the following form:

This product was accompanied at the time of the importation by a certificate issued by the

_____

(Name of government)

government indicating that the product is

_____

(Class and type as stated on the container)

and (if container bears a statement of vintage date) that the wine is of the vintage of

_____

(Year of vintage stated on the container).

§ 4.128 Claims related to distilled spirits or malt beverages.

(a) *General.* Except as provided in paragraph (b) of this section, no label, carton, case, or any other packaging material may contain a statement, design, or representation that tends to create a false or misleading impression that the wine is a distilled spirits or malt beverage product, or that it contains distilled spirits or malt beverages. For example, the use of the name of a class or type designation of a distilled spirits or malt beverage product, as set forth in part 5 or 7 of this chapter, is prohibited, if the use of that name creates a misleading impression as to the identity of the product. Homophones or coined words that simulate or imitate a class or type designation are also prohibited.

(b) *Exceptions.* This section does not prohibit:

(1) A truthful and accurate statement of alcohol content;

(2) The use of a brand name of a distilled spirits or malt beverage product as a wine brand name, provided that the overall label does not create a misleading impression as to the identity of the product;

(3) The use of a distilled spirits or malt beverage cocktail name as a brand name or a distinctive or fanciful name of a wine product, provided that a statement of composition, in accordance with § 4.151, appears in the same field of vision as the brand name or a distinctive or fanciful name and the overall label does not create a misleading impression about the identity of the product;

(4) The use of a statement of composition that includes a reference to the type of distilled spirits contained therein;

(5) The use of truthful and accurate statements about the production of the wine, as part of a statement of composition or otherwise, such as ''aged in whisky barrels,'' so long as such statements do not create a misleading impression as to the identity of the product; or

(6) The use of terms that simply compare wine to distilled spirits or malt beverage products without creating a misleading impression as to the identity of the product.

§ 4.129 Health-related statements.

(a) *Definitions.* When used in this section, the following terms have the meaning indicated:

(1) *Health-related statement* means any statement related to health (other than the warning statement required under part 16 of this chapter) and includes statements of a curative or therapeutic nature that, expressly or by implication, suggest a relationship between the consumption of alcohol, wine, or any substance found within the wine, and health benefits or effects on health. The term includes both specific health claims and general references to alleged health benefits or effects on health associated with the consumption of alcohol, wine, or any substance found within the wine, as well as health-related directional statements. The term also includes statements and claims that imply that a physical or psychological sensation results from consuming the wine, as well as statements and claims of nutritional value (for example, statements of vitamin content). Numerical statements of the calorie,

carbohydrate, protein, and fat content of the product do not constitute claims of nutritional value.

(2) *Specific health claim* means a type of health-related statement that, expressly or by implication, characterizes the relationship of alcohol, wine, or any substance found within the wine, to a disease or health-related condition. Implied specific health claims include statements, symbols, vignettes, or other forms of communication that suggest, within the context in which they are presented, that a relationship exists between wine, alcohol, or any substance found within the wine, and a disease or health-related condition.

(3) *Health-related directional statement* means a type of health-related statement that directs or refers consumers to a third party or other source for information regarding the effects on health of wine or alcohol consumption.

(b) *Rules for labeling*—(1) *Health-related statements.* In general, labels may not contain any health-related statement that is untrue in any particular or tends to create a misleading impression as to the effects on health of alcohol consumption. TTB will evaluate such statements on a case-by-case basis and may require as part of the health-related statement a disclaimer or some other qualifying statement to dispel any misleading impression conveyed by the health-related statement.

(2) *Specific health claims.* (i) TTB will consult with the Food and Drug Administration (FDA), as needed, on the use of a specific health claim on the wine. If FDA determines that the use of such a labeling claim is a drug claim that is not in compliance with the requirements of the Federal Food, Drug, and Cosmetic Act, TTB will not approve the use of that specific health claim on the wine.

(ii) TTB will approve the use of a specific health claim on a wine label only if the claim: Is truthful and adequately substantiated by scientific or medical evidence; is sufficiently detailed and qualified with respect to the categories of individuals to whom the claim applies; adequately discloses the health risks associated with both moderate and heavier levels of alcohol consumption; and outlines the categories of individuals for whom any levels of alcohol consumption may cause health risks. This information must appear as part of the specific health claim.

(3) *Health-related directional statements.* A health-related directional statement is presumed misleading unless it:

(i) Directs consumers in a neutral or other non-misleading manner to a third party or other source for balanced information regarding the effects on health of alcohol or alcohol beverage product consumption; and

(ii)(A) Includes as part of the health-related directional statement the following disclaimer: ''This statement should not encourage you to drink or to increase your alcohol consumption for health reasons''; or

(B) Includes as part of the health-related directional statement some other qualifying statement that the appropriate TTB officer finds is sufficient to dispel any misleading impression conveyed by the health-related directional statement.

§ 4.130 Appearance of endorsement.

(a) *General.* Wine labels, containers, or packaging may not include the name, or the simulation or abbreviation of the name, of any living individual of public prominence, or an existing private or public organization, or any graphic, pictorial, or emblematic representation of the individual or organization, if its use is likely to lead a consumer to falsely believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization. This section does not prohibit the use of such names where the individual or organization has provided authorization for their use.

(b) *Documentation.* The appropriate TTB officer may request documentation from the bottler or importer to establish that the person or organization has provided authorization to use the name of that person or organization.

(c) *Disclaimers.* Statements or other representations do not violate this section if, taken as a whole, they create no misleading impression as to an implied endorsement either because of the context in which they are presented or because of the use of an adequate disclaimer.

§ 4.131 Use of the word ''importer'' or similar words.

(a) Except as provided in paragraph (b) of this section, labels, containers, or packaging for wine that is not required to bear an ''imported by'' statement under § 4.67 or § 4.68 may not include the word ''importer'' or any other word that creates the misleading impression that the product was imported.

(b) If the word ''importer'' or a similar word is part of the bona fide name of a permittee by or for whom the wine was bottled, or a retailer for whom the wine was bottled or distributed, it may appear as part of the name and address statement, as long as the words ''Product of the United States'' or similar dispelling language appears immediately adjacent to the name and address statement, in the same size and type of the name and address statement.

§ 4.132 [Reserved]

§ 4.133 Claims regarding terms defined or authorized by this part.

(a) Wine labels, containers, or packaging may not include any use of a term defined in this part in a manner that is not consistent with the definitions set forth in this part.

(b) Wine labels, containers, or packaging materials may not contain any coined word or name that simulates, imitates, or which tends to create the impression that the wine so labeled is entitled to bear, any class, type, or authorized designation recognized by the regulations in this part or in part 5 or part 7 of this chapter unless the wine conforms to the requirements prescribed with respect to such designation and is in fact so designated on its labels.

(c) Except as provided by § 4.136, statements or representations on wine labels, containers, or packaging may not make claims about the grape varieties used in production of a wine that does not bear a varietal designation under § 4.156 or § 4.157.

(d) Except as provided by § 4.134, statements or representations on wine labels, containers, or packaging may not make claims about the year that grapes were grown or harvested unless the wine label bears a vintage date in accordance with § 4.95, and the claims are consistent with that date.

§ 4.134 Statements related to dates or ages.

(a) *Statement of age.* Except as provided in paragraphs (b) and (c) of this section, a wine label, container, or packaging may not bear any statement or other representation of age, including representations in the brand name, except for:

(1) Vintage wine, in accordance with § 4.95;

(2) References relating to methods of wine production involving storage or aging, in accordance with § 4.56. Any such age statement must indicate how long the wine has been aged and the type of aging that occurred, for example, ''Barrel aged for ____ months;'' or

(3) Use of the word ''old'' as part of the brand name; or

(4) Additional truthful, accurate, and specific information about the year of

harvest of the grapes or fruit used to make still, sparkling, or carbonated grape wine, or still, sparkling, or carbonated fruit wine, respectively. The information must indicate the percentage of wine derived from grapes or fruit, respectively, grown in each of the labeled harvest years, such as ''60% of the grapes used to make this wine were harvested in 2014; the remaining 40% were harvested in 2013,'' or ''this wine is a blend of 50% wine made from apples harvested in 2012 and 50% wine made from apples harvested in 2011.'' When applicable, the years of harvest must be presented in descending order based on the percentage of wine derived from grapes or fruit grown in each year.

(b) *Statement of bottling date.* For purposes of paragraph (a) of this section, a statement of the bottling date of a wine will not be deemed to be a representation relative to age, provided that the statement appears in the following form: ''Bottled in ____'' (inserting the year in which the wine was bottled).

(c) *Miscellaneous date statements.* Except in the case of vintage dates and bottling, storage, or aging dates as provided in paragraphs (a) and (b) of this section, a wine label must not bear any date unless, in addition to the date and immediately adjacent to the date and in the same size and kind of printing, a statement of the significance or relevance of the date is provided, such as ''established'' or ''founded in''. If the date refers to the date of establishment of any business or brand name, the date and its accompanying statement must appear immediately adjacent to the name of the person, company, or brand name to which it relates if the appropriate TTB officer finds that this is necessary in order to prevent confusion as to the person, company, or brand name to which the establishment date applies. This paragraph does not authorize the use of dates referring to the date of growth or harvest of the grapes on wines that are not labeled with vintage dates in accordance with § 4.95.

§ 4.135 Indications of origin.

(a) *General rule.* Except as otherwise provided in §§ 4.64 and 4.174, which address brand names of geographic significance and semi-generic designations, respectively, any statement, design, device or representation on a wine label, container, or packaging that indicates or implies an origin other than the true place of origin of the wine is prohibited. This section does not prohibit name and address statements in accordance with this part.

(b) *Wine that is labeled with an appellation of origin.* Except as otherwise provided in §§ 4.64 and 4.174, which address brand names of geographic significance and semi-generic designations, respectively, any statement or representation regarding the origin of the grapes, fruit, or agricultural materials used to make wine that is labeled with an appellation of origin must be consistent with the appellation of origin that appears on the label.

(c) *Wine that is not labeled with an appellation of origin.* Wine that is not labeled with an appellation of origin may be labeled with additional information that provides truthful information about the origin of the grapes, fruit, or other agricultural materials that were used to produce the wine provided that:

(1) The name of the place of origin of the grapes, fruit, or other agricultural products does not appear on the label in a way that creates the misleading impression that the wine is entitled to an appellation of origin under §§ 4.88–4.90 or §§ 4.96–4.97; and

(2) Any additional information about the origin of the grapes, fruit, or other agricultural products of the wine sets forth the origin of 100 percent of the grapes, fruit, or other agricultural products used to make the wine, in descending order of predominance, together with the place where the wine was produced.

(d) *Examples of permissible statements of origin as additional information.* A wine that is produced in New York and designated as ''red wine,'' may be labeled with a statement that indicates the origin and percentage of the gapes that were used to produce the wine. If 50 percent of the grapes used to make the wine were grown in New York, and 50 percent of the grapes used to make the wine were grown in Virginia, the wine may bear a statement on the label to the effect of ''this wine was produced and bottled in New York from 50 percent New York grapes and 50 percent Virginia grapes.''

§ 4.136 Use of a varietal name, type designation of varietal significance, semi-generic name, or geographic distinctive designation.

(a) The use of a varietal name, type designation of varietal significance, semi-generic name, or geographic distinctive designation is presumed to be misleading and is thus prohibited on the label, container, or packaging of any wine that is not made in accordance with the standards prescribed for still grape wine, sparkling grape wine, or carbonated grape wine of §§ 4.142, 4.143, and 4.144.

(b) The use of such a term on the label of a wine, container, or packaging of any wine that is made in accordance with the standards prescribed for still grape wine, sparkling grape wine, or carbonated grape wine but does not meet the requirements for use of the designation named, including its use in a brand name, product name, or a distinctive or fanciful name, is prohibited where the use of such name may tend to create a false or misleading impression as to the designation, origin, or identity of the wine.

(c) This paragraph does not prohibit the use of truthful, accurate, and specific additional information on the label about the grape varieties used to make a still grape wine, sparkling grape wine, or carbonated grape wine, provided that the information includes every grape variety used to make the wine, listed in descending order of predominance. The percentage of each grape variety may be, but is not required to be, shown on the label, along with a tolerance of two percentage points. When shown, percentages must be shown for all grape varieties listed, and the total must equal 100 percent.

§ 4.137 Terms relating to intoxicating qualities.

Wine labels, containers, or packaging may not contain any statement or representation that tends to create the impression that the wine should be purchased or consumed based on intoxicating qualities.

Subpart I—The Standards of Identity for Wine

§ 4.141 The standards of identity in general.

(a) *Standards of identity (class and type designations) and other designations (statements of composition).* Sections 4.142 through 4.150 provide for the standards of identity for wine. These standards are broken into nine classes and several types within each class. In general, the class and/or type designation is used to meet the mandatory requirement found in § 4.63(a)(2). In certain circumstances, a statement of composition as prescribed in § 4.151 may be required. In those circumstances, the statement of composition meets the mandatory label information requirement in § 4.63(a)(2). All parts of the designation of wine, whether mandatory or optional, must appear together and in lettering substantially of the same size and kind. Whenever any term for which a standard of identity has been

established in this subpart is used in this part, the term has the meaning assigned to it by that standard of identity.

(b) *Cellar treatment of wine.* See § 4.154 for cellar treatments that change the class and type designation of wine and for those cellar treatments that are authorized for use without changing the class and type of wine.

§ 4.142 Still grape wine—class and type designation.

(a) *Still grape wine.* (1) Still grape wine is wine produced by the normal alcoholic fermentation of the juice of sound, ripe grapes (including restored or unrestored pure condensed grape must), with or without the addition, after fermentation, of pure condensed grape must and with or without added spirits of the type authorized for natural wine under 26 U.S.C. 5382, but without other addition or abstraction except as may occur in cellar treatment of the type authorized for natural wine under 26 U.S.C. 5382.

(2) Still grape wine may be ameliorated, or sweetened, before, during, or after fermentation, in a way that is consistent with the limits set forth in 26 U.S.C. 5383 for natural grape wine, provided that grape wine designated as ''specially sweetened grape wine'' under paragraph (c)(11) of this section may be sweetened in accordance with the standards set forth in 26 U.S.C. 5385.

(3) Still grape wine must contain less than 0.392 grams of carbon dioxide per 100 milliliters. The maximum volatile acidity, calculated as acetic acid and exclusive of sulfur dioxide is 0.14 gram per 100 mL (20 degrees Celsius) for red wine and 0.12 gram per 100 mL (20 degrees Celsius) for other grape wine, provided that the maximum volatile acidity for wine produced from unameliorated juice of 28 or more degrees Brix is 0.17 gram per 100 mL for red wine and 0.15 gram per 100 mL for white wine.

(b) *Class designation of grape wine.* Still grape wine must be designated as ''still grape wine'' or ''grape wine'' unless paragraph (c) of this section applies. Still grape wine that is designated with an authorized type designation may use the class designation ''grape wine'' in addition to the type designation.

(c) *Type designation of still grape wine.* Still grape wine may be designated with one or more of the following type designation(s) that apply in place of or in addition to the class designation.

(1) *Red, white, blush, pink, rosé, and amber wine.* Still grape wine that derives its characteristic color from the presence or absence of the red coloring matter of the skins, juice, or pulp of grapes may be designated as ''red wine,'' ''white wine,'' ''blush wine,'' ''pink wine,'' ''rosé wine,'' or ''amber wine,'' as the case may be.

(2) *Grape variety.* The names of one or more grape varieties (for example, ''chardonnay'' or ''cabernet franc and merlot'') may be used as the type designation in accordance with § 4.156.

(3) *Grape type designation of varietal significance.* A grape type designation of varietal significance (for example, ''moscato'' or ''scuppernong'') may be used as the type designation in accordance with § 4.157.

(4) *Semi generic designation of geographic significance.* A semi-generic designation of geographic significance (for example, ''Angelica'') may be used as the type designation in accordance with § 4.174.

(5) *Non-generic designation that is a distinctive designations of specific grape wines.* A non-generic designation that is a distinctive designation of specific grape wine (for example, ''Bordeaux Blanc'') may be used as the type designation in accordance with § 4.175.

(6) *Table wine and light wine.* Still grape wine having an alcoholic content greater than 7 percent by volume and not in excess of 14 percent by volume may be designated as ''table wine'' or ''light wine.''

(7) *Dessert wine.* Still grape wine having an alcoholic content greater than 14 percent by volume and not in excess of 24 percent by volume may be designated as ''dessert wine.''

(8) *Angelica.* Angelica is grape wine having the taste, aroma, and characteristics generally attributed to angelica. Angelica has an alcohol content in excess of 14 percent but not in excess of 24 percent by volume. The alcohol content is derived in part from added grape brandy or alcohol. Angelica has been recognized as a semi-generic designation of geographic significance and is subject to the requirements of § 4.174.

(9) *Madeira, port, and sherry.* Madeira, port, and sherry are grape wines having the taste, aroma, and characteristics generally attributed to such wines. Madeira, port, and sherry have an alcohol content in excess of 14 percent but not in excess of 24 percent by volume. The alcohol content is derived in part from added grape brandy or alcohol. These grape wine types have been recognized as semi-generic designation of geographic significance and are subject to the requirements of § 4.174.

(10) *Muscatel.* Muscatel is grape wine having the taste, aroma, and characteristics generally attributed to Muscatel. Muscatel has an alcohol content in excess of 14 percent but not in excess of 24 percent by volume. The alcohol content is derived in part from added grape brandy or alcohol. Muscatel is a grape type designation.

(11) ''*Specially sweetened grape wine.*'' Grape wine sweetened in accordance with the standards set forth in 26 U.S.C. 5385 must include the words ''extra sweet,'' ''specially sweetened,'' ''specially sweet,'' or ''sweetened with excess sugar'' as part of the class and type designation.

§ 4.143 Sparkling grape wine—class and type designation.

(a) *Sparkling grape wine.* Sparkling grape wine is still grape wine made effervescent with carbon dioxide resulting solely from the secondary fermentation of the wine within a closed container, tank or bottle. Sparkling grape wine must contain at least 0.392 grams of carbon dioxide per 100 milliliters of wine.

(b) *Class designation of sparkling wine.* Sparkling grape wine must be designated as ''sparkling wine'' or ''sparkling grape wine.''

(c) *Type designations of sparkling wine.* In addition to the class designation, sparkling grape wine may be designated with one or more of the following type designation(s) that apply.

(1) *Red, white, amber, pink, rosé, and blush.* Sparkling wine that derives its characteristic color from the presence or absence of the red coloring matter of the skins, juice, or pulp of grapes may be designated as ''sparkling red (or white, blush, pink, rosé, or amber, as the case may be) wine.''

(2) *Grape variety.* The names of one or more grape varieties following the word ''sparkling'' (for example, ''sparkling chardonnay'' or ''sparkling cabernet franc and merlot'') may be used as a type designation for sparkling grape wine in accordance with § 4.156.

(3) *Grape type designation of varietal significance.* A grape type designation (for example, ''sparkling moscato'' or ''sparkling scuppernong'') may be used as a type designation for sparkling wine in accordance with § 4.157.

(4) *Semi-generic designation of geographic significance.* A semi-generic designation of geographic significance (for example, ''champagne'') may be used as the type designation for sparkling grape wine in accordance with § 4.174.

(5) *Nongeneric designation that is a distinctive designation.* A nongeneric designation that is a distinctive

designation of a specific grape wine (for example, ''sparkling asti spumante'') may be used as the type designation in accordance with § 4.176.

(6) *Champagne.* Champagne is a type of sparkling grape wine with an alcohol content of less than 14 percent alcohol by volume. Champagne derives its effervescence solely from the secondary fermentation of the wine within glass containers of not greater than one gallon capacity, and possesses the taste, aroma, and other characteristics attributed to champagne as made in the Champagne district of France. Champagne has been recognized as a semi-generic designation of geographic significance and must be labeled in accordance with § 4.174.

(7) *Champagne style and champagne type.* A sparkling wine having less than 14 percent alcohol by volume, and having the taste, aroma, and characteristics generally attributed to champagne but not otherwise conforming to the standard for ''champagne'' as prescribed by paragraph (c)(6) of this section may, in addition to but not in lieu of the class designation ''sparkling wine,'' be further designated as ''champagne style'' or ''champagne type,'' along with one of the required terms denoting use of bulk process set forth in paragraph (d) of this section. The designation ''champagne'' has been recognized as a semi-generic designation of geographic significance and thus wines labeled with a designation of ''champagne style'' or ''champagne type'' must be labeled in accordance with § 4.174.

(8) *Crackling wine, petillant wine, frizzante wine, cremant, perlant, reciotto, and other similar wine.* Crackling, petillant, frizzante, cremant, perlant, and reciotto wines are types of sparkling grape wines that are normally less effervescent than champagne or other similar sparkling wine, but containing sufficient carbon dioxide in solution to produce, upon pouring under normal conditions, after the disappearance of air bubbles, a slow and steady effervescence evidenced by the formation of gas bubbles flowing through the wine. Such wines may be designated as: ''crackling,'' ''petillant,'' ''frizzante,'' ''cremant,'' ''perlant,'' and ''reciotto'' wines.

(d) *Bulk process.* In addition to the product designation, any sparkling grape wine that derives its effervescence from secondary fermentation in containers greater than 1-gallon capacity must be labeled with one or more of the following statements: ''Bulk process,'' ''fermented outside the bottle,'' ''secondary fermentation outside the bottle,'' ''secondary fermentation before bottling,'' ''not fermented in the bottle,'' or ''not bottle fermented.'' The statement ''charmat method'' or ''charmat process'' may be used as additional information in addition to but not in lieu of one of the required statements. This information must be stated on the same label as the product designation and must appear in at least half the type size as the product designation.

§ 4.144 Carbonated grape wine—class and type designation.

(a) *Carbonated grape wine.* Carbonated grape wine is still grape wine made effervescent by the injection of carbon dioxide. Carbonated grape wine must contain at least 0.392 grams of carbon dioxide per 100 milliliters of wine.

(b) *Class designation of carbonated wine.* Carbonated grape wine must be designated as ''carbonated wine'' or ''carbonated grape wine.''

(c) *Type designation.* In addition to the class designation, carbonated grape wine may be designated with one or more of the following type designation(s) that apply.

(1) *Red, white, amber, pink, rosé, and blush.* Carbonated wine that derives its characteristic color from the presence or absence of the red coloring matter of the skins, juice, or pulp of grapes may be designated as ''carbonated red (or white, blush, pink, rosé, or amber, as the case may be) wine.''

(2) *Grape variety.* The names of one or more grape varieties may be used as a type designation for carbonated grape wine (for example, ''carbonated chardonnay'' or ''carbonated merlot and cabernet franc'') in accordance with § 4.156.

(3) *Grape type designation of varietal significance.* A grape type designation may be used as a type designation for carbonated grape wine (for example, ''carbonated moscato'' or ''carbonated scuppernong'') in accordance with § 4.157.

(4) *Semi-generic designation of geographic significance.* A semi-generic designation of geographic significance may be used as a type designation of carbonated grape wine (for example, ''carbonated Burgundy'') in accordance with § 4.174.

§ 4.145 Fruit wine—class and type designation.

(a) *Fruit wine.* (1) Fruit wine is wine produced by the normal alcoholic fermentation of the juice of sound, ripe fruit (including restored or unrestored pure condensed fruit must) other than grapes, with or without the addition, after fermentation, of pure condensed fruit must and, with or without added spirits of the type authorized for natural wine under 26 U.S.C. 5382, but without other addition or abstraction except as may occur in cellar treatment of the type authorized for natural wine under 26 U.S.C. 5382.

(2) Fruit wine may be ameliorated, or sweetened, before, during, or after fermentation, in a way that is consistent with the limits set forth in 26 U.S.C. 5384 for natural fruit wine, provided that fruit wine designated as ''specially sweetened fruit wine'' (or with a similar term) under paragraph (c)(8) of this section may be sweetened in accordance with the standards set forth in 26 U.S.C. 5385.

(3) The maximum volatile acidity, calculated as acetic acid and exclusive of sulfur dioxide, shall not be, for fruit wine that does not contain brandy or wine spirits, more than 0.14 gram, and for other fruit wine, more than 0.12 gram, per 100 milliliters (20 degrees Celsius).

(b) *Class designation for fruit wine*—(1) *Fruit wine derived wholly from one kind of fruit.* Fruit wine derived wholly from one kind of fruit must be designated with the name of that fruit followed by the word ''wine.'' For example, wine that is derived wholly from strawberries, oranges, or peaches must be designated as ''strawberry wine,'' ''orange wine,'' ''peach wine,'' respectively.

(2) *Fruit wine derived from more than one kind of fruit.* Fruit wine derived from the fermentation of more than one kind of fruit must be designated with the name of each fruit, followed by the word ''wine'' (for example, ''blueberry/banana wine,'' or ''orange-lime wine''). (For the rules regarding statements of composition when two types of fruit wine are blended together, see § 4.151(c)).

(c) *Type designation of fruit wine.* Fruit wine may be designated with one or more of the following applicable type designation(s) in place of the class designation.

(1) *Cider.* Fruit wine that is derived wholly from apples may be designated as ''cider.''

(2) *Perry.* Fruit wine that is derived wholly from pears may be designated as ''perry.''

(3) *Sparkling fruit wine.* Fruit wine that is rendered effervescent (at least 0.392 grams of carbon dioxide per 100 milliliters of wine) by carbon dioxide resulting solely from the secondary fermentation of the wine within a closed container, tank, or bottle may be designated as such provided that the name of the fruit follows the word ''sparkling.'' For example, a fruit wine

that is derived wholly from peaches and rendered effervescent as indicated in this paragraph, must be designated as ''sparkling peach wine.'' If a fruit wine is authorized to carry the designation of ''sparkling'' and is derived from more than one type of fruit, it must be designated as ''sparkling fruit wine'' and carry a statement that indicates the types of fruit that the wine is made from, or as ''sparkling (name all fruits) wine.''

(4) *Carbonated fruit wine.* Fruit wine that is rendered effervescent (at least 0.392 grams of carbon dioxide per 100 milliliters of wine) by carbon dioxide may be designated as such provided that the name of the fruit follows the word ''carbonated.'' For example, a fruit wine that is wholly derived from peaches and rendered effervescent as indicated in this paragraph must be designated as ''carbonated peach wine.'' If a fruit wine is authorized to carry the designation of ''carbonated'' and is derived from more than one type of fruit, it must be designated as ''carbonated fruit wine'' and carry a statement indicating the types of fruit the wine is made from, or as ''carbonated (name all fruits) wine.''

(5) *Fruit table wine and fruit light wine.* Fruit wine that has an alcohol content greater than 7 percent by volume and not in excess of 14 percent by volume may be designated as ''(name of fruit(s)) table wine'' or ''(name of fruit(s)) light wine.''

(6) *Fruit dessert wine.* Fruit wine that has an alcohol content greater than 14 percent by volume and not in excess of 24 percent by volume may be designated as ''(name of fruit(s)) dessert wine.''

(7) *Specially sweetened fruit wine.* Fruit wine sweetened in accordance with the standards set forth in 26 U.S.C. 5385 must include the words ''extra sweet,'' ''specially sweetened,'' ''specially sweet,'' or ''sweetened with excess sugar'' as part of the class and type designation.

§ 4.146 Agricultural wine—class and type designation.

(a) *Agricultural wine.* (1) Agricultural wine is made from suitable agricultural products other than the juice of grapes, berries, or other fruits and is produced by the normal alcoholic fermentation of sound fermentable agricultural products, either fresh or dried, or of the restored or unrestored pure condensed must thereof, and without added distilled spirits.

(2) Agricultural wine may not be flavored or colored; however, hops may be used in the production of honey wine in accordance with the standards set forth in part 24 of this chapter.

(3) Agricultural wine may be ameliorated in accordance with the standards set forth in part 24 of this chapter. The maximum volatile acidity, calculated as acetic acid and exclusive of sulfur dioxide, shall not be, for wine of this class, more than 0.14 grams per 100 milliliters (20 degrees Celsius).

(b) *Class designation of agricultural wine*—(1) *Agricultural wine derived wholly from one kind of agricultural product.* Agricultural wine derived wholly from one kind of agricultural product must be designated by the word ''wine'' qualified by the name of the agricultural product. For example, agricultural wine that is derived wholly from dandelions, raisins, or agave must be designated as ''dandelion wine,'' ''raisin wine,'' or ''agave wine,'' respectively. Agricultural wine derived wholly from honey may be designated as either ''honey wine'' or ''mead.''

(2) *Agricultural wine derived from more than one kind of agricultural product.* Agricultural wine derived from the fermentation of more than one kind of agricultural product must be designated with the name of each agricultural material, followed by the word ''wine'' (for example, ''dandelion honey wine). (For the rules regarding statements of composition when two types of agricultural wine are blended together, see § 4.151(c)).

(c) *Type designations.* One or more of the following type designations may be used in place of the class designation for agricultural wine:

(1) *Sparkling agricultural wine.* Agricultural wine that is rendered effervescent (at least 0.392 grams of carbon dioxide per 100 milliliters of wine) by carbon dioxide resulting solely from the secondary fermentation of the wine within a closed container, tank, or bottle may be designated as ''sparkling (name of agricultural product) wine.'' For example, agricultural wine that is derived wholly from dandelions and rendered effervescent as stated in this paragraph must be designated as ''sparkling dandelion wine.''

(2) *Carbonated agricultural wine.* Agricultural wine that is rendered effervescent (at least 0.392 grams of carbon dioxide per 100 milliliters of wine) by carbon dioxide may be designated as ''carbonated (name of agricultural product) wine.'' For example, agricultural wine that is derived wholly from dandelions and rendered effervescent as stated in this paragraph must be designated as ''carbonated dandelion wine.''

(3) *Agricultural table wine and light wine.* Agricultural wine that has an alcohol content greater than 7 percent by volume and not in excess of 14 percent by volume may be designated as ''(name of agricultural product(s)) table wine'' or ''(name of agricultural product(s)) light wine.''

(4) *Agricultural dessert wine.* Agricultural wine having an alcoholic content greater than 14 percent by volume and not in excess of 24 percent by volume may be designated as ''(name of agricultural product(s)) dessert wine.''

§ 4.147 Aperitif—class and type designation.

(a) *Aperitif wine.* Aperitif wine is compounded from grape wine containing added brandy or alcohol may be flavored with herbs and other natural aromatic flavoring materials, with or without the addition of caramel for coloring purposes; and possess the taste, aroma, and characteristics generally attributed to aperitif wine; and must have an alcoholic content of not less than 15 percent by volume.

(b) *Class designation of aperitif wine.* Aperitif wine must be designated as aperitif wine unless paragraph (c) of this section applies.

(c) *Type designation of aperitif wine.* The following type designation may be used for aperitif wine in place of the class designation as applicable.

(1) *Vermouth.* Vermouth is a type of aperitif wine made from grape wine, having the taste, aroma, and characteristics generally attributed to vermouth. Vermouth has been recognized as a generic designation of geographical significance and may be designated as ''vermouth.''

(2) [Reserved].

§ 4.148 Rice wine—class and type designation.

(a) *Rice wine.* Rice wine is produced from the alcoholic fermentation of rice, with or without the addition of distilled spirits.

(b) *Class designation of rice wine.* Wine of this class must be designated as rice wine unless it meets one of the type designations in paragraph (c) of this section.

(c) *Type designation of rice wine.* One or more of the following type designations may be used for rice wine as applicable.

(1) *Saké.* Saké is produced from rice in accordance with the commonly accepted method of manufacture of such product. Saké has been designated as a generic designation of geographic significance under § 4.183.

(2) *Gyeongju Beopju.* Gyeongju Beopju is a rice wine produced in the Republic of Korea in accordance with the laws and regulations of the Republic of Korea governing the manufacture of such product.

(3) *Rice table wine and light wine.* Rice wine that has an alcohol content greater than 7 percent by volume and not in excess of 14 percent by volume may be designated as ''rice table wine'' or ''rice light wine.''

(4) *Rice dessert wine.* Rice wine having an alcoholic content greater than 14 percent by volume and not in excess of 24 percent by volume may be designated as ''rice dessert wine.''

§ 4.149 Retsina wine—designation.

''Retsina wine'' is still grape table wine fermented or flavored with resin. Retsina has been recognized as a semi-generic designation of geographic significance and is subject to the rules found in § 4.174 with regard to semi-generic designations.

§ 4.150 Imitation and substandard or other than standard wine—designation.

(a) ''Imitation wine'' shall bear as a part of its designation the word ''imitation,'' and shall include:

(1) Any wine containing synthetic materials.

(2) Any wine made from a mixture of water with residue remaining after thorough pressing of grapes, fruit, or other agricultural products.

(3) Any class or type of wine the taste, aroma, color, or other characteristics of which have been acquired, in whole or in part, by treatment with methods or materials of any kind (except as permitted in § 4.154(c)(5)), if the taste, aroma, color, or other characteristics of normal wines of such class or type are acquired without such treatment.

(4) Any wine made from must concentrated at any time to more than 80° brix.

(b) ''Substandard wine'' or ''other than standard wine'' shall bear as a part of its designation the words ''substandard'' or ''other than standard,'' and shall include:

(1) Any wine having a volatile acidity in excess of the maximum prescribed therefor in subpart I of this part.

(2) Any wine for which no maximum volatile acidity is prescribed in subpart I of this part, inclusive, having a volatile acidity, calculated as acetic acid and exclusive of sulfur dioxide, in excess of 0.14 gram per 100 milliliters (20 degrees Celsius).

(3) Any wine for which a standard of identity is prescribed in this subpart I of this part, inclusive, which, through disease, decomposition, or otherwise, fails to have the composition, color, and clean vinous taste and aroma of normal wines conforming to such standard.

(4) Any ''grape wine,'' ''fruit wine,'' or ''wine from other agricultural products'' to which sugar, water, or a sugar-water solution has been added in excess of the production standards for such wine as prescribed in part 24 of this chapter and in an amount which is in excess of the limitations prescribed in the standards of identity for these products, unless, in the case of ''fruit wine'' and ''wine from other agricultural products'' the normal acidity of the material from which such wine is produced is 20 parts or more per thousand and the volume of the resulting product has not been increased more than 60 percent by such addition.

§ 4.151 Statements of composition.

(a) *General.* If the class of the wine is not defined in one of the standards of identity specified in subpart I of this part, or the wine has been altered, treated, or blended beyond the standards permitted by § 4.154, a truthful and adequate statement of composition must appear on the label as the class designation. A distinctive or fanciful name, or a designation in accordance with trade understanding may appear in addition to the statement of composition.

(b) The statement of composition may not include any reference to a varietal (grape type) designation, type designation of varietal significance, semi-generic geographic type designation, or geographic distinctive designation.

(c) The appropriate TTB officer may require a statement of composition to identify the base wine(s), including blends of wine or fermentable materials, as well as other materials added to the wine before, during, and after fermentation, as appropriate, in order to ensure that the label provides adequate information about the identity of the product. Where a product consists entirely of a blend of two different types of fruit or agricultural wine, the statement of composition must include of the names of the types of wine (such as, ''blueberry wine and apple wine'' or ''mead/rhubarb wine'').

§§ 4.152–4.153 [Reserved]

Cellar Treatment and Alteration of Class and Type

§ 4.154 Cellar treatment and alteration of class or type.

(a) *Statement of composition.* If the class or type of any wine is altered, and the product as altered does not fall within any other class or type designations specified in §§ 4.142 through 4.150, then such wine must be labeled with a statement of composition in accordance with § 4.151.

(b) *Alteration of class or type.* Any of the following, occurring before, during, or after fermentation, will result in an alteration of class or type of wine:

(1) Treatment of any class or type of wine with a substance that is not a natural component of the wine and that remains in the wine, provided, that the presence in finished wine of not more than 350 parts per million of total sulfur dioxide, or sulfites expressed as sulfur dioxide, is not prohibited under this paragraph;

(2) Treatment of any class or type of wine with a substance that is not foreign to the wine but that remains in the wine in larger quantities than is naturally and normally present in other wines of the same class or type that are not so treated;

(3) Treatment of any class or type of wine with a method or material of any kind to such an extent or in such a manner as to affect the basic composition of the wine by altering any of its characteristic elements;

(4) Blending wine of one class with wine of another class or blending of wines of different types within the same class; and

(5) Treatment of any class or type of wine for which a standard of identity is prescribed in this part with sugar, water, or a sugar-water solution in excess of the quantities specifically authorized in that standard of identity, except that the class or type of such wine is not deemed to be altered:

(i) If fruit wine, agricultural wine, aperitif wine, rice wine, and imitation wine have a high normal acidity, if the total solids content is not more than 22 grams per 100 cubic centimeters and the content of natural acid is not less than 7.69 grams per liter; or

(ii) If grape wine, fruit wine, agricultural wine, aperitif wine, rice wine, retsina, and imitation wine have the normal acidity of 20 grams per liter, the volume of the resulting product has been increased not more than 60 percent by the addition of sugar, water, or a sugar-water solution for the sole purpose of correcting natural deficiencies due to such acidity, and (except in the case of such wine when produced from fruit or berries other than grapes) the phrase ''Made with over 35 percent sugar-water solution'' is included as part of the class and type statement.

(c) *Authorized cellar treatments:* The following treatments are authorized for use provided that they do not result in the alteration of the class or type of the wine under the provisions of paragraph (b) of this section:

(1) Treatment with filtering equipment, or with fining or sterilizing agents;

(2) Treatment with pasteurization or refrigeration as necessary to bring the wine to commercial standards in accordance with acceptable cellar practice but only in such a manner and to such an extent as not to change the basic composition of the wine or eliminate any of its characteristic elements;

(3) Treatment with methods and materials authorized for use under part 24 of this chapter (such as correcting cloudiness, precipitation, or abnormal color) to the minimum extent necessary to correct the wine;

(4) Treatment with constituents naturally present in the kind of fruit or other agricultural product from which the wine is produced for the purpose of correcting deficiencies of these constituents, but only to the extent that such constituents would be present in normal wines of the same class or type not so treated;

(5) Treatment of any class or type of wine involving the use of volatile fruit-flavor concentrates in the manner provided in section 5382 of the Internal Revenue Code; and

(6) In accordance with the provisions of §§ 4.143 through 4.157, carbon dioxide may be used to maintain counterpressure during the transfer of finished sparkling wines from bulk processing tanks to bottles, or from bottle to bottle, provided that the carbon dioxide content of the wine shall not be increased by more than 0.009 gram. per 100 mL during the transfer operation.

§ 4.155 [Reserved]

Grape Type Labeling

§ 4.156 Varietal (grape type) labeling as type designations.

(a) *General.* The names of one or more grape varieties may be used as the type designation of a grape wine only if the wine is also labeled with an appellation of origin, as defined in § 4.88.

(b) *Use of one variety name.* Except as otherwise provided in paragraph (c)(1) or (2) of this section, the name of a single grape variety may appear as a type designation on a wine label only if:

(1) Not less than 75 percent of the wine is derived from grapes of that variety, and

(2) The entire qualifying percentage of the named variety was grown in the area described by the labeled appellation of origin.

(c) *Exceptions.* (1) Wine made from any *Vitis labrusca* variety (exclusive of hybrids with *Vitis labrusca* parentage) may be labeled with the variety name if:

(i) Not less than 51 percent of the wine is derived from grapes of the named variety;

(ii) The following statement is shown on any label: ''contains not less than 51 percent (name of variety).'' This statement does not have to appear if 75 percent or more of the wine is derived from grapes of the named variety; and

(iii) The entire qualifying percentage of the named variety was grown in the labeled appellation of origin area.

(2) Wine made from any variety of any species found by the appropriate TTB officer upon appropriate application to be too strongly flavored at 75 percent minimum varietal content may be labeled with the varietal name if:

(i) Not less than 51 percent of the wine is derived from grapes of that variety;

(ii) The statement ''contains not less than 51 percent (name of variety)'' is shown on the label (except that this statement need not appear if 75 percent or more of the wine is derived from grapes of the named variety); and

(iii) The entire qualifying percentage of the named variety was grown in the labeled appellation of origin.

(d) *Two or more varieties.* The names of two or more grape varieties may be used as the type designation if:

(1) Not less than 85 percent of the wine is derived from grapes of the labeled varieties;

(2) The wine derived each grape variety listed on the label is in greater proportion than wine derived from grapes of any variety that is not listed; and

(3) The varieties must be listed in descending order of predominance, based on the percentage of wine derived from each variety of grape.

(e) *List of approved variety names for American wine.* The name of a grape variety may be used in a type designation for an American wine only if that name has been approved by the Administrator. A list of approved grape variety names appears in subpart J of this part.

(f) *List of administratively approved grape variety names.* TTB administratively approves grape variety names pending future rulemaking. An administrative approval is temporary in nature, and it means that TTB will allow the use of the grape variety name as a type designation on a wine label pending rulemaking. An administrative approval may be revoked as a result of subsequent rulemaking on the grape variety name. See the TTB website, at *https://www.ttb.gov* for a list of administratively approved grape variety names.

§ 4.157 Type designations of varietal significance for American wines.

This section specifies type designations of varietal significance that are used for American wines. A name specified in this section may appear on a label as a type designation for American wine only if the wine is also labeled with an appellation of origin as defined in § 4.157.

(a) *Muscadine.* Muscadine is the name of an American wine that derives at least 75 percent of its volume from *Muscadinia rotundifolia* grapes.

(b) *Muscatel.* Muscatel is the name of a American wine that derives its predominant taste, aroma, and characteristics, and at least 75 percent of its volume from any Muscat grape source, and that conforms to the standards specified in § 4.142(c)(11).

(c) *Muscat or moscato.* Muscat or moscato is the name of an American wine that derives at least 75 percent of its volume from any Muscat grape source.

(d) *Scuppernong.* Scuppernong is the name of an American wine that derives at least 75 percent of its volume from bronze *Muscadinia rotundifolia* grapes.

§ 4.158 [Reserved]

Generic, Semi–Generic, and Non–Generic Designations of Geographic Significance

§ 4.173 Generic designations of geographic significance.

(a) *Definition.* A generic designation is the name of a class or type of wine that once had geographic significance but has been deemed by the Administrator to have lost any geographic significance.

(b) *List of generic designations.* Vermouth and Saké are generic designations that may be used as a class or type designation, in accordance with subpart I of this part.

§ 4.174 Semi-generic designations of geographic significance.

(a) *Definition.* A semi-generic designation of geographic significance is a geographic term which is also the designation of a class or type of wine and which has been deemed to have become semi-generic by the Administrator. A semi-generic designation may be used to designate wine of an origin other than that indicated by such name only when used in accordance with the rules set forth in paragraph (c) of this section.

(b) *List of semi-generic designations of geographic significance.* Each of the following names has been found to be semi-generic:

(1) Angelica (associated with wine from the United States);

(2) Burgundy (associated with wine from France);

(3) Chablis (associated with wine from France);

(4) Champagne (associated with wine from France);
(5) Chianti (associated with wine from Italy);
(6) Claret (associated with wine from France);
(7) Haut Sauterne (associated with wine from France);
(8) Madeira (associated with wine from Portugal);
(9) Hock (associated with wine from Germany);
(10) Malaga (associated with wine from Spain),
(11) Marsala (associated with wine from Italy);
(12) Moselle (associated with wine from France);
(13) Port (associated with wine from Portugal);
(14) Retsina (associated with wine from Greece);
(15) Rhine wine (associated with wine from Germany);
(16) Sauterne (associated with wine from France);
(17) Sherry (associated with wine from Spain); and
(18) Tokay (associated with wine from Hungary).

(c) *Use of authorized semi-generic designations of geographic significance.* A semi-generic designation of geographic significance may be used to designate wines of an origin other than that indicated by such name only if:

(1) There appears an appropriate appellation of origin disclosing the true place of origin of the wine in the same field of vision as the semi-generic designation;

(2) The person, or the successor in interest of a person, using a semi-generic designation name listed in paragraphs (b)(2) through (18) of this section, held a COLA or a certificate of exemption from label approval (see § 4.22) issued before March 10, 2006, for a wine label bearing the same brand name or brand name and a distinctive or fanciful name and on which the semi-generic designation appeared; and

(3) The wine so designated conforms to the standard of identity, if any, for such wine contained in the regulations in this part or, if there is no such standard, to the trade understanding of such class or type.

(d) *Imported wine originating from the place indicated by the name.* In the case of wine originating from the place indicated by the name, the semi-generic designation may be used to designate the wine only if:

(1) The wine conforms either to the standard of identity specified for the wine in subpart I of this part or, if no such standard exists, to the trade understanding of the class or type of the wine; and

(2) The wine conforms to the requirements of the foreign laws and regulations that govern the composition, method of production, and designation of wines available for consumption within the country of origin.

§ 4.175 Nongeneric designation of geographic significance and nongeneric designations that are distinctive designations of specific grape wines.

(a) *Definition.* A nongeneric designation of geographic significance is a name of geographic significance that has not been found by the Administrator to be generic or semi-generic. A nongeneric name of geographic significance may be deemed to be the distinctive designation of a wine if the Administrator finds that it is known to the consumer and to the trade as the designation of a specific wine of a particular place or region, distinguishable from all other wines.

(b) *Use of nongeneric designations of geographic significance.* Nongeneric designations of geographic significance are appellation of origin names that may be used only to designate wines of the origin indicated by such name in accordance with §§ 4.88 through 4.91, as applicable. Examples of nongeneric names that are not distinctive designations of specific grape wines are American, California, Lake Erie, Napa Valley, New York State, French, and Spanish. Additional examples of foreign nongeneric names are listed in subpart C of part 12 of this chapter.

(c) *Use of nongeneric names that are distinctive designations of specific grape wines.* Nongeneric designations of geographic significance are appellation of origin names that may be used only to designate wines of the origin indicated by such name in accordance with §§ 4.88 through 4.91, as applicable, and that may also be used as the class and type designation of the wine. Examples of nongeneric names that are distinctive designations of specific grape wines are: Bordeaux Blanc, Bordeaux Rouge, Graves, Medoc, Saint-Julien, Chateau Yquem, Chateau Margaux, Chateau Lafite, Pommard, Chambertin, Montrachet, Rhone, Liebfraumilch, Rudesheimer, Forster, Deidesheimer, Schloss Johannisberger, Lagrima, and Lacryma Christi. A list of foreign distinctive designations, as determined by the Administrator, appears in subpart D of part 12 of this chapter.

§ 4.176–4.177 [Reserved]

Subpart J—American Grape Variety Names

§ 4.191 Approval of grape variety names.

(a) Any interested person may petition the Administrator for the approval of a grape variety name. The petition may be in the form of a letter and should provide evidence of the following:

(1) Acceptance of the new grape variety;

(2) The validity of the name for identifying the grape variety;

(3) That the variety is used or will be used in winemaking; and

(4) That the variety is grown and used in the United States.

(b) For the approval of names of new grape varieties, documentation submitted with the petition to provide evidence that the requirements in paragraph (a) of this section have been met may include:

(1) Reference to the publication of the name of the variety in a scientific or professional journal of horticulture or a published report by a professional, scientific or winegrowers' organization;

(2) Reference to a plant patent, if so patented; and

(3) Information pertaining to the commercial potential of the variety, such as the acreage planted and its location or market studies.

(c) The Administrator will not approve a grape variety name if:

(1) The name has previously been used for a different grape variety;

(2) The name contains a term or name found to be misleading under § 4.122; or

(3) The name of a new grape variety contains the term ''Riesling.''

(d) For new grape varieties developed in the United States, the Administrator may determine if the use of names which contain words of geographical significance, place names, or foreign words are misleading under § 4.122. The Administrator will not approve the use of a grape variety name found to be misleading.

(e) TTB administratively approves grape variety names pending future rulemaking. An administrative approval is temporary in nature, and it means that TTB will allow the use of the grape variety name as a type designation on a wine label pending rulemaking. An administrative approval may be revoked as a result of subsequent rulemaking on the grape variety name. The list of administratively approved grape variety names can be found on TTB's website at *https://www.ttb.gov.*

§ 4.192 List of approved names.

The following grape variety names have been approved by the Administrator for use as type designations for American wines. When more than one name may be used to identify a single variety of grape, the synonym is shown in parentheses following the grape variety name. Grape variety names may be spelled with or without the hyphens or diacritic marks indicated in the list. The list of grape variety names administratively approved under § 4.191(e) is available on the TTB website at *https://www.ttb.gov.*

Aglianico
Agawam
Albariño (Alvarinho)
Albemarle
Aleatico
Alicante Bouschet
Aligoté
Alvarelhão
Alvarinho (Albariño)
Arneis
Aurore
Auxerrois
Bacchus
Baco blanc
Baco noir
Barbera
Beacon
Beclan
Bellandais
Beta
Biancolella
Black Corinth
Black Malvoisie (Cinsaut)
Black Monukka
Black Muscat (Muscat Hamburg)
Black Pearl
Blanc Du Bois
Blaufränkish (Lemberger, Limberger)
Blue Eye
Bonarda
Bountiful
Brianna
Burdin 4672
Burdin 5201
Burdin 11042
Burgaw
Burger
Cabernet Diane
Cabernet Doré
Cabernet franc
Cabernet Pfeffer
Cabernet Sauvignon
Calzin
Campbell Early (Island Belle)
Canada Muscat
Canaiolo (Canaiolo Nero)
Canaiolo Nero (Canaiolo)
Captivator
Carignan (Carignane)
Carignane (Carignan)
Carlos
Carmenère
Carmine
Carnelian
Cascade
Castel 19–637
Catawba
Cayuga White
Centurion
Chambourcin
Chancellor
Charbono
Chardonel
Chardonnay
Chasselas doré
Chelois
Chenin blanc
Chief
Chowan
Cinsaut (Black Malvoisie)
Clairette blanche
Clinton
Colombard (French Colombard)
Colobel
Corot noir
Cortese
Corvina
Concord
Conquistador
Couderc noir
Counoise
Cowart
Creek
Crimson Cabernet
Cynthiana (Norton)
Dearing
De Chaunac
Delaware
Diamond
Dixie
Dolcetto
Doreen
Dornfelder
Dulcet
Durif (Petite Sirah)
Dutchess
Early Burgundy
Early Muscat
Edelweiss
Eden
Ehrenfelser
Ellen Scott
Elvira
Emerald Riesling
Erbaluce
Favorite
Feher Szagos
Fernão Pires
Fern Munson
Fiano
Flame Tokay
Flora
Florental
Folle blanche
Forastera
Fredonia
Freedom
Freisa
French Colombard (Colombard)
Frontenac
Frontenac gris
Fry
Fumé blanc (Sauvignon blanc)
Furmint
Gamay noir
Garnacha (Grenache, Grenache noir)
Garnacha blanca (Grenache blanc)
Garronet
Geneva Red 7
Gewürztraminer
Gladwin 113
Glennel
Gold
Golden Isles
Golden Muscat
Graciano
Grand Noir
Green Hungarian
Grenache (Garnacha, Grenache noir)
Grenache blanc (Garnacha blanca)
Grenache noir (Garnacha, Grenache)
Grignolino
Grillo
Gros Verdot
Grüner Veltliner
Helena
Herbemont
Higgins
Horizon
Hunt
Iona
Interlaken
Isabella
Island Belle (Campbell Early)
Ives
James
Jewell
Joannes Seyve 12–428
Joannes Seyve 23–416
Kerner
Kay Gray
Kleinberger
La Crescent
LaCrosse
Lagrein
Lake Emerald
Lambrusco
Landal
Landot noir
Lenoir
Léon Millot
Lemberger (Blaufränkish, Limberger)
Limberger (Blaufränkisch, Lemberger)
Louise Swenson
Lucie Kuhlmann
Madeline Angevine
Magnolia
Magoon
Malbec
Malvasia bianca (Moscato greco)
Mammolo
Maréchal Foch
Marquette
Marsanne
Mataro (Monastrell, Mourvèdre)
Melody
Melon (Melon de Bourgogne)
Melon de Bourgogne (Melon)
Merlot
Meunier (Pinot Meunier)

Mish
Mission
Missouri Riesling
Monastrell (Mataro, Mourvèdre)
Mondeuse (Refosco)
Montefiore
Montepulciano
Moore Early
Morio-Muskat
Moscato greco (Malvasia bianca)
Mourvèdre (Mataro, Monastrell)
Müller-Thurgau
Münch
Muscadelle
Muscat blanc (Muscat Canelli)
Muscat Canelli (Muscat blanc)
Muscat du Moulin
Muscat Hamburg (Black Muscat)
Muscat of Alexandria
Muscat Ottonel
Naples
Nebbiolo
Négrette
Negrara
Negro Amaro
Nero d'Avola
New York Muscat
Niagara
Noah
Noble
Noiret
Norton (Cynthiana)
Ontario
Orange Muscat
Palomino
Pamlico
Pedro Ximenes
Peloursin
Petit Bouschet
Petit Manseng
Petit Verdot
Petite Sirah (Durif)
Peverella
Picpoul (Piquepoul blanc)
Pinotage
Pinot blanc
Pinot Grigio (Pinot gris)
Pinot gris (Pinot Grigio)
Pinot Meunier (Meunier)
Pinot noir
Piquepoul blanc (Picpoul)
Prairie Star
Precoce de Malingre
Pride
Primitivo
Princess
Rayon d'Or
Ravat 34
Ravat 51 (Vignoles)
Ravat noir
Redgate
Refosco (Mondeuse)
Regale
Reliance
Riesling (White Riesling)
Rkatsiteli (Rkatziteli)
Rkatziteli (Rkatsiteli)
Roanoke
Rondinella
Rosette
Roucaneuf
Rougeon
Roussanne
Royalty
Rubired
Ruby Cabernet
St. Croix
St. Laurent
St. Pepin
St. Vincent
Sabrevois
Sagrantino
Saint Macaire
Salem
Salvador
Sangiovese
Sauvignon blanc (Fumé blanc)
Sauvignon gris
Scarlet
Scheurebe
Sémillon
Sereksiya
Seyval (Seyval blanc)
Seyval blanc (Seyval)
Shiraz (Syrah)
Siegerrebe
Siegfried
Southland
Souzão
Steuben
Stover
Sugargate
Sultanina (Thompson Seedless)
Summit
Suwannee
Sylvaner
Symphony
Syrah (Shiraz)
Swenson Red
Tannat
Tarheel
Taylor
Tempranillo (Valdepeñas)
Teroldego
Thomas
Thompson Seedless (Sultanina)
Tinta Madeira
Tinto cão
Tocai Friulano
Topsail
Touriga
Traminer
Traminette
Trebbiano (Ugni blanc)
Trousseau
Trousseau gris
Ugni blanc (Trebbiano)
Valdepeñas (Tempranillo)
Valdiguié
Valerien
Valiant
Valvin Muscat
Van Buren
Veeblanc
Veltliner
Ventura
Verdelet
Verdelho
Vergennes
Vermentino
Vidal blanc
Vignoles (Ravat 51)
Villard blanc
Villard noir
Vincent
Viognier
Vivant
Welsch Rizling
Watergate
Welder
White Riesling (Riesling)
Wine King
Yuga
Zinfandel
Zinthiana
Zweigelt

§ 4.193 Alternative names permitted for temporary use.

(a) *Johannisberg Riesling.* The name ''Johannisberg Riesling'' may be used as the type designation in lieu of ''Riesling'' for wines bottled prior to January 1, 2006.

(b) *Agwam.* The name ''Agwam'' may be used as the type designation in lieu of ''Agawam'' for wines bottled prior to October 29, 2012.

Subpart K—Standards of Fill and Authorized Container Sizes

§ 4.201 General.

(a) Except as provided in paragraph (b) of this section, no person engaged in business as a producer, blender, importer, or wholesaler of wine, directly or indirectly, or through an affiliate, may sell or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or receive therein, or remove from customs custody for consumption, any wine in containers, unless the wine is bottled in conformity with §§ 4.202 and 4.203.

(b) Sections 4.202 and 4.203 do not apply to:

(1) Rice wine;

(2) Wine packed in containers of 18 liters or more;

(3) Imported wine in the original containers in which such wine entered customs custody, if the wine was bottled or packed before January 1, 1979; or

(4) Imported wine bottled or packed before January 1, 1979, and certified as to such in a statement, available to the appropriate TTB officer upon request, signed by an official duly authorized by the appropriate foreign government.

(c) Section 4.203 does not apply to wine domestically bottled or packed, either in or out of customs custody, before January 1, 1979, if the wine was bottled or packed according to the standards of fill (listed in ounces,

quarts, and gallons) prescribed by regulation before that date.

§ 4.202 Standard wine containers.

(a) *General.* Wine must be bottled in standard wine containers, as defined in this paragraph. A standard wine container is a container that is made, formed, and filled in such a way that it does not mislead purchasers as regards it contents. An individual carton or other container of a bottle may not be so designed as to mislead purchasers as to the size of the bottle it contains.

(b) *Headspace.* Wine containers must be designed and filled so that the headspace, or empty space between the top of the wine and the top of the container, meets the following specifications:

(1) If the net contents stated on the label are 187 milliliters or more, the headspace must not exceed 6 percent of the container's total capacity after closure.

(2) In the case of all other containers, the headspace must not exceed 10 percent of the container's total capacity after closure.

(c) *Design.* Regardless of the correctness of the stated net contents, a wine container is deemed to mislead the purchaser if it is made and formed in such a way that its actual capacity is substantially less than the capacity it appears to have upon visual examination under ordinary conditions of purchase or use.

(d) *Fill.* Containers must be filled with a quantity of wine that corresponds to one of the authorized container sizes prescribed in § 4.203.

§ 4.203 Standards of fill (container sizes).

(a) *Authorized standards of fill.* Subject to the container requirements set forth in § 4.202, wine subject to this part must be placed in one of the following authorized container sizes:

(1) 3 liters.
(2) 1.5 liters.
(3) 1 liter.
(4) 750 milliliters.
(5) 500 milliliters.
(6) 375 milliliters.
(7) 187 milliliters.
(8) 100 milliliters.
(9) 50 milliliters.

(b) *Sizes larger than 3 liters.* Wine may be bottled in containers of 4 liters or larger if the containers are filled and labeled in quantities of whole liters (4 liters, 5 liters, 6 liters, etc.). This applies to containers that have a capacity of up to 17 liters.

(c) *Tolerances.* The tolerances in fill are the same as are allowed by § 4.62 in respect to statement of net contents on labels.

§ 4.204 Aggregate packaging to meet standard of fill requirements.

(a) Under the conditions set forth in paragraphs (b) through (f) of this section, industry members may use aggregate packaging to satisfy a standard of fill required under § 4.203. In other words, industry members may bottle wine in containers that do not meet a standard of fill, as long as those containers are then packaged together in a larger container and the entire net contents of the aggregate package meets a standard of fill. For example, thirty 25-milliliter (mL) bottles may be packaged together to meet the 750 mL standard of fill. The industry member must submit the actual external container and a sample of one of the internal containers to TTB together with the industry member's application for label approval.

(b) The class and type, tax class, and alcohol content of the wine in each of the individual internal containers of the aggregate package must be the same.

(c) The external container, as well as each of the individual internal containers, must be labeled with all of the mandatory label information required by this part and parts 16 and 24 of this chapter; however, an appropriate standard of fill is not required for internal containers.

(d) The external container must include a net contents statement that indicates how the aggregate package equals an authorized standard of fill (for example, ''750 mL = 30 containers of 25 mL each''). The internal container must include a net contents statement in accordance with § 4.68.

(e) The external container must be shrink-wrapped, boxed, or sealed in such a manner that the smaller containers cannot be easily removed.

(f) Each of the smaller containers must be labeled ''NOT FOR INDIVIDUAL SALE.''

Subpart L—Recordkeeping and Substantiation Requirements

§ 4.211 Recordkeeping requirements—certificates.

(a) *Certificates of label approval (COLAs).* Upon request by the appropriate TTB officer, a bottler or importer must provide evidence that a container of wine is covered by a COLA or a certificate of exemption. This requirement may be satisfied by providing original certificates, photocopies or electronic copies of COLAs, or records showing the TTB Identification number assigned to the COLA. TTB may request such information for a period of five years from the date that the products covered by the COLA were removed from the bottler's premises or from customs custody, as applicable.

(b) *Labels with revisions.* Where labels on containers reflect revisions to the approved label that have been made in compliance with allowable revisions authorized by TTB Form 5100.31 or otherwise authorized by TTB, the bottler or importer must, upon request by the appropriate TTB officer, identify the COLA covering the product if the product is required to be covered by a COLA. TTB may request such information for a period of five years from the date that the products covered by the COLA were removed from the bottler's premises or from customs custody, as applicable.

(c) *Other recordkeeping requirements under this part.* See § 4.30 for other recordkeeping requirements under this part.

§ 4.212 Substantiation requirements.

(a) *Application.* The substantiation requirements of this section apply to any claim made on any label or container subject to the requirements of this part.

(b) *Reasonable basis in fact.* All claims, whether implicit or explicit, must have a reasonable basis in fact. Claims that contain express or implied statements regarding the amount of support for the claim (such as ''tests prove,'' or ''studies show'') must have the level of substantiation that is claimed. Any labeling claim that does not have a reasonable basis in fact, or cannot be adequately substantiated upon the request of the appropriate TTB officer, will be considered misleading within the meaning of § 4.122(b)(2).

(c) *Evidence that claims are adequately substantiated.* The appropriate TTB officer may request that bottlers and importers provide evidence that labeling claims are adequately substantiated at any time within a period of five years from the time the wine was removed from the bottling premises or from customs custody, as applicable.

Subpart M—Penalties and Compromise of Liability

§ 4.221 Criminal penalties.

A violation of the labeling provisions of 27 U.S.C. 205(e) is punishable as a misdemeanor. See 27 U.S.C. 207 for the statutory provisions relating to criminal penalties, consent decrees, and injunctions.

§ 4.222 Conditions of basic permit.

A basic permit is conditioned upon compliance with the requirements of 27 U.S.C. 205, including the labeling

provisions of this part. A willful violation of the conditions of a basic permit provides grounds for the revocation or suspension of the permit, as applicable, as set forth in part 1 of this chapter.

§ 4.223 Compromise.

Pursuant to 27 U.S.C. 207, the appropriate TTB officer is authorized, with respect to any violation of 27 U.S.C. 205, to compromise the liability arising with respect to such violation upon payment of a sum not in excess of $500 for each offense, to be collected by the appropriate TTB officer and to be paid into the Treasury as miscellaneous receipts.

Subpart N—Paperwork Reduction Act

§ 4.231 OMB control numbers assigned under the Paperwork Reduction Act.

(a) *Purpose.* This subpart displays the control numbers assigned to information collection requirements in this part by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, Public Law 104–13.

(b) *Chart.* The following chart identifies each section in this part that contains an information collection requirement and the OMB control number that is assigned to that information collection requirement.

Section where contained	Current OMB Control No.
4.21	1513–0020.
4.22	1513–0020, 1513–0111.
4.23	1513–0020, 1513–0111.
4.24	1513–0020, 1513–0064.
4.25	1513–0020, 1513–0111.
4.27	1513–0020.
4.28	1513–0122.
4.30	1513–0064, 1513–0119, New control number.
4.62	1513–0087.
4.63	1513–0084, 1513–0087.
4.81	1513–0087, 1513–0121.
4.82	1513–0087, 1513–0121.
4.83	1513–0087.
4.84	1513–0087.
4.85	1513–0087.
4.86	1513–0087.
4.87	1513–0087.
4.88	1513–0087.
4.89	1513–0087.
4.90	1513–0087.
4.91	1513–0087.
4.92	1513–0087.
4.93	1513–0087.
4.94	1513–0087.
4.95	1513–0087.
4.96	1513–0087.
4.97	1513–0087.
4.98	1513–0087.
4.121	1513–0087.
4.122	1513–0087.
4.123	1513–0087.
4.124	1513–0087.
4.125	1513–0087.
4.126	1513–0087.
4.127	1513–0087.
4.128	1513–0087.
4.129	1513–0087.
4.130	1513–0087.
4.131	1513–0087.
4.133	1513–0087.
4.134	1513–0087.
4.135	1513–0087.
4.136	1513–0087.
4.201	1513–0064.
4.211	New control number.
4.212	New control number.

■ 2. Revise part 5 to read as follows:

PART 5—LABELING OF DISTILLED SPIRITS

Sec.

Authority: 26 U.S.C. 5301, 7805, 27 U.S.C. 205 and 207.

§ 5.05.0 Scope.

This part sets forth requirements that apply to the labeling and packaging of distilled spirits in containers, including requirements for label approval and rules regarding mandatory, regulated, and prohibited labeling statements.

Subpart A—General Provisions

§ 5.15.1 Definitions.

When used in this part and on forms prescribed under this part, the following terms have the meaning assigned to them in this section, unless the terms appear in a context that requires a different meaning. Any other term defined in the Federal Alcohol Administration Act (FAA Act) and used in this part has the same meaning assigned to it by the FAA Act.

Administrator. The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury.

Age. The length of time during which, after distillation and before bottling, the distilled spirits have been stored in oak barrels in such a manner that chemical changes take place as a result of direct contact with the wood. For bourbon whisky, rye whisky, wheat whisky, malt whisky, or rye malt whisky, and straight whiskies other than straight corn whisky, aging must occur in charred new oak barrels.

American proof. See *Proof.*

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any function relating to the administration or enforcement of this part by the current version of TTB Order 1135.5, Delegation of the Administrator's Authorities, in 27 CFR part 5, Labeling of Distilled Spirits.

Bottler. Any distiller or processor of distilled spirits who places distilled spirits in containers.

Brand name. The name under which a distilled spirit or line of distilled spirits is sold.

Certificate holder. The permittee or brewer whose name, address, and basic permit number, plant registry number, or brewer's notice number appears on an approved TTB Form 5100.31.

Certificate of exemption from label approval. A certificate issued on TTB Form 5100.31, which authorizes the bottling of wine or distilled spirits, under the condition that the product will under no circumstances be sold, offered for sale, shipped, delivered for shipment, or otherwise introduced by the applicant, directly or indirectly, into interstate or foreign commerce.

Certificate of label approval (COLA). A certificate issued on TTB Form 5100.31 that authorizes the bottling of wine, distilled spirits, and malt beverages, or the removal of bottled wine, distilled spirits, and malt beverages from customs custody for introduction into commerce, as long as the product bears labels identical to the labels appearing on the face of the certificate, or labels with changes authorized by TTB on the certificate or otherwise.

Container. Any can, bottle, box with an internal bladder, cask, keg, or other closed receptacle, in any size or material, that is for use in the sale of distilled spirits at retail. See subpart K of this part for rules regarding authorized standards of fill for containers.

Customs officer. An officer of U.S. Customs and Border Protection (CBP) or any agent or other person authorized by law to perform the duties of such an officer.

Distilled spirits. Ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whisky, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof, for nonindustrial use. The term ''distilled spirits'' does not include mixtures containing wine, bottled at 48 degrees of proof or less, if the mixture contains more than 50 percent wine on a proof gallon basis. The term ''distilled spirits'' also does not include products containing less than 0.5 percent alcohol by volume.

Distilling season. The period from January 1 through June 30, which is the spring distilling season, or the period from July 1 through December 31, which is the fall distilling season.

Distinctive or fanciful name. A descriptive name or phrase chosen to identify a distilled spirits product on the label. It does not include a brand name, class or type designation, or statement of composition.

FAA Act. The Federal Alcohol Administration Act.

Gallon. A U.S. gallon of 231 cubic inches at 60 degrees Fahrenheit.

Grain. Includes cereal grains and the seeds of the pseudocereals amaranth, buckwheat, and quinoa.

In bulk. In barrels or other receptacles having a capacity in excess of 1 wine gallon (3.785 liters).

Interstate or foreign commerce. Commerce between any State and any place outside of that State or commerce within the District of Columbia or commerce between points within the same State but through any place outside of that State.

Liter or litre. A metric unit of capacity equal to 1,000 cubic centimeters or 1,000 milliliters (mL) of distilled spirits at 15.56 degrees Celsius (60 degrees Fahrenheit), and equivalent to 33.814 U.S. fluid ounces.

Net contents. The amount, by volume, of distilled spirits held in a container.

Oak barrel. A cylindrical oak drum of approximately 50 gallons used to age bulk spirits.

Permittee. Any person holding a basic permit under the FAA Act.

Person. Any individual, corporation, partnership, association, joint-stock company, business trust, limited liability company, or other form of business enterprise, including a receiver, trustee, or liquidating agent and including an officer or employee of any agency of a State or political subdivision of a State.

Produced at or distilled at. When used with reference to specific degrees of proof of a distilled spirits product, the phrases ''produced at'' and ''distilled at'' mean the composite proof of the distilled spirits after completion of distillation and before reduction in proof, if any.

Proof. The ethyl alcohol content of a liquid at 60 degrees Fahrenheit, stated as twice the percentage of ethyl alcohol by volume.

Proof gallon. A gallon of liquid at 60 degrees Fahrenheit that contains 50 percent by volume of ethyl alcohol having a specific gravity of 0.7939 at 60 degrees Fahrenheit, referred to water at 60 degrees Fahrenheit as unity, or the alcoholic equivalent thereof.

Spirits. See Distilled spirits.

State. One of the 50 States of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

TTB. The Alcohol and Tobacco Tax and Trade Bureau of the Department of the Treasury.

United States (U.S.). The 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 5.25.2 Territorial extent.

The provisions of this part apply to the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 5.35.3 General requirements and prohibitions under the FAA Act.

(a) *Certificates of label approval (COLAs).* Subject to the requirements and exceptions set forth in the regulations in subpart B of this part, any bottler of distilled spirits, and any person who removes distilled spirits in containers from customs custody for sale or any other commercial purpose, is required to first obtain from TTB a COLA covering the label(s) on each container.

(b) *Alteration, mutilation, destruction, obliteration, or removal of labels.* Subject to the requirements and exceptions set forth in the regulations in subpart C of this part, it is unlawful to alter, mutilate, destroy, obliterate, or remove labels on distilled spirits containers. This prohibition applies to any person, including retailers, holding distilled spirits for sale in interstate or foreign commerce or any person holding distilled spirits for sale after shipment in interstate or foreign commerce.

(c) *Labeling requirements for distilled spirits.* It is unlawful for any person engaged in business as a bottler, wholesaler, or importer of distilled spirits, directly or indirectly, or through an affiliate, to sell or ship, or deliver for sale or shipment, or otherwise introduce or receive in interstate or foreign commerce, or remove from customs custody, any distilled spirits in containers unless the distilled spirits are bottled in containers, and the containers are marked, branded and labeled, in conformity with the regulations in this part.

(d) *Labeled in accordance with this part.* In order to be labeled in accordance with the regulations in this part, a container of distilled spirits must be in compliance with the following requirements:

(1) It must bear one or more label(s) meeting the standards for ''labels'' set forth in subpart D of this part;

(2) One or more of the labels on the container must include the mandatory information set forth in subpart E of this part;

(3) Claims on any label, container, or packaging (as defined in § 5.82) must comply with the rules for regulated label statements, as applicable, set forth in subpart F of this part;

(4) Statements or any other representations on any label, container, or packaging (as defined in §§ 5.81(b) and 5.121(b)) may not violate the regulations in subparts G and H of this part regarding certain practices on labeling of distilled spirits;

(5) The class and type designation on the label(s), as well as any designation appearing on containers or packaging must comply with the standards of identity set forth in subpart I of this part; and

(6) The distilled spirits in the container may not be adulterated within the meaning of the Federal Food, Drug, and Cosmetic Act.

(e) *Bottled in accordance with this part.* In order to be bottled in accordance with the regulations in this part, the distilled spirits must be bottled in authorized standards of fill in containers that meet the requirements of subpart K of this part.

§§ 5.4§ 5.4–5.6 [Reserved]

§ 5.75.7 Other TTB labeling regulations that apply to distilled spirits.

In addition to the regulations in this part, distilled spirits must also comply with the following TTB labeling regulations:

(a) *Health warning statement.* Alcoholic beverages, including distilled spirits, that contain at least half of one percent alcohol by volume, must be labeled with a health warning statement, in accordance with the Alcoholic Beverage Labeling Act of 1988 (ABLA). The regulations implementing the ABLA are contained in 27 CFR part 16.

(b) *Internal Revenue Code requirements.* The labeling and marking requirements for distilled spirits under the Internal Revenue Code are found in 27 CFR part 19, subpart T (for domestic products) and 27 CFR part 27, subpart E (for imported products).

§ 5.85.8 Distilled spirits for export.

Distilled spirits that are exported in bond without payment of tax directly from a distilled spirits plant or from customs custody are not subject to this part. For purposes of this section, direct exportation in bond does not include exportation after distilled spirits have been removed for consumption or sale in the United States, with appropriate tax determination or payment.

§ 5.95.9 Compliance with Federal and State requirements.

(a) *General.* Compliance with the requirements of this part relating to the labeling and bottling of distilled spirits does not relieve industry members from responsibility for complying with other applicable Federal and State requirements, including but not limited to those highlighted in paragraphs (b) and (c) of this section.

(b) *Ingredient safety.* While it remains the responsibility of the industry member to ensure that any ingredient used in production of distilled spirits complies fully with all applicable U.S. Food and Drug Administration (FDA) regulations pertaining to the safety of food ingredients and additives, the appropriate TTB officer may at any time request documentation to establish such compliance. As set forth in § 5.3(d), distilled spirits that are adulterated under the Federal Food, Drug, and Cosmetic Act are not labeled in accordance with this part.

(c) *Containers.* While it remains the responsibility of the industry member to ensure that containers are made of suitable materials that comply with all applicable FDA health and safety regulations for the packaging of beverages for consumption, the appropriate TTB officer may at any time request documentation to establish such compliance.

§ 5.10 Other related regulations.

(a) *TTB regulations.* Other TTB regulations that relate to distilled spirits are listed in paragraphs (a)(1) through (9) of this section:

(1) 27 CFR part 1—Basic Permit Requirements Under the Federal Alcohol Administration Act, Nonindustrial Use of Distilled Spirits and Wine, Bulk Sales and Bottling of Distilled Spirits;
(2) 27 CFR part 13—Labeling Proceedings;
(3) 27 CFR part 14—Advertising of Alcohol Beverage Products;
(4) 27 CFR part 16—Alcoholic Beverage Health Warning Statement;
(5) 27 CFR part 19—Distilled Spirits Plants;
(6) 27 CFR part 26—Liquors and Articles From Puerto Rico and the Virgin Islands;
(7) 27 CFR part 27—Importation of Distilled Spirits, Wines, and Beer;
(8) 27 CFR part 28—Exportation of Alcohol; and
(9) 27 CFR part 71—Rules of Practice in Permit Proceedings.

(b) *Other Federal Regulations.* The regulations listed in paragraphs (b)(1) through (9) of this section issued by other Federal agencies also may apply:
(1) 7 CFR part 205—National Organic Program;
(2) 19 CFR part 11—Packing and Stamping; Marking;
(3) 19 CFR part 102—Rules of Origin;
(4) 19 CFR part 134—Country of Origin Marking;
(5) 21 CFR part 1—General Enforcement Regulations, Subpart H, Registration of Food Facilities, and Subpart I, Prior Notice of Imported Food;
(6) 21 CFR parts 70–82, which pertain to food and color additives;
(7) 21 CFR part 101—Food Labeling;
(8) 21 CFR part 110—Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Human Food; and
(9) 21 CFR parts 170–189, which pertain to food additives and secondary direct food additives.

§ 5.11 Forms.

(a) *General.* TTB prescribes and makes available all forms required by this part. Any person completing a form must provide all of the information required by each form as indicated by the headings on the form and the instructions for the form. Each form must be filed in accordance with this part and the instructions for the form.

(b) *Electronically filing forms.* The forms required by this part can be filed electronically by using TTB's online filing systems: COLAs Online and Formulas Online. Anyone who intends to use one of these online filing systems must first register to use the system by accessing the TTB website at *https://www.ttb.gov.*

(c) *Obtaining paper forms.* Forms required by this part are available for printing through the TTB website (*https://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 8002, Cincinnati, OH 45202.

§ 5.12 Delegations of the Administrator.

Most of the regulatory authorities of the Administrator contained in this part are delegated to ''appropriate TTB officers.'' To determine which officers have been delegated specific authorities, see the current version of TTB Order 1135.5, Delegation of the Administrator's Authorities in 27 CFR part 5, Labeling of Distilled Spirits. Copies of this order can be obtained by accessing the TTB website *(https://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 8002, Cincinnati, OH 45202.

Subpart B—Certificates of Label Approval and Certificates of Exemption from Label Approval.

Requirements for Distilled Spirits Bottled in the United States

§ 5.21 Requirement for certificates of label approval (COLAs) for distilled spirits bottled in the United States.

(a) This section applies to distilled spirits bottled in the United States, outside of customs custody.

(b) No person may bottle distilled spirits without first applying for and obtaining a COLA issued by the appropriate TTB officer. This requirement applies to distilled spirits produced and bottled in the United States and to distilled spirits imported in bulk, regardless of where produced, and bottled in the United States. Bottlers may obtain an exemption from this requirement only if they satisfy the conditions set forth in § 5.23.

§ 5.22 Rules regarding certificates of label approval (COLAs) for distilled spirits bottled in the United States.

(a) *What a COLA authorizes.* An approved TTB Form 5100.31 authorizes the bottling of distilled spirits covered by the COLA, as long as the container bears labels identical to the labels appearing on the face of the COLA, or labels with changes authorized by TTB on the COLA or otherwise. The list of allowable changes can be found on the TTB website at *https://www.ttb.gov.*

(b) *What a COLA does not do.* Among other things, the issuance of a COLA does not:
(1) Confer trademark protection;
(2) Relieve the certificate holder from its responsibility to ensure that all ingredients used in the production of the distilled spirit comply with applicable requirements of the Food and Drug Administration with regard to ingredient safety; or
(3) Relieve the certificate holder from liability for violations of the FAA Act, the Alcohol Beverage Labeling Act of 1988, the Internal Revenue Code, or related regulations and rulings.

(i) The issuance of a COLA does not mean that TTB has verified the accuracy of any representations or claims made on the label with respect to the product in the container. It is the responsibility of the applicant to ensure that all information on the application is true and correct, and that all labeling representations and claims are truthful, accurate, and not misleading with respect to the product in the container.

(ii) A distilled spirit may be mislabeled even when the label is covered by a COLA. For example, if the label on the container contains representations that are false or misleading when applied to the product in the container, the distilled spirit is not labeled in accordance with the regulations in this part, even if it is covered by a COLA.

(c) *When to obtain a COLA.* The COLA must be obtained prior to bottling. No bottler may bottle distilled spirits, or remove distilled spirits from the premises where bottled, unless a COLA has been obtained.

(d) *Application for a COLA.* The bottler may apply for a COLA by submitting an application to TTB on Form 5100.31, in accordance with the instructions on the form. The bottler may apply for a COLA either electronically by accessing TTB's online system, COLAs Online, at *https://www.ttb.gov,* or by submitting the paper form. For procedures regarding the issuance of COLAs, see part 13 of this chapter.

§ 5.23 Application for exemption from label approval for distilled spirits bottled in the United States.

(a) *Exemption.* Any bottler of distilled spirits may apply to be exempt from the requirements of this part, by showing to the satisfaction of the appropriate TTB officer that the distilled spirits to be bottled are not to be sold, offered for sale, or shipped or delivered for shipment, or otherwise introduced, in interstate or foreign commerce.

(b) *Application required.* The bottler must file an application on TTB Form 5100.31 for exemption from label approval before bottling the distilled spirits. The bottler may apply for a

certificate of exemption from label approval either electronically, by accessing TTB's online system, COLAs Online, at *https://www.ttb.gov,* or by using the paper form. For procedures regarding the issuance of certificates of exemption from label approval, see part 13 of this chapter.

(c) *Labeling of distilled spirits covered by certificate of exemption.* The application for a certificate of exemption from label approval requires that the applicant identify the State in which the product will be sold. As a condition of receiving exemption from label approval, the label covered by an approved certificate of exemption must include the statement ''For sale in [name of State] only.'' See §§ 19.517 and 19.518 of this chapter for additional labeling rules that apply to distilled spirits covered by a certificate of exemption.

Requirements for Distilled Spirits Imported in Containers

§ 5.24 Certificates of label approval (COLAs) for distilled spirits imported in containers.

(a) *Application requirement.* Any person removing distilled spirits in containers from customs custody for consumption must first apply for and obtain a COLA covering the distilled spirits from the appropriate TTB officer.

(b) *Release of distilled spirits from customs custody.* Distilled spirits, imported in containers, are not eligible for release from customs custody for consumption, and no person may remove such distilled spirits from customs custody for consumption, unless the person removing the distilled spirits has obtained and is in possession of a COLA covering the distilled spirits.

(c) *Filing requirements.* If filing electronically, the importer must file with U.S. Customs and Border Protection (CBP), at the time of filing the customs entry, the TTB-assigned identification number of the valid COLA that corresponds to the label on the brand or lot of distilled spirits to be imported. If the importer is not filing electronically, the importer must provide a copy of the COLA to CBP at the time of entry. In addition, the importer must provide a copy of the applicable COLA, and proof of the certificate holder's authorization if applicable, upon request by the appropriate TTB officer or a customs officer.

(d) *Scope of this section.* The COLA requirement imposed by this section applies only to distilled spirits that are removed for sale or any other commercial purpose. Distilled spirits that are imported in containers are not eligible for a certificate of exemption from label approval. See 27 CFR 27.49, 27.74, and 27.75 for labeling exemptions applicable to certain imported samples of distilled spirits.

(e) *Relabeling in customs custody.* Containers of distilled spirits in customs custody that are required to be covered by a COLA but are not labeled in conformity with a COLA must be relabeled, under the supervision and direction of customs officers, prior to their removal from customs custody for consumption.

§ 5.25 Rules regarding certificates of label approval (COLAs) for distilled spirits imported in containers.

(a) *What COLA authorizes.* An approved TTB Form 5100.31 authorizes the use of the labels covered by the COLA on containers of distilled spirits, as long as the container bears labels identical to the labels appearing on the face of the COLA, or labels with changes authorized by the form or otherwise authorized by TTB.

(b) *What a COLA does not do.* Among other things, the issuance of a COLA does not:

(1) Confer trademark protection;

(2) Relieve the certificate holder from its responsibility to ensure that all ingredients used in the production of the distilled spirit comply with applicable requirements of the Food and Drug Administration with regard to ingredient safety; or

(3) Relieve the certificate holder from liability for violations of the FAA Act, the Alcoholic Beverage Labeling Act, the Internal Revenue Code, or related regulations and rulings.

(i) The issuance of a COLA does not mean that TTB has verified the accuracy of any representations or claims made on the label with respect to the product in the container. It is the responsibility of the applicant to ensure that all information on the application is true and correct and that all labeling representations and claims are truthful, accurate, and not misleading with respect to the product in the container.

(ii) Distilled spirits may be mislabeled even when the label is covered by a COLA. For example, if the label on the container contains representations that are false or misleading when applied to the product in the container the distilled spirits are not labeled in accordance with the regulations in this part, even if it is covered by a COLA.

(c) *When to obtain a COLA.* The COLA must be obtained prior to the removal of distilled spirits in containers from customs custody for consumption.

(d) *Application for a COLA.* The person responsible for the importation of distilled spirits must obtain approval of the labels by submitting an application to TTB on TTB Form 5100.31. A person may apply for a COLA either electronically, by accessing TTB's online system, COLAs Online, at *https://www.ttb.gov,* or by submitting the paper form. For procedures regarding the issuance of COLAs, see part 13 of this chapter.

Administrative Rules

§ 5.27 Presenting certificates of label approval (COLAs) to Government officials.

A certificate holder must present the original or a paper or electronic copy of the appropriate COLA upon the request of any duly authorized representative of the United States Government.

§ 5.28 Formulas, samples, and documentation.

(a) In addition to any formula specifically required under subpart J, TTB may require formulas under certain circumstances in connection with the label approval process. Prior to or in conjunction with the review of an application for a certificate of label approval (COLA) on TTB Form 5100.31, the appropriate TTB officer may require a bottler or importer to submit a formula, the results of laboratory testing of the distilled spirits, or a sample of any distilled spirits or ingredients used in producing a distilled spirit. The appropriate TTB officer also may request such information or samples after the issuance of such a COLA, or in connection with any distilled spirit that is required to be covered by a COLA. A formula may be filed electronically by using Formulas Online, or it may be submitted on paper on Form 5100.51. See § 5.11 for more information on forms and Formulas Online.

(b) Upon request of the appropriate TTB officer, a bottler or importer must submit a full and accurate statement of the contents of any container to which labels are to be or have been affixed, as well as any other documentation on any issue pertaining to whether the distilled spirits are labeled in accordance with this part.

§ 5.29 Personalized labels.

(a) *General.* Applicants for label approval may obtain permission from TTB to make certain changes in order to personalize labels without having to resubmit labels for TTB approval. Personalized labels may contain a personal message, picture, or other artwork that is specific to the consumer who is purchasing the product. For example, a distiller may offer individual or corporate customers labels that

commemorate an event such as a wedding or grand opening.

(b) *Application.* Any person who intends to offer personalized labels must submit a template for the personalized label with the application for label approval, and must note on the application a description of the specific personalized information that may change.

(c) *Approval of personalized label.* If the application complies with the regulations, TTB will issue a certificate of label approval (COLA) with a qualification allowing the personalization of labels. The qualification will allow the certificate holder to add or change items on the personalized label such as salutations, names, graphics, artwork, congratulatory dates and names, or event dates without applying for a new COLA. All of these items on personalized labels must comply with the regulations of this part.

(d) *Changes not allowed to personalized labels.* Approval of an application to personalize labels does not authorize the addition of any information that discusses either the alcohol beverage or characteristics of the alcohol beverage or that is inconsistent with or in violation of the provisions of this part or any other applicable provision of law or regulations.

§ 5.30 Certificates of age and origin for imported spirits.

(a) *Scotch, Irish, and Canadian whiskies.* (1) Scotch, Irish, and Canadian whiskies, imported in containers, are not eligible for release from customs custody for consumption, and no person may remove such whiskies from customs custody for consumption, unless that person has obtained and is in possession of an invoice accompanied by a certificate of origin issued by an official duly authorized by the appropriate foreign government, certifying:

(i) That the particular distilled spirits are Scotch, Irish, or Canadian whisky, as the case may be;

(ii) That the distilled spirits have been manufactured in compliance with the laws of the respective foreign governments regulating the manufacture of whisky for home consumption; and

(iii) That the product conforms to the requirements of the Immature Spirits Act of such foreign governments for spirits intended for home consumption.

(2) In addition, an official duly authorized by the appropriate foreign government must certify to the age of the youngest distilled spirits in the container. The age certified shall be the period during which, after distillation and before bottling, the distilled spirits have been stored in oak containers.

(b) *Brandy, including Cognac.* Brandy (other than fruit brandies of a type not customarily stored in oak containers) or Cognac, imported in containers, is not eligible for release from customs custody for consumption, and no person may remove such brandy or Cognac from customs custody for consumption, unless the person so removing the brandy or Cognac possesses a certificate issued by an official duly authorized by the appropriate foreign country certifying that the age of the youngest brandy or Cognac in the container is not less than two years, or if age is stated on the label that none of the distilled spirits are of an age less than that stated. The age certified shall be the period during which, after distillation and before bottling, the distilled spirits have been stored in oak containers. If the label of any fruit brandy, not stored in oak containers, bears any statement of storage in another type of container, the brandy is not eligible for release from customs custody for consumption, and no person may remove such brandy from customs custody for consumption, unless the person so removing the brandy possesses a certificate issued by an official duly authorized by the appropriate foreign government certifying to such storage. Cognac, imported in containers, is not eligible for release from customs custody for consumption, and no person may remove such Cognac from customs custody for consumption, unless the person so removing the Cognac possesses a certificate issued by an official duly authorized by the French Government, certifying that the product is grape brandy distilled in the Cognac region of France and entitled to be designated as ''Cognac'' by the laws and regulations of the French Government.

(c) *Rum.* Rum imported in containers that contain any statement of age is not eligible to be released from customs custody for consumption, and no person may remove such rum from customs custody for consumption, unless the person so removing the rum possesses a certificate issued by an official duly authorized by the appropriate foreign country, certifying to the age of the youngest rum in the container. The age certified shall be the period during which, after distillation and before bottling, the distilled spirits have been stored in oak containers.

(d) *Tequila.* (1) Tequila imported in containers is not eligible for release from customs custody for consumption, and no person may remove such Tequila from customs custody for consumption, unless the person removing such Tequila possesses a certificate issued by an official duly authorized by the Mexican Government stating that the product is entitled to be designated as Tequila under the applicable laws and regulations of the Mexican Government.

(2) If the label of any Tequila imported in containers contains any statement of age, the Tequila is not eligible for release from customs custody for consumption, and no person may remove such Tequila from customs custody for consumption, unless the person removing the Tequila possesses a certificate issued by an official duly authorized by the Mexican Government as to the age of the youngest Tequila in the container. The age certified shall be the period during which the Tequila has been stored in oak containers after distillation and before bottling.

(e) *Other whiskies.* Whisky, as defined in § 5.143(c)(2) through (7) and (10) through (14), that is imported in containers may be released from customs custody for econsumption only if the invoice is accompanied by a certificate issued by a duly authorized official of the appropriate foreign government certifying:

(1) In the case of whisky (regardless of whether it is mixed or blended) that contains no neutral spirits:

(i) The type of the whisky as defined in § 5.143;

(ii) The American proof at which the whisky was distilled;

(iii) That no neutral spirits (or other whisky in the case of straight whisky) have been added or otherwise included in the whisky

(iv) The age of the whisky; and

(v) The type of oak barrel in which the whisky was aged and whether the barrel was new or reused, charred or uncharred; and

(2) In the case of whisky containing neutral spirits:

(i) The type of the whisky as defined in § 5.143;

(ii) The percentage of straight whisky used in the blend, if any;

(iii) The American proof at which any straight whisky in the blend was distilled;

(iv) The percentage of whisky other than straight whisky in the blend, if any;

(v) The percentage of neutral spirits in the blend and the name of the commodity from which the neutral spirits were distilled;

(vi) The age of any straight whisky and the age of any other whisky in the blend; and

(vii) The type of oak barrel in which the age of each whisky in the blend was attained and whether the barrel was new or reused and charred or uncharred.

(f) *Miscellaneous.* Distilled spirits (other than Scotch, Irish, and Canadian whiskies, and Cognac) imported in containers are not eligible for release from customs custody for consumption, and no person shall remove such spirits from customs custody for consumption, unless that person has obtained and is in possession of an invoice accompanied by a certificate of origin issued by an official duly authorized by the appropriate foreign government, if the issuance of such certificates with respect to such distilled spirits is required by the foreign government concerned, certifying as to the identity of the distilled spirits and that the distilled spirits have been manufactured in compliance with the laws of the respective foreign government regulating the manufacture of such distilled spirits for home consumption.

(g) *Retention of certificates—distilled spirits imported in containers.* The importer of distilled spirits imported in containers must retain for five years following the removal of the bottled distilled spirits from customs custody copies of the certificates (and accompanying invoices, if applicable) required by paragraphs (a) through (f) of this section, and must provide them upon request of the appropriate TTB officer or a customs officer.

(h) *Distilled spirits imported in bulk for bottling in the United States.* Distilled spirits that would be required under paragraphs (a) through (f) of this section to be covered by a certificate of age and/or a certificate of origin and that are imported in bulk for bottling in the United States may be removed from the premises where bottled only if the bottler possesses a certificate of age and/or a certificate of origin, issued by the appropriate entity as set forth in paragraphs (a) through (f) of this section, applicable to the spirits that provides the same information as a certificate required under paragraphs (a) through (f) of this section, would provide for like spirits imported in bottles. The bottler of distilled spirits imported in bulk must retain for five years following the removal of such spirits from the domestic plant where bottled copies of the certificates required by paragraphs (a) through (f), and must provide them upon request of the appropriate TTB officer.

(i) *Retention of distilled spirits certificates—distilled spirits in bulk.* The bottler of distilled spirits imported in bulk must retain, for five years following the removal of such distilled spirits from the premises where bottled, copies of the certificates required by paragraphs (a) through (f) of this section, and must provide them upon request of the appropriate TTB officer.

Subpart C—Alteration of Labels, Relabeling, and Adding Information to Containers

§ 5.41 Alteration of labels.

(a) *Prohibition.* It is unlawful for any person to alter, mutilate, destroy, obliterate or remove any mark, brand, or label on distilled spirits in containers held for sale in interstate or foreign commerce, or held for sale after shipment in interstate or foreign commerce, except as authorized by § 5.42, § 5.43, or § 5.44, or as otherwise authorized by Federal law.

(b) *Authorized relabeling.* For purposes of the relabeling activities authorized by this subpart, the term ''relabel'' includes the alteration, mutilation, destruction, obliteration, or removal of any existing mark, brand, or label on the container, as well as the addition of a new label (such as a sticker that adds information about the product or information engraved on the container) to the container, and the replacement of a label with a new label bearing identical information.

(c) *Obligation to comply with other requirements.* Authorization to relabel under this subpart in no way authorizes the placement of labels on containers that do not accurately reflect the brand, bottler, identity, or other characteristics of the product; nor does it relieve the person conducting the relabeling operations from any obligation to comply the regulations in this part and with State or local law, or to obtain permission from the owner of the brand where otherwise required.

§ 5.42 Authorized relabeling activities by distillers and importers.

(a) *Relabeling at distilled spirits plant premises.* Proprietors of distilled spirits plant premises may relabel domestically bottled distilled spirits prior to removal from, and after return to bond at, the distilled spirits plant premises, with labels covered by a certificate of label approval (COLA), without obtaining separate permission from TTB for the relabeling activity.

(b) *Relabeling after removal from distilled spirits plant premises.* Proprietors of distilled spirits plant premises may relabel domestically bottled distilled spirits after removal from distilled spirits plant premises with labels covered by a COLA, without obtaining separate permission from TTB for the relabeling activity.

(c) *Relabeling in customs custody.* Under the supervision of customs officers, imported distilled spirits in containers in customs custody may be relabeled without obtaining separate permission from TTB for the relabeling activity. Such containers must bear labels covered by a COLA upon their removal from customs custody for consumption. See § 5.24(b).

(d) *Relabeling after removal from customs custody.* Imported distilled spirits in containers may be relabeled by the importer thereof after removal from customs custody without obtaining separate permission from TTB for the relabeling activity, as long as the labels are covered by a COLA.

§ 5.43 Relabeling activities that require separate written authorization from TTB.

Any persons holding distilled spirits for sale who need to relabel the containers but are not eligible to obtain a COLA to cover the labels that they wish to affix to the containers may apply for written permission for the relabeling of distilled spirits containers. The appropriate TTB officer may permit relabeling of distilled spirits in containers if the facts show that the relabeling is for the purpose of compliance with the requirements of this part or State law. The written application must include copies of the original and proposed new labels; the circumstances of the request, including the reason for relabeling; the number of containers to be relabeled; the location where the relabeling will take place; and the name and address of the person who will be conducting the relabeling operations.

§ 5.44 Adding a label or other information to a container that identifies the wholesaler, retailer, or consumer.

Any label or other information that identifies the wholesaler, retailer, or consumer of the distilled spirits may be added to containers (by the addition of stickers, engraving, stenciling, etc.) without prior approval from TTB and without being covered by a certificate of label approval or certificate of exemption from label approval. Such information may be added before or after the containers have been removed from distilled spirits plant premises or released from customs custody. The information added:

(a) May not violate the provisions of subpart F, G, or H of this part;

(b) May not contain any reference to the characteristics of the product; and

(c) May not be added to the container in such a way that it obscures any other labels on the container.

Subpart D—Label Standards

§ 5.51 Firmly affixed requirements.

Any label that is not an integral part of the container must be affixed to the container in such a way that it cannot be removed without thorough application of water or other solvents.

§ 5.52 Legibility and other requirements for mandatory information on labels.

(a) *Readily legible.* Mandatory information on labels must be readily legible to potential consumers under ordinary conditions.

(b) *Separate and apart.* Mandatory information on labels, except brand names, must be separate and apart from any additional information. This does not preclude the addition of brief optional phrases of additional information as part of the class or type designation (such as, ''premium vodka'' or ''delicious Tequila''), the name and address statement (such as, ''Proudly distilled and bottled by ABC Distilling Company, Atlanta, GA, for over 30 years'') or other information required by § 5.63(a) and (b), as long as the additional information does not detract from the prominence of the mandatory information. The statements required by § 5.63(c) may not include additional information.

(c) *Contrasting background.* Mandatory information must appear in a color that contrasts with the background on which it appears, except that if the net contents are blown into a glass container, they need not be contrasting. The color of the container and of the spirits must be taken into account if the label is transparent or if mandatory label information is etched, engraved, sandblasted, or otherwise carved into the surface of the container or is branded, stenciled, painted, printed, or otherwise directly applied on to the surface of the container. Examples of acceptable contrasts are:

(1) Black lettering appearing on a white or cream background; or

(2) White or cream lettering appearing on a black background.

(d) *Capitalization.* Except for the aspartame statement when required by § 5.63(c)(4), which must appear in all capital letters, mandatory information prescribed by this part may appear in all capital letters, in all lower case letters, or in mixed-case using both capital and lower-case letters.

§ 5.53 Minimum type size of mandatory information.

All capital and lowercase letters in statements of mandatory information on labels must meet the following type size requirements.

(a) *Containers of more than 200 milliliters.* All mandatory information must be in script, type, or printing that is at least two millimeters in height.

(b) *Containers of 200 milliliters or less.* All mandatory information must be in script, type, or printing that is at least one millimeter in height.

§ 5.54 Visibility of mandatory information.

Mandatory information on a label must be readily visible and may not be covered or obscured in whole or in part. See § 5.62 for rules regarding packaging of containers (including cartons, coverings, and cases). See part 14 of this chapter for regulations pertaining to advertising materials.

§ 5.55 Language requirements.

(a) *General.* Mandatory information must appear in the English language, with the exception of the brand name and except as provided in paragraphs (c) and (d) of this section.

(b) *Foreign languages.* Additional statements in a foreign language, including translations of mandatory information that appears elsewhere in English on the label, are allowed on labels and containers as long as they do not in any way conflict with, or contradict, the requirements of this part.

(c) *Distilled spirits for consumption in the Commonwealth of Puerto Rico.* Mandatory information may be stated solely in the Spanish language on labels of distilled spirits bottled for consumption within the Commonwealth of Puerto Rico.

(d) *Exception for country of origin statements.* The country of origin statement for distilled spirits may appear in a language other than English when allowed by U.S. Customs and Border Protection regulations.

§ 5.56 Additional information.

Information (other than mandatory information) that is truthful, accurate, and specific, and that does not violate subpart F, G, or H of this part, may appear on labels. Such additional information may not conflict with, modify, qualify or restrict mandatory information in any manner.

Subpart E—Mandatory Label Information

§ 5.61 What constitutes a label for purposes of mandatory information.

(a) *Label.* Certain information, as outlined in § 5 63, must appear on a label. When used in this part for purposes of determining where mandatory information must appear, the term ''label'' includes:

(1) Material affixed to the container, whether made of paper, plastic film, or other matter;

(2) For purposes of the net content statement only, information blown, embossed, or molded into the container as part of the process of manufacturing the container;

(3) Information etched, engraved, sandblasted, or otherwise carved into the surface of the container; and

(4) Information branded, stenciled, painted, printed, or otherwise directly applied on to the surface of the container.

(b) *Information appearing elsewhere on the container.* Information appearing on the following parts of the container is subject to all of the restrictions and prohibitions set forth in subparts F, G and H of this part, but will not satisfy any requirements for mandatory information that must appear on labels in this part:

(1) Material affixed to, or information appearing on, the bottom surface of the container;

(2) Caps, corks or other closures unless authorized to bear mandatory information by the appropriate TTB officer; and

(3) Foil or heat shrink bottle capsules.

(c) *Materials not firmly affixed to the container.* Any materials that accompany the container to the consumer but are not firmly affixed to the container, including booklets, leaflets, and hang tags, are not ''labels'' for purposes of this part. Such materials are instead subject to the advertising regulations in part 14 of this chapter.

§ 5.62 Packaging (cartons, coverings, and cases).

(a) *General.* The term ''packaging'' includes any covering, carton, case, carrier, or other packaging of distilled spirits containers used for sale at retail, but does not include shipping cartons or cases that are not intended to accompany the container to the consumer.

(b) *Prohibition.* Any packaging of distilled spirits containers may not contain any statement, design, device, or graphic, pictorial, or emblematic representation that violates the provisions of subpart F, G, or H of this part.

(c) *Requirements for closed packaging.* If containers are enclosed in closed packaging, including sealed opaque coverings, cartons, cases, carriers, or other packaging used for sale at retail, such packaging must bear all mandatory label information required on the label under § 5.63.

(1) Packaging is considered closed if the consumer must open, rip, untie,

unzip, or otherwise manipulate the package to remove the container in order to view any of the mandatory information.

(2) Packaging is not considered closed if a consumer could view all of the mandatory information on the container by merely lifting the container up, or if the packaging is transparent or designed in a way that all of the mandatory information can be easily read by the consumer without having to open, rip, untie, unzip, or otherwise manipulate the package.

(d) *Packaging that is not closed.* The following requirements apply to packaging that is not closed.

(1) The packaging may display any information that is not in conflict with the label on the container that is inside the packaging.

(2) If the packaging displays a brand name, it must display the brand name in its entirety. For example, if a brand name is required to be modified with additional information on the container, the packaging must also display the same modifying language.

(3) If the packaging displays a class or type designation, it must be identical to the class or type designation appearing on the container. For example, if the packaging displays a class or type designation for a brandy for which a truthful and adequate statement of composition is required on the container, the packaging must also include the statement of composition as well.

(e) *Labeling of containers within the packaging.* The container within the packaging is subject to all labeling requirements of this part, including mandatory labeling information requirements, regardless of whether the packaging bears such information.

§ 5.63 Mandatory label information.

(a) *Mandatory information required to appear within the same field of vision.* Distilled spirits containers must bear a label or labels (as defined in § 5.61) containing the following information within the same field of vision (which means a single side of a container (for a cylindrical container, a side is 40 percent of the circumference) where all of the pieces of information can be viewed simultaneously without the need to turn the container):

(1) Brand name, in accordance with § 5.64;

(2) Class, type, or other designation, in accordance with subpart I of this part; and

(3) Alcohol content, in accordance with § 5.65.

(b) *Other mandatory information.* Distilled spirits containers must bear a label or labels (as defined in § 5.61) anywhere on the container bearing the following information:

(1) Name and address of the bottler or distiller, in accordance with § 5.66, or the importer, in accordance with § 5.67 or § 5.68, as applicable; and

(2) Net contents (which may be blown, embossed, or molded into the container as part of the process of manufacturing the container), in accordance with § 5.68.

(c) *Disclosure of certain ingredients, processes and other information.* The following ingredients, processes, and other information must be disclosed on a label, without the inclusion of any additional information as part of the statement, as follows:

(1) *Neutral spirits.* The percentage of neutral spirits and the name of the commodity from which the neutral spirits were distilled, or in the case of continuously distilled neutral spirits or gin, the name of the commodity only, in accordance with § 5.70;

(2) *Coloring or treatment with wood.* Coloring or treatment with wood, in accordance with §§ 5.71 and 5.72;

(3) *Age.* A statement of age or age and percentage of type, when required or used, in accordance with § 5.73;

(4) *State of distillation.* State of distillation of any type of whisky defined in § 5.143(c)(2) through (c)(7), which is distilled in the United States, in accordance with § 5.66(f);

(5) *FD&C Yellow No. 5.* If a distilled spirit contains the coloring material FD&C Yellow No. 5, the label must include a statement to that effect, such as ''FD&C Yellow No. 5'' or ''Contains FD&C Yellow No. 5'';

(6) *Cochineal extract or carmine.* If a distilled spirit contains the color additive cochineal extract or the color additive carmine, the label must include a statement to that effect, using the respective common or usual name (such as ''contains cochineal extract'' or ''contains carmine''). This requirement applies to labels when either of the coloring materials was used in a distilled spirit that is removed from bottling premises or from customs custody on or after April 16, 2013;

(7) *Sulfites.* If a distilled spirit contains 10 or more parts per million of sulfur dioxide or other sulfiting agent measured as total sulfur dioxide, the label must include a statement to that effect. Examples of acceptable statements are ''Contains sulfites'' or ''Contains (a) sulfiting agent(s)'' or a statement identifying the specific sulfiting agent. The alternative terms ''sulphites'' or ''sulphiting'' may be used; and

(8) *Aspartame.* If the distilled spirit contains aspartame, the label must include the following statement, in capital letters, separate and apart from all other information: ''PHENYLKETONURICS: CONTAINS PHENYLALANINE.''

(d) *Distinctive liquor bottles.* See § 5.205(b)(2) for exemption from placement requirements for certain mandatory information for distinctive liquor bottles.

§ 5.64 Brand name.

(a) *Requirement.* The distilled spirits label must include a brand name. If the distilled spirits are not sold under a brand name, then the name of the bottler, distiller or importer, as applicable, appearing in the name and address statement is treated as the brand name.

(b) *Misleading brand names.* Labels may not include any misleading brand names. A brand name is misleading if it creates (by itself or in association with other printed or graphic matter) any erroneous impression or inference as to the age, origin, identity, or other characteristics of the distilled spirits. A brand name that would otherwise be misleading may be qualified with the word ''brand'' or with some other qualification, if the appropriate TTB officer determines that the qualification dispels any misleading impression that might otherwise be created.

§ 5.65 Alcohol content.

(a) *General.* The alcohol content for distilled spirits must be stated on the label as a percentage of alcohol by volume. Products that contain a significant amount of material, such as solid fruit, that may absorb spirits after bottling must state the alcohol content at the time of bottling as follows: ''Bottled at ____ percent alcohol by volume.''

(b) *How the alcohol content must be expressed.* The following rules apply to statements of alcohol content.

(1) A statement of alcohol content must be expressed as a percentage of alcohol by volume and not by a range, or by maximums or minimums.

(i) In addition, the alcohol content in degrees of proof may be stated on a label as long as it appears immediately adjacent to the mandatory statement of alcohol content as a percentage of alcohol by volume. Additional statements of proof may appear on the label without being immediately adjacent to the mandatory alcohol by volume statement.

(ii) Other truthful, accurate, and specific factual representations of alcohol content, such as alcohol by

weight, may be made, as long as they appear together with, and as part of, the statement of alcohol content as a percentage of alcohol by volume.

(2)(i) The alcohol content statement must be expressed in one of the following formats:

(A) ''Alcohol ____ percent by volume'';

(B) ''____ percent alcohol by volume''; or

(C) ''Alcohol by volume ____ percent.''

(ii) Any of the words or symbols may be enclosed in parentheses and authorized abbreviations may be used with or without a period. The alcohol content statement does not have to appear with quotation marks.

(3) The statements listed in paragraph (b)(2)(i) of this section must appear as shown, except that the following abbreviations may be used: Alcohol may be abbreviated as ''alc''; percent may be represented by the percent symbol ''%''; alcohol and volume may be separated by a slash ''/'' in lieu of the word ''by''; and volume may be abbreviated as ''vol''.

(4) *Examples.* The following are examples of alcohol content statements that comply with the requirements of this part:

(i) ''40% alc/vol'';

(ii) ''Alc. 40 percent by vol.'';

(iii) ''Alc 40% by vol''; and

(iv) ''40% Alcohol by Volume.''

(c) *Tolerances.* A tolerance of plus or minus 0.3 percentage points is allowed for actual alcohol content that is above or below the labeled alcohol content.

§ 5.66 Name and address for domestically bottled distilled spirits that were wholly made in the United States.

(a) *General.* Domestically bottled distilled spirits that were wholly made in the United States and contain no imported distilled spirits must be labeled in accordance with this section. (See §§ 5.67 and 5.68 for name and address requirements applicable to distilled spirits that are not wholly made in the United States.) For purposes of this section, a ''processor'' who solely bottles the labeled distilled spirits will be considered the ''bottler.''

(b) *Form of statement.* The bottler, distiller, or processor of the distilled spirits must be identified by a phrase describing the function performed by that person. If that person performs more than one function, the label may (but is not required to) so indicate.

(1) If the name of the bottler appears on the label, it must be preceded by a phrase such as ''bottled by,'' ''canned by,'' ''packed by,'' or ''filled by,'' followed by the name and address of the bottler.

(2) If the name of the processor appears on the label, it must be preceded by a phrase such as ''blended by,'' ''made by,'' ''prepared by,'' ''produced by,'' or ''manufactured by,'' as appropriate, followed by the name and address of the processor. When applied to distilled spirits, the term ''produced by'' indicates a processing operation (formerly known as rectification) that involves a change in the class or type of the product through the addition of flavors or some other processing activity.

(3) If the name of the distiller appears on the label, it must be preceded by a phrase such as ''distilled by,'' followed by the name and address of the distiller. If the distilled spirits were bottled for the distiller thereof, the name and address of the distiller may be preceded by a phrase such as ''distilled by and bottled for,'' or ''bottled for.''

(c) *Listing of more than one function.* If different functions are performed by more than one person, statements on the label may not create the misleading impression that the different functions were performed by the same person.

(d) *Form of address*—(1) *General.* The address consists of the city and State where the operation occurred, or the city and State of the principal place of business of the person performing the operation. This information must be consistent with the information on the basic permit. Addresses may, but are not required to, include additional information such as street names, counties, zip codes, phone numbers, and website addresses. The postal abbreviation of the State name may be used; for example, California may be abbreviated as CA.

(2) *More than one address.* If the bottler, distiller, or processor listed on the name and address statement is the actual operator of more than one distilled spirits plant engaged in bottling, distilling, or processing operations, as applicable, the label may state, immediately following the name of the permittee, the addresses of those other plants, in addition to the address of the plant at which the distilled spirits were bottled. In this situation, the address where the operation occurred must be indicated on the label or on the container by printing, coding, or other markings.

(3) *Principal place of business.* The label may provide the address of the bottler's, distiller's, or processor's principal place of business, in lieu of the place where the bottling, distilling, or other operation occurred, provided that the address where the operation occurred is indicated on the label or on the container by printing, coding, or other markings.

(4) *Distilled spirits bottled for another person.* (i) If distilled spirits are bottled for another person, other than the actual distiller thereof, the label may state, in addition to (but not in place of) the name and address of the bottler, the name and address of such other person, immediately preceded by the words ''bottled for'' or another similar appropriate phrase. Such statements must clearly indicate the relationship between the two persons (for example, contract bottling).

(ii) If the same brand of distilled spirits is bottled by two distillers that are not under the same ownership, the label for each distiller may set forth both locations where bottling takes place, as long as the label uses the actual location (and not the principal place of business) and as long as the nature of the arrangement is clearly set forth.

(5) No additional places or addresses may be stated for the same person unless:

(i) That person is actively engaged in the conduct of an additional bona fide and actual alcohol beverage business at such additional place or address, and

(ii) The label also contains in direct conjunction therewith, appropriate descriptive material indicating the function occurring at such additional place or address in connection with the particular product (such as ''distilled by.'')

(e) *Special rule for straight whiskies.* If ''straight whiskies'' (see § 5.143) of the same type are distilled in the same State by two or more different distillers and are combined (either at the time of bottling or at a warehouseman's bonded premises for further storage) and subsequently bottled and labeled as ''straight whisky,'' that ''straight whisky'' must bear a label that contains name and address information of the bottler. If that combined ''straight whisky'' is bottled by or for the distillers, in lieu of the name and address of the bottler, the label may contain the words ''distilled by,'' followed immediately by the names (or trade names) and addresses of the different distillers who distilled a portion of the ''straight whisky'' and the percentage of ''straight whisky'' distilled by each distiller, with a tolerance of plus or minus 2 percent. If ''straight whisky'' consists of a mixture of ''straight whiskies'' of the same type from two or more different distilleries of the same proprietor located within the same State, and if that ''straight whisky'' is bottled by or for that proprietor, in lieu of the name and address of the bottler, the ''straight whisky'' may bear

a label containing the words ''distilled by'' followed by the name (or trade name) of the proprietor and the addresses of the different distilleries that distilled a portion of the ''straight whisky.''

(f) *State of distillation for whisky.* (1) The State of distillation, which is the State in which original distillation takes place, must appear on the label of any type of whisky defined in § 5.143(c)(2) through (7), which is distilled in the United States. The State of distillation may appear on any label and must be shown in at least one of the following ways:

(i) By including a ''distilled by'' (or ''distilled and bottled by'' or any other phrase including the word ''distilled'') statement as part of the mandatory name and address statement, followed by a single location.

(ii) By including the name of the State in which original distillation occurred immediately adjacent to the class or type designation (such as ''Kentucky bourbon whisky''), as long as the product was both distilled and aged in that State in conformance with the requirements of § 5.143(b).

(iii) By including a separate statement, such as ''Distilled in [name of State].''

(2) The appropriate TTB officer may require that the State of distillation or other information appear on a label of any whisky subject to the requirements of paragraph (f)(1) of this section (and may prescribe placement requirements for such information), even if that State appears in the name and address statement, if such additional information is necessary to negate any misleading or deceptive impression that might otherwise be created as regards the actual State of distillation.

(3) In the case of ''light whisky,'' the State name ''Kentucky'' or ''Tennessee'' may not appear on any label, except as a part of a name and address as specified in paragraph (a)(1), (2), or (4) of this section.

(g) *Trade or operating names.* (1) The name of the person appearing on the label may be the trade name or the operating name, as long as it is identical to a trade or operating name appearing on the basic permit. In the case of a distillation statement for spirits bottled in bond, the name or trade name under which the spirits were distilled must be shown.

(2) A trade name may be used only if the use of that name would not create a misleading impression as to the age, origin, or identity of the product. For example, if a distiller or bottler of the spirits authorizes the use of its trade name by another distiller or bottler that is not under the same ownership, that trade name may not be used on a label in a way that tends to mislead consumers as to the identity or location of the distiller or bottler.

§ 5.67 Name and address for domestically bottled distilled spirits that were bottled after importation.

(a) *General.* This section applies to distilled spirits that were bottled after importation. See § 5.68 for name and address requirements applicable to imported distilled spirits that were bottled after importation. See 19 CFR parts 102 and 134 for U.S. Customs and Border Protection country of origin marking requirements.

(b) *Distilled spirits bottled after importation in the United States.* Distilled spirits bottled, without further blending, making, preparing, producing, manufacturing, or distilling activities after importation, must bear one of the following name and address statements:

(1) The name and address of the bottler, preceded by the words ''bottled by,'' ''canned by,'' ''packed by,'' or ''filled by'';

(2) If the distilled spirits were bottled for the person responsible for the importation, the words ''imported by and bottled (canned, packed, or filled) in the United States for'' (or a similar appropriate phrase) followed by the name and address of the principal place of business in the United States of the person responsible for the importation;

(3) If the distilled spirits were bottled by the person responsible for the importation, the words ''imported by and bottled (canned, packed, or filled) in the United States by'' (or a similar appropriate phrase) followed by the name and address of the principal place of business in the United States of the person responsible for the importation.

(c) *Distilled spirits that were subject to blending or other production activities after importation.* Distilled spirits that, after importation in bulk, were blended, made, prepared, produced, manufactured or further distilled, may not bear an ''imported by'' statement on the label, but must instead be labeled in accordance with the rules set forth in § 5.66 for mandatory and optional labeling statements.

(d) *Optional statements.* In addition to the statements required by paragraph (a)(1) of this section, the label may also state the name and address of the principal place of business of the foreign producer.

(e) *Form of address.* (1) The address consists of the city and State where the operation occurred, or the city and State of the principal place of business of the person performing the operation. This information must be consistent with the information on the basic permit. Addresses may, but are not required to, include additional information such as street names, counties, zip codes, phone numbers, and website addresses.

(2) If the bottler or processor listed on the name and address statement is the actual operator of more than one distilled spirits plant engaged in bottling, distilling, or processing operations, as applicable the label may state, immediately following the name of the bottler, the addresses of those other plants, in addition to the address of the plant at which the distilled spirits were bottled. In this situation, the address where the operation occurred must be indicated on the label or on the container by printing, coding, or other markings.

(3) *Principal place of business.* The label may provide the address of the bottler's or processor's principal place of business, in lieu of the place where the bottling, distilling, or other operation occurred, provided that the address where the operation occurred is indicated on the label or on the container by printing, coding, or other markings.

(f) *Trade or operating names.* A trade name may be used if the trade name is listed on the basic permit or other qualifying documentation and if its use on the label would not create any misleading impression as to the age, origin, or identity of the product.

§ 5.68 Name and address for distilled spirits that were imported in a container.

(a) *General.* This section applies to distilled spirits that were imported in a container, as defined in § 5.1. See § 5.67 for name and address requirements applicable to distilled spirits that were domestically bottled after importation. See 19 CFR parts 102 and 134 for U.S. Customs and Border Protection country of origin marking requirements.

(b) *Mandatory labeling statement.* Distilled spirits imported in containers, as defined in § 5.1, must bear a label stating the words ''imported by'' or a similar appropriate phrase, followed by the name and address of the importer.

(1) For purposes of this section, the importer is the holder of the importer's basic permit who either makes the original Customs entry or is the person for whom such entry is made, or the holder of the importer's basic permit who is the agent, distributor, or franchise holder for the particular brand of imported alcohol beverages and who places the order abroad.

(2) The address of the importer must be stated as the city and State of the principal place of business and must be

consistent with the address reflected on the importer's basic permit. Addresses may, but are not required to, include additional information such as street names, counties, zip codes, phone numbers, and website addresses. The postal abbreviation of the State name may be used; for example, California may be abbreviated as CA.

(c) *Optional statements.* In addition to the statements required by paragraph (b)(1) of this section, the label may also state the name and address of the principal place of business of the foreign producer.

(d) *Form of address.* The ''place'' stated must be the city and State, shown on the basic permit or other qualifying document, of the premises at which the operations took place; and the place for each operation that is designated on the label must be shown.

(e) *Trade or operating names.* A trade name may be used if the trade name is listed on the basic permit or other qualifying documentation and if its use on the label would not create any misleading impression as to the age, origin, or identity of the product.

§ 5.69 Country of origin.

(a) Pursuant to U.S. Customs and Border Protection (CBP) regulations at 19 CFR parts 102 and 134, a country of origin statement must appear on the container of distilled spirits imported in containers or bottled in the United States after importation. Labeling statements with regard to the country of origin must be consistent with CBP regulations. The determination of the country (or countries) of origin, for imported wines, as well as for blends of imported distilled spirits with domestically produced distilled spirits, must comply with CBP regulations.

(b) It is the responsibility of the importer or bottler, as appropriate, to ensure compliance with the country of origin marking requirement, both when distilled spirits are imported in containers and when imported distilled spirits are subject to bottling, blending, or production activities in the United States. Industry members may seek a ruling from CBP for a determination of the country of origin for their product.

§ 5.70 Net contents.

The requirements of this section apply to the net contents statement required by § 5.63.

(a) *General.* The volume of spirits in the container must appear on a label as a net contents statement. The net contents for the external container of an aggregate package must be stated as specified in § 5.204. The word ''liter'' may be alternatively spelled ''litre'' or may be abbreviated as ''L''. The word ''milliliters'' may be abbreviated as ''ml.,'' ''mL.,'' or ''ML.'' Net contents in U.S. equivalents and in metric equivalents such as centiliters may appear on a label and, if used, must appear in the same field of vision as the metric net contents statement.

(b) *Tolerances.* (1) The following tolerances are permissible for purposes of applying paragraph (a) of this section:

(i) *Errors in measuring.* Discrepancies due to errors in measuring that occur in filling conducted in compliance with good commercial practice;

(ii) *Differences in capacity.* Discrepancies due exclusively to differences in the capacity of containers, resulting solely from unavoidable difficulties in manufacturing the containers so as to be of uniform capacity, provided that the discrepancy does not result from a container design that prevents the manufacture of containers of an approximately uniform capacity; and

(iii) *Differences in atmospheric conditions.* Discrepancies in measure due to differences in atmospheric conditions in various places, including discrepancies resulting from the ordinary and customary exposure of alcohol beverage products in containers to evaporation, provided that the discrepancy is determined to be reasonable on a case by case basis.

(2) *Shortages and overages.* A contents shortage in certain of the containers in a shipment may not be counted against a contents overage in other containers in the same shipment for purposes of determining compliance with the requirements of this section.

§ 5.71 Neutral spirits and name of commodity.

(a) In the case of distilled spirits (other than cordials, liqueurs, flavored neutral spirits, including flavored vodka, and distilled spirits specialty products) manufactured by blending or other processing, if neutral spirits were used in the production of the spirits, the percentage of neutral spirits so used and the name of the commodity from which the neutral spirits were distilled must appear on a label. The statement of percentage and the name of the commodity must be in substantially the following form: ''____% neutral spirits distilled from _____ (insert grain, cane products, fruit, or other commodity as appropriate)''; or ''____% neutral spirits (vodka) distilled from _____ (insert grain, cane products, fruit, or other commodity as appropriate)''; or ''____% (grain) (cane products), (fruit) neutral spirits'', or ''____% grain spirits.''

(b) In the case of gin manufactured by a process of continuous distillation or in the case of neutral spirits, a label on the container must state the name of the commodity from which the gin or neutral spirits were distilled. The statement of the name of the commodity must appear in substantially the following form: ''Distilled from grain'' or ''Distilled from cane products''.

§ 5.72 Coloring materials.

The words ''artificially colored'' must appear on a label of any distilled spirits product containing synthetic or natural materials that primarily contribute color, or when information on a label conveys the impression that a color was derived from a source other than the actual source of the color, except that:

(a) If no coloring material other than a color exempt from certification under FDA regulations has been added, a truthful statement of the source of the color may appear in lieu of the words ''artificially colored,'' for example, ''Contains Beta Carotene'' or ''Colored with beet extract.'' See 21 CFR parts 73 and 74 for the list of such colors under Food and Drug Administration (FDA) regulations;

(b) If no coloring material has been added other than one certified as suitable for use in foods by the FDA, the words ''(to be filled in with name of) certified color added'' or ''Contains Certified Color'' may appear in lieu of the words ''artificially colored''; and

(c) If no coloring material other than caramel has been added, the words ''colored with caramel,'' ''contains caramel color,'' or another statement specifying the use of caramel color, may appear in lieu of the words ''artificially colored.'' However, no statement of any type is required for the use of caramel color in brandy, rum, or Tequila, or in any type of whisky other than straight whisky if used at not more than 2½ percent by volume of the finished product.

(d) As provided in § 5.61, the use of FD&C Yellow No. 5, carmine, or cochineal extract must be specifically stated on the label even if the label also contains a phrase such as ''contains certified color'' or ''artificially colored.''

§ 5.73 Treatment of whisky or brandy with wood.

The words ''colored and flavored with wood _____'' (inserting ''chips,'' ''slabs,'' etc., as appropriate) must appear immediately adjacent to, and in the same size of type as, the class and type designation under subpart I of this part for whisky and brandy treated, in whole or in part, with wood through percolation or otherwise during

distillation or storage, other than through contact with an oak barrel. However, the statement specified in this section is not required in the case of brandy treated with an infusion of oak chips in accordance with § 5.155(b)(3)(B).

§ 5.74 Statements of age, storage, and percentage.

(a) *General.* (1) As defined in § 5.1, age is the length of time during which, after distillation and before bottling, the distilled spirits have been stored in oak barrels in such a manner that chemical changes take place as a result of direct contact with the wood. For bourbon whisky, rye whisky, wheat whisky, malt whisky, or rye malt whisky, and straight whiskies other than straight corn whisky, aging must occur in charred new oak barrels.

(2) If an age statement is used, it is permissible to understate the age of a product, but overstatements of age are prohibited. However, the age statement may not conflict with the standard of identity, if aging is required as part of the standard of identity. For example, the standard of identity for straight rye whisky requires that the whisky be aged for a minimum of 2 years, so the age statement ''Aged 1 year,'' would be prohibited, even if the spirits were actually aged for more than 2 years, because it is inconsistent with the standard of identity.

(3) If spirits are aged in more than one oak barrel (for example, if a whisky is aged 2 years in a new charred oak barrel and then placed into a second new charred oak barrel for an additional 6 months,) only the time spent in the first barrel is counted towards the ''age.''

(4) The age may be stated in years, months, or days.

(b) *Age statements and percentage of type statements for whisky.* For all domestic or foreign whiskies that are aged less than four years, including blends containing a whisky that is aged less than four years, an age statement and percentage of types of whisky statement is required to appear on a label, unless the whisky is labeled as ''bottled in bond'' in conformity with § 5.88. For all other whiskies, the statements are optional, but if used, they must conform to the formatting requirements listed below. Moreover, if the bottler chooses to include a statement of age or percentage on the label of a product that is four years old or more and that contains neutral spirits, the statement must appear immediately adjacent to the neutral spirits statement required by § 5.70. The following are the allowable formats for the age and percentage statements for whisky:

(1) In the case of whisky, whether or not mixed or blended but containing no neutral spirits, the age of the youngest whisky in the product. The age statement must appear substantially as follows: ''____ years old'';

(2) In the case of whisky containing neutral spirits, whether or not mixed or blended, if any straight whisky or other whisky in the product is less than 4 years old, the percentage by volume of each such whisky and the age of each such whisky (the age of the youngest of the straight whiskies or other whiskies if the product contains two or more of either). The age and percentage statement for a straight whisky and other whisky must appear immediately adjacent to the neutral spirits statement required by § 5.70 and must read substantially as follows:

(i) If the product contains only one straight whisky and no other whisky: ''____ percent straight whisky ____ years old;''

(ii) If the product contains more than one straight whisky but no other whisky: ''____ percent straight whiskies ____ years or more old.'' In this case the age blank must state the age of the youngest straight whisky in the product. However, in lieu of the foregoing statement, the following statement may appear on the label: ''____ percent straight whisky ____ years old, ____ percent straight whisky ____ years old, and ____ percent straight whisky ____ years old'';

(iii) If the product contains only one straight whisky and one other whisky: ''____ percent straight whisky ____ years old, ____ percent whisky ____ years old''; or

(iv) If the product contains more than one straight whisky and more than one other whisky: ''____ percent straight whiskies ____ years or more old, ____ percent whiskies ____ years or more old.'' In this case, the age blanks must state the age of the youngest straight whisky and the age of the youngest other whisky. However, in lieu of the foregoing statement, the following statement may appear on the label: ''____ percent straight whisky ____ years old, ____ percent straight whisky ____ years old, ____ percent whisky ____ years old, and ____ percent whisky ____ years old'';

(3) In the case of an imported rye whisky, wheat whisky, malt whisky, or rye malt whisky, a label on the product must state each age and percentage in the manner and form that would be required if the whisky had been made in the United States;

(4) In the case of whisky made in the United States and stored in reused oak barrels, other than corn whisky, white whisky, unaged whisky, and light whisky, in lieu of the words ''____ years old'' specified in paragraphs (b)(1) and (b)(2) of this section, the period of storage in the reused oak barrels must appear on the label as follows: ''stored ____ years in reused cooperage;''

(5) In the case of white whisky that is not aged, the statement must appear as follows: ''unaged,'' ''not aged,'' or a similar statement. The designation ''unaged whisky'' satisfies this requirement.

(c) *Statements of age for rum, brandy, and agave spirits.* A statement of age on labels of rums, brandies, and agave spirits is optional, except that, in the case of brandy (other than immature brandies, fruit brandies, marc brandy, pomace brandy, Pisco brandy, and grappa brandy, which are not customarily stored in oak barrels) not stored in oak barrels for a period of at least two years, a statement of age must appear on the label. Any statement of age authorized or required under this paragraph must appear substantially as follows: ''____ years old,'' with the blank to be filled in with the age of the youngest distilled spirits in the product.

(d) *Statement of storage for grain spirits.* In the case of grain spirits, the period of storage in oak barrels may appear on a label immediately adjacent to the percentage statement required under § 5.73 of this part, for example: ''____% grain spirits stored ____ years in oak barrels.''

(e) *Other distilled spirits.* (1) Statements regarding age or maturity or similar statements or representations on labels for all other spirits, except neutral spirits, are permitted only when the distilled spirits are stored in an oak barrel and, once dumped from the barrel, subjected to no treatment besides mixing with water, filtering, and bottling. If batches are made from barrels of spirits of different ages, the label may only state the age of the youngest spirits.

(2) Statements regarding age or maturity or similar statements of neutral spirits (except for grain spirits as stated in paragraph (c) of this section) are prohibited from appearing on any label.

(f) *Other age representations.* (1) If a representation that is similar to an age or maturity statement permitted under this section appears on a label, a statement of age, in a manner that is conspicuous and in characters at least half the type size of the representation, must also appear on each label that carries the representation, except in the following cases:

(i) The use of the word ''old'' or another word denoting age as part of the brand name of the product is not deemed to be an age representation that requires a statement of age; and

(ii) Labels of whiskies and brandies (other than immature brandies, pomace brandy, marc brandy, Pisco brandy, and grappa brandy) not required to bear a statement of age, and rum and agave spirits aged for not less than four years, may contain general inconspicuous age, maturity or similar representations without the label having to bear an age statement.

(2) Distillation dates (which may be an exact date or a year) may appear on a label of spirits where the spirits are manufactured solely through distillation. A distillation date may only appear if an optional or mandatory age statement is used on the label and must appear in the same field of vision as the age statement.

Subpart F—Restricted Labeling Statements.

§ 5.81 General.

(a) *Application.* The labeling practices, statements, and representations in this subpart may be used on distilled spirits labels only when used in compliance with this subpart. In addition, if any of the practices, statements, or representations in this subpart are used elsewhere on containers or in packaging, they must comply with the requirements of this subpart. For purposes of this subpart:

(1) The term ''label'' includes all labels on distilled spirits containers on which mandatory information may appear, as set forth in § 5.61(a), as well as any other label on the container.

(2) The term ''container'' includes all parts of the distilled spirits container, including any part of a distilled spirits container on which mandatory information may appear, as well as those parts of the container on which information does not satisfy mandatory labeling requirements, as set forth in § 5.61(b).

(3) The term ''packaging'' includes any carton, case, carrier, individual covering or other packaging of such containers used for sale at retail, but does not include shipping cartons or cases that are not intended to accompany the container to the consumer.

(b) *Statement or representation.* For purposes of the practices in this subpart, the term ''statement or representation'' includes any statement, design, device, or representation, and includes pictorial or graphic designs or representations as well as written ones. The term ''statement or representation'' includes explicit and implicit statements and representations.

Food Allergen Labeling

§ 5.82 Voluntary disclosure of major food allergens.

(a) *Definitions.* For purposes of this section, the following terms or phrases have the meanings indicated.

(1) *Major food allergen* means any of the following:

(i) Milk, egg, fish (for example, bass, flounder, or cod), Crustacean shellfish (for example, crab, lobster, or shrimp), tree nuts (for example, almonds, pecans, or walnuts), wheat, peanuts, and soybeans; or

(ii) A food ingredient that contains protein derived from a food specified in paragraph (a)(1)(i) of this section, except:

(A) Any highly refined oil derived from a food specified in paragraph (a)(1)(i) of this section and any ingredient derived from such highly refined oil; or

(B) A food ingredient that is exempt from major food allergen labeling requirements pursuant to a petition for exemption approved by the Food and Drug Administration (FDA) under 21 U.S.C. 343(w)(6) or pursuant to a notice submitted to FDA under 21 U.S.C. 343(w)(7), provided that the food ingredient meets the terms or conditions, if any, specified for that exemption.

(2) *Name of the food source from which each major food allergen is derived.* ''Name of the food source from which each major food allergen is derived'' means the name of the food as listed in paragraph (a)(1)(i) of this section, except that:

(i) In the case of a tree nut, it means the name of the specific type of nut (for example, almonds, pecans, or walnuts); and

(ii) In the case of Crustacean shellfish, it means the name of the species of Crustacean shellfish (for example, crab, lobster, or shrimp); and

(iii) The names ''egg'' and ''peanuts,'' as well as the names of the different types of tree nuts, may be expressed in either the singular or plural form, and the name ''soy,'' ''soybean,'' or ''soya'' may be used instead of ''soybeans.''

(b) *Voluntary labeling standards.* Major food allergens used in the production of a distilled spirits product may, on a voluntary basis, be declared on any label affixed to the container. However, if any one major food allergen is voluntarily declared, all major food allergens used in production of the distilled spirits product, including major food allergens used as fining or processing agents, must be declared, except when covered by a petition for exemption approved by the appropriate TTB officer under § 5.83. The major food allergens declaration must consist of the word ''Contains'' followed by a colon and the name of the food source from which each major food allergen is derived (for example, ''Contains: egg'').

§ 5.83 Petitions for exemption from major food allergen labeling.

(a) *Submission of petition.* Any person may petition the appropriate TTB officer to exempt a particular product or class of products from the labeling requirements of § 5.82. The burden is on the petitioner to provide scientific evidence (as well as the analytical method used to produce the evidence) that demonstrates that the finished product or class of products, as derived by the method specified in the petition, either:

(1) Does not cause an allergic response that poses a risk to human health; or

(2) Does not contain allergenic protein derived from one of the foods identified in § 5.82(a)(1)(i), even though a major food allergen was used in production.

(b) *Decision on petition.* TTB will approve or deny a petition for exemption submitted under paragraph (a) of this section in writing within 180 days of receipt of the petition. If TTB does not provide a written response to the petitioner within that 180-day period, the petition will be deemed denied, unless an extension of time for decision is mutually agreed upon by the appropriate TTB officer and the petitioner. TTB may confer with the Food and Drug Administration (FDA) on petitions for exemption, as appropriate and as FDA resources permit. TTB may require the submission of product samples and other additional information in support of a petition; however, unless required by TTB, the submission of samples or additional information by the petitioner after submission of the petition will be treated as the withdrawal of the initial petition and the submission of a new petition. An approval or denial under this section will constitute final agency action.

(c) *Resubmission of a petition.* After a petition for exemption is denied under this section, the petitioner may resubmit the petition along with supporting materials for reconsideration at any time. TTB will treat this submission as a new petition.

(d) *Availability of information*—(1) *General.* TTB will promptly post to its website (*https://www.ttb.gov*) all

petitions received under this section, as well as TTB's responses to those petitions. Any information submitted in support of the petition that is not posted to the TTB website will be available to the public pursuant to the Freedom of Information Act, at 5 U.S.C. 552, except where a request for confidential treatment is granted under paragraph (d)(2) of this section.

(2) *Requests for confidential treatment of business information.* A person who provides trade secrets or other commercial or financial information in connection with a petition for exemption under this section may request that TTB give confidential treatment to that information. A failure to request confidential treatment at the time the information in question is submitted to TTB will constitute a waiver of confidential treatment. A request for confidential treatment of information under this section must conform to the following standards:

(i) The request must be in writing;

(ii) The request must clearly identify the information to be kept confidential;

(iii) The request must relate to information that constitutes trade secrets or other confidential commercial or financial information regarding the business transactions of an interested person, the disclosure of which would cause substantial harm to the competitive position of that person;

(iv) The request must set forth the reasons why the information should not be disclosed, including the reasons why the disclosure of the information would prejudice the competitive position of the interested person; and

(v) The request must be supported by a signed statement by the interested person, or by an authorized officer or employee of that person, certifying that the information in question is a trade secret or other confidential commercial or financial information and that the information is not already in the public domain.

Production Claims

§ 5.84 Use of the term ''organic.''

Use of the term ''organic'' is permitted if any such use complies with United States Department of Agriculture (USDA) National Organic Program rules (7 CFR part 205), as interpreted by the USDA.

§ 5.85 Environmental, sustainability, and similar statements.

Statements related to environmental or sustainable agricultural practices, social justice principles, and other similar statements (such as, ''Produced using 100% solar energy'' or ''Carbon Neutral'') may appear as long as the statements are truthful, specific and not misleading. Statements or logos indicating environmental, sustainable agricultural, or social justice certification (such as, ''Biodyvin,'' ''Salmon-Safe,'' or ''Fair Trade Certified'') may appear on distilled spirits that are actually certified by the appropriate organization.

§ 5.86 [Reserved]

Other Label Terms

§ 5.87 ''Barrel Proof'' and similar terms.

(a) The term ''barrel proof'' or ''cask strength'' may be used to refer to distilled spirits stored in wood barrels only when the bottling proof is not more than two degrees lower than the proof of the spirits when the spirits are dumped from the barrels.

(b) The term ''original proof,'' ''original barrel proof,'' ''original cask strength,'' or ''entry proof'' may be used only if the distilled spirits were stored in wooden barrels and the proof of the spirits entered into the barrel and the proof of the bottled spirits are the same.

§ 5.88 Bottled in bond.

(a) The term ''bond,'' ''bonded,'' ''bottled in bond,'' or ''aged in bond,'' or phrases containing these or synonymous terms, may be used (including as part of the brand name) only if the distilled spirits are:

(1) Composed of the same kind (type, if one is applicable to the spirits, otherwise class) of spirits distilled from the same class of materials;

(2) Distilled in the same distilling season (as defined in § 5.1) by the same distiller at the same distillery.

(3) Stored for at least four years in wooden barrels wherein the spirits have been in contact with the wood surface, except for gin and vodka, which must be stored for at least four years in wooden barrels coated or lined with paraffin or other substance which will preclude contact of the spirits with the wood surface;

(4) Unaltered from their original condition or character by the addition or subtraction of any substance other than by filtration, chill proofing, or other physical treatments (which do not involve the addition of any substance which will remain in the finished product or result in a change in class or type);

(5) Reduced in proof by the addition of only pure water to 50 percent alcohol by volume (100 degrees of proof); and

(6) Bottled at 50 percent alcohol by volume (100 degrees of proof).

(b) Imported spirits labeled as ''bottled in bond'' or other synonymous term described above must be manufactured in accordance with paragraphs (a)(1) through (6) of this section and may only be so labeled if the laws and regulations of the country in which the spirits are manufactured authorize the bottling of spirits in bond and require or specifically authorize such spirits to be so labeled. The ''bottled in bond'' or synonymous statement must be immediately followed, in the same font and type size, by the name of the country under whose laws and regulations such distilled spirits were so bottled.

(c) Domestically manufactured spirits labeled as ''bottled in bond'' or with some other synonymous statement must bear the real name of the distillery or the trade name under which the distiller distilled and warehoused the spirits, and the number of the distilled spirits plant in which distilled, and the number of the distilled spirits plant in which bottled. The label may also bear the name or trade name of the bottler.

§ 5.89 Multiple distillation claims.

(a) Truthful statements about the number of distillations, such as ''double distilled,'' ''distilled three times,'' or similar terms to convey multiple distillations, may be used; except that only additional distillations beyond those required to meet the product's production standards may be counted as additional distillations. For example, if in order to meet the production standards for vodka (which requires the spirits reach an alcohol content level of at least 95 percent), a particular product must be distilled three times, and then the vodka is distilled two more times, that vodka could be labeled as ''triple distilled.'' For the purposes of this section only, the term ''distillation'' means a single run through a pot still or a single run through a column of a column (reflux) still. For example, if a column still has three separate columns, one complete additional run through the system would constitute three additional distillations.

(b) The number of distillations may be understated but may not be overstated.

§ 5.90 Terms related to Scotland.

(a) The words ''Scotch,'' ''Scots,'' ''Highland,'' or ''Highlands,'' and similar words connoting, indicating, or commonly associated with Scotland, may only be used to designate distilled spirits wholly manufactured in Scotland, except that the term ''Scotch whisky'' may appear in the designation for a flavored spirit (''Flavored Scotch Whisky'') or in a truthful statement of composition (''Scotch whisky with natural flavors'') where the base distilled spirit meets the requirements

for a Scotch whisky designation, regardless of where the finished product is manufactured.

(b) In accordance with § 5.127, statements relating to government supervision may appear on Scotch whisky containers only if such labeling statements are required or specifically authorized by the applicable regulations of the United Kingdom.

§ 5.91 Use of the term ''pure.''

Distilled spirits labels, containers, or packaging may not bear the word ''pure'' unless it:

(a) Refers to a particular ingredient used in the production of the distilled spirits, and is a truthful representation about that ingredient;

(b) Is part of the bona fide name of a permittee or retailer for which the distilled spirits are bottled; or

(c) Is part of the bona fide name of the permittee that bottled the distilled spirits.

Subpart G—Prohibited Labeling Practices

§ 5.101 General.

(a) *Application.* The prohibitions set forth in this subpart apply to any distilled spirits label, container, or packaging. For purposes of this subpart:

(1) The term ''label'' includes all labels on distilled spirits containers on which mandatory information may appear, as set forth in § 5.61(a), as well as any other label on the container;

(2) The term ''container'' includes all parts of the distilled spirits container, including any part of a distilled spirits container on which mandatory information may appear, as well as those parts of the container on which information does not satisfy mandatory labeling requirements, as set forth in § 5.61(b); and

(3) The term ''packaging'' includes any carton, case, carrier, individual covering or other packaging of such containers used for sale at retail, but does not include shipping cartons or cases that are not intended to accompany the container to the consumer.

(b) *Statement or representation.* For purposes of the prohibited practices in this subpart, the term ''statement or representation'' includes any statement, design, device, or representation, and includes pictorial or graphic designs or representations as well as written ones. The term ''statement or representation'' includes explicit and implicit statements and representations.

§ 5.102 False or untrue statements.

Distilled spirits labels, containers, or packaging may not contain any statement or representation that is false or untrue in any particular.

§ 5.103 Obscene or indecent depictions.

Distilled spirits labels, containers, or packaging may not contain any statement, design, device, picture, or representation that is obscene or indecent.

Subpart H—Labeling Practices That Are Prohibited If They Are Misleading

§ 5.121 General.

(a) *Application.* The labeling practices that are prohibited if misleading set forth in this subpart apply to any distilled spirits label, container, or packaging. For purposes of this subpart:

(1) The term ''label'' includes all labels on distilled spirits containers on which mandatory information may appear, as set forth in § 5.61(a), as well as any other label on the container;

(2) The term ''container'' includes all parts of the distilled spirits container, including any part of a distilled spirits container on which mandatory information may appear, as well as those parts of the container on which information does not satisfy mandatory labeling requirements, as set forth in § 5.61(b); and

(3) The term ''packaging'' includes any carton, case, carrier, individual covering or other packaging of such containers used for sale at retail, but does not include shipping cartons or cases that are not intended to accompany the container to the consumer.

(b) *Statement or representation.* For purposes of this subpart, the term ''statement or representation'' includes any statement, design, device, or representation, and includes pictorial or graphic designs or representations as well as written ones. The term ''statement or representation'' includes explicit and implicit statements and representations.

§ 5.122 Misleading statements or representations.

(a) *General prohibition.* Distilled spirits labels, containers, or packaging may not contain any statement or representation, irrespective of falsity, that is misleading to consumers as to the age, origin, identity, or other characteristics of the distilled spirits, or with regard to any other material factor.

(b) *Ways in which statements or representations may be misleading.* (1) A statement or representation is prohibited, irrespective of falsity, if it directly creates a misleading impression, or if it does so indirectly through ambiguity, omission, inference, or by the addition of irrelevant, scientific, or technical matter. For example, an otherwise truthful statement may be misleading because of the omission of material information, the disclosure of which is necessary to prevent the statement from being misleading.

(2) As set forth in § 5.212(b), all claims, whether implicit or explicit, must have a reasonable basis in fact. Any claim on distilled spirits labels, containers, or packaging that does not have a reasonable basis in fact, or cannot be adequately substantiated upon the request of the appropriate TTB officer, is considered misleading.

§ 5.123 Guarantees.

Distilled spirits labels, containers, or packaging may not contain any statement relating to guarantees if the appropriate TTB officer finds it is likely to mislead the consumer. However, money-back guarantees are not prohibited.

§ 5.124 Disparaging statements.

(a) *General.* Distilled spirits labels, containers, or packaging may not contain any false or misleading statement that explicitly or implicitly disparages a competitor's product.

(b) *Examples.* (1) An example of an explicit statement that falsely disparages a competitor's product is ''Brand X is not aged in oak barrels,'' when such statement is not true.

(2) An example of an implicit statement that disparages competitors' products in a misleading fashion is ''We do not add arsenic to our distilled spirits,'' when such a claim may lead consumers to falsely believe that other distillers do add arsenic to their distilled spirits.

(c) *Truthful and accurate comparisons.* This section does not prevent truthful and accurate comparisons between products (such as, ''Our liqueur contains more strawberries than Brand X'') or statements of opinion (such as, ''We think our rum tastes better than any other distilled spirits on the market'').

§ 5.125 Tests or analyses.

Distilled spirits labels, containers, or packaging may not contain any statement or representation of or relating to analyses, standards, or tests, whether or not it is true, that is likely to mislead the consumer. An example of such a misleading statement is ''tested and approved by our research laboratories'' if the testing and approval does not in fact have any significance.

§ 5.126 Depictions of government symbols.

(a) *Representations of the armed forces and flags.* Distilled spirits labels, containers, or packaging may not show an image of any government's flag or any representation related to the armed forces of the United States if the representation, standing alone or considered together with any additional language or symbols on the label, creates a false or misleading impression that the product was endorsed by, made by, used by, or made under the supervision of, the government represented by that flag or the armed forces of the United States. This section does not prohibit the use of a flag as part of a claim of American origin or another country of origin.

(b) *Government seals.* Distilled spirits labels, containers, or packaging may not contain any government seal or other insignia that is likely to create a false or misleading impression that the product has been endorsed by, made by, used by, or made for, or under the supervision of, or in accordance with the specification of, that government. Seals required or specifically authorized by applicable law or regulations and used in accordance with such law or regulations are not prohibited.

§ 5.127 Depictions simulating government stamps or relating to supervision.

Distilled spirits labels, containers, or packaging may not contain any statements, images, and designs that mislead consumers to believe that the distilled spirits are manufactured or processed under government authority. Distilled spirits labels, containers, or packaging may not contain images or designs resembling a stamp of the U.S. Government or any State or foreign government, other than stamps authorized or required by this or any other government, and may not contain statements or indications that the distilled spirits are distilled, blended, bottled, packed or sold under, or in accordance with, any municipal, State, Federal, or foreign authorization, law, or regulations, unless such statement is required or specifically authorized by applicable law or regulation. If a municipal, State, or Federal Government permit number is stated on distilled spirits labels, containers, or packaging, it may not be accompanied by any additional statement relating to that permit number.

§ 5.128 Claims related to wine or malt beverages.

(a) *General.* Except as provided in paragraph (b) of this section, no label, carton, case, or any other packaging material may contain a statement, design, or representation that tends to create a false or misleading impression that the distilled spirits product is a wine or malt beverage product, or that it contains wine or malt beverages. For example, the use of the name of a class or type designation of a wine or malt beverage product, as set forth in parts 4 or 7 of this chapter, is prohibited, if the use of that name creates a misleading impression as to the identity of the product. Homophones or coined words that simulate or imitate a class or type designation are also prohibited.

(b) *Exceptions.* This section does not prohibit:

(1) A truthful and accurate statement of alcohol content;

(2) The use of a brand name of a wine or malt beverage product as a distilled spirits product brand name, provided that the overall label does not create a misleading impression as to the identity of the product;

(3) The use of a wine or malt beverage cocktail name as a brand name or a distinctive or fanciful name of a distilled spirits product, provided that a statement of composition, in accordance with § 5.166, appears in the same field of vision as the brand name or the distinctive or fanciful name and the overall label does not create a misleading impression about the identity of the product;

(4) The use of truthful and accurate statements about the production of the distilled spirits product, as part of a statement of composition or otherwise, such as ''flavored with chardonnay grapes,'' so long as such statements do not create a misleading impression as to the identity of the product; or

(5) The use of terms that simply compare distilled spirits products to wine or malt beverages without creating a misleading impression as to the identity of the product.

§ 5.129 Health-related statements.

(a) *Definitions.* When used in this section, the following terms have the meaning indicated:

(1) *Health-related statement* means any statement related to health (other than the warning statement required under part 16 of this chapter) and includes statements of a curative or therapeutic nature that, expressly or by implication, suggest a relationship between the consumption of alcohol, distilled spirits, or any substance found within the distilled spirits product, and health benefits or effects on health. The term includes both specific health claims and general references to alleged health benefits or effects on health associated with the consumption of alcohol, distilled spirits, or any substance found within the distilled spirits, as well as health-related directional statements. The term also includes statements and claims that imply that a physical or psychological sensation results from consuming the distilled spirits, as well as statements and claims of nutritional value (for example, statements of vitamin content).

(2) *Specific health claim* means a type of health-related statement that, expressly or by implication, characterizes the relationship of distilled spirits, alcohol, or any substance found within the distilled spirits, to a disease or health-related condition. Implied specific health claims include statements, symbols, vignettes, or other forms of communication that suggest, within the context in which they are presented, that a relationship exists between alcohol, distilled spirits, or any substance found within the distilled spirits, and a disease or health-related condition.

(3) *Health-related directional statement* means a type of health-related statement that directs or refers consumers to a third party or other source for information regarding the effects on health of distilled spirits or alcohol consumption.

(b) *Rules for labeling*—(1) *Health-related statements.* In general, distilled spirits may not contain any health-related statement that is untrue in any particular or tends to create a misleading impression as to the effects on health of alcohol consumption. TTB will evaluate such statements on a case-by-case basis and may require as part of the health-related statement a disclaimer or some other qualifying statement to dispel any misleading impression conveyed by the health-related statement.

(2) *Specific health claims.* (i) TTB will consult with the Food and Drug Administration (FDA), as needed, on the use of a specific health claim on the distilled spirits. If FDA determines that the use of such a labeling claim is a drug claim that is not in compliance with the requirements of the Federal Food, Drug, and Cosmetic Act, TTB will not approve the use of that specific health claim on the distilled spirits.

(ii) TTB will approve the use of a specific health claim on a distilled spirits label only if the claim is truthful and adequately substantiated by scientific or medical evidence; is sufficiently detailed and qualified with respect to the categories of individuals to whom the claim applies; adequately discloses the health risks associated with both moderate and heavier levels

of alcohol consumption; and outlines the categories of individuals for whom any levels of alcohol consumption may cause health risks. This information must appear as part of the specific health claim.

(3) *Health-related directional statements.* A health-related directional statement is presumed misleading unless it:

(i) Directs consumers in a neutral or other non-misleading manner to a third party or other source for balanced information regarding the effects on health of distilled spirits or alcohol consumption; and

(ii)(A) Includes as part of the health-related directional statement the following disclaimer: ''This statement should not encourage you to drink or to increase your alcohol consumption for health reasons;'' or

(B) Includes as part of the health-related directional statement some other qualifying statement that the appropriate TTB officer finds is sufficient to dispel any misleading impression conveyed by the health-related directional statement.

§ 5.130 Appearance of endorsement.

(a) *General.* Distilled spirits labels, containers, or packaging may not include the name, or the simulation or abbreviation of the name, of any living individual of public prominence, or an existing private or public organization, or any graphic, pictorial, or emblematic representation of the individual or organization, if its use is likely to lead a consumer to falsely believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization. This section does not prohibit the use of such names where the individual or organization has provided authorization for their use.

(b) *Documentation.* The appropriate TTB officer may request documentation from the bottler or importer to establish that the person or organization has provided authorization to use the name of that person or organization.

(c) *Disclaimers.* Statements or other representations do not violate this section if, taken as a whole, they create no misleading impression as to an implied endorsement either because of the context in which they are presented or because of the use of an adequate disclaimer.

Subpart I—Standards of Identity for Distilled Spirits

§ 5.141 The standards of identity in general.

(a) *General.* Distilled spirits are divided, for labeling purposes, into classes, which are further divided into specific types. As set forth in § 5.63, a distilled spirits product label must bear the appropriate class, type or other designation. The standards that define the classes and types are known as the ''standards of identity.'' The classes and types of distilled spirits set forth in this subpart apply only to distilled spirits for beverage or other nonindustrial purposes.

(b) *Rules.* (1) Unless otherwise specified, when a standard of identity states that a mash is of a particular ingredient (such as ''fermented mash of grain''), the mash must be made entirely of that ingredient without the addition of other fermentable ingredients.

(2) Where an intermediate product is used to manufacture a distilled spirits product, the components of that intermediate product are considered as being directly added to the finished product for purposes of determining the class or type of the finished product and for any applicable limitations or statements of composition.

(3) Some distilled spirits products may conform to the standards of identity of more than one class. Such products may be designated with any class designation defined in this subpart to which the products conform.

(c) *Designating with both class and type.* If a product is designated with both the class and the type, the class and type must be in the same type size and in the same field of vision.

(d) *Words in a designation.* All words in a designation must be in the same type size and must appear together.

§ 5.142 Neutral spirits or alcohol.

(a) *The class neutral spirits.* ''Neutral spirits'' or ''alcohol'' are distilled spirits distilled from any suitable material at or above 95 percent alcohol by volume (190° proof), and, if bottled, bottled at not less than 40 percent alcohol by volume (80° proof). The source material may, but need not, appear in the class designation (for example, ''Apple Neutral Spirits'' or ''Grain Neutral Spirits''). Neutral spirits other than the type ''grain spirits'' may be designated as ''neutral spirits'' or ''alcohol'' on a label. Neutral spirits other than the type ''grain spirits'' that are stored in wood barrels may not be aged in wood barrels at any time.

(b) *Types.* The following chart lists the types of neutral spirits and the rules that apply to the type designation.

Type designation	Standards
(1) Vodka	Neutral spirits so distilled, or so treated after distillation with charcoal or other materials, as to be without distinctive character, aroma, taste, or color. Vodka may not be aged or stored in wood barrels at any time except when labeled as bottled in bond pursuant to § 5.68. Vodka treated and filtered with not less than one ounce of activated carbon or activated charcoal per 100 wine gallons of spirits may be labeled as ''charcoal filtered.'' Vodka may contain up to two grams per liter of sugar and up to one gram per liter of citric acid. Addition of any other flavoring or blending materials changes the classification to flavored vodka or to a distilled spirits specialty product, as appropriate. Vodka must be designated on the label as ''neutral spirits,'' ''alcohol,'' or ''vodka''.
(2) Grain spirits	Neutral spirits distilled from a fermented mash of grain and stored in oak barrels. ''Grain spirits'' must be designated as such on the label. Grain spirits may not be designated as ''neutral spirits'' or ''alcohol'' on the label.

§ 5.143 Whisky.

(a) *The class whisky.* ''Whisky'' or ''whiskey'' is distilled spirits that is an alcoholic distillate from a fermented mash of any grain distilled at less than 95 percent alcohol by volume (190° proof) having the taste, aroma, and characteristics generally attributed to whisky, stored in oak barrels (except that corn whisky, white whisky, and unaged whisky need not be so stored), and bottled at not less than 40 percent alcohol by volume (80° proof), and also includes mixtures of such distillates for which no specific standards of identity are prescribed.

(b) *Label designations.* The word whisky may be spelled as either ''whisky'' or ''whiskey''. Whisky conforming to one of the types of whisky defined in paragraph (c) of this section must be designated as that type on the label, except that whisky distilled in Tennessee may be called ''Tennessee Whisky'' even if it conforms to one of the specific type designations. The place, state, or region where the

whisky was distilled may appear as part of the designation on the label if the distillation and any required aging took place in that location; blending and bottling need not have taken place in the same place, state, or region (*e.g.,* ''New York Bourbon Whisky'' must be distilled and aged in the State of New York). However, if any whisky is made partially from whisky distilled in a country other than that indicated by the type designation, the label must indicate the percentage of such whisky and the country where that whisky was distilled. Additionally, the label of whisky that does not meet one of the standards for specific types of whisky and that is comprised of components distilled in more than one country must contain a statement of composition indicating the country of origin of each component (such as ''Whisky—50% from Japan, 50% from the United States''). The word ''bourbon'' may not be used to describe any whisky or whisky-based distilled spirits not distilled and aged in the United States. The whiskies defined in paragraphs (c)(2) through (6) and (10) through (14) of this section are distinctive products of the United States and must have the country of origin stated immediately adjacent to the type designation if it is distilled outside of the United States, or the whisky designation must be proceeded by the term ''American type'' if the country of origin appears elsewhere on the label. For example, ''Brazilian Corn Whisky,'' ''Rye Whisky distilled in Sweden,'' and ''Blended Whisky—Product of Japan'' are statements that meet this country of origin requirement. ''Light whisky'' and ''Blended light whisky'' may only be produced in the United States.

(c) *Types of whisky.* The following tables set out the designations for whisky. Table 1 sets forth the standards for whisky that are defined based on production, storage, and processing standards, while Table 2 sets forth rules for the types of whisky that are defined as distinctive products of certain countries. For the whiskies listed in Table 1, a whisky may use the designation listed, when it complies with the production standards in the subsequent columns. The ''source'' column indicates the source of the grain mash used to make the whisky. The ''distillation proof'' indicates the allowable distillation proof for that type. The ''storage'' column indicates the type of packages (barrels) in which the spirits must be stored and limits for the proof of the spirits when entering the packages. The ''neutral spirits permitted'' column indicates whether neutral spirits may be used in the product in their original state (and not as vehicles for flavoring materials), and if so, how much may be used. The ''harmless coloring, flavoring, blending materials permitted'' column indicates whether harmless coloring, flavoring, or blending materials, other than neutral spirits in their original form, described in § 5.142, may be used in the product. The use of the word ''straight'' is a further designation of a type, and is optional. The designation ''white whisky'' may only appear on whiskies that are clear in color and that meet the rules in paragraph (b)(15) of this section.

TABLE 1 TO PARAGRAPH (c): TYPES OF WHISKY AND PRODUCTION, STORAGE, AND PROCESSING STANDARDS

Type	Source	Distillation proof	Storage	Neutral spirits permitted	Allowable coloring, flavoring, blending materials permitted
(1) Whisky, which may be used as the designation if the whisky does not meet one of the type designations.	Fermented grain mash	Less than 190° ...	Oak barrels with no minimum time requirement.	No	Yes.
(2) Bourbon Whisky, Rye Whisky, Wheat Whisky, Malt Whisky, Rye Malt Whisky, or [name of other grain] Whisky.	Fermented mash of not less than 51%, respectively: Corn, Rye, Wheat, Malted Barley, Malted Rye Grain [Other grain].	160° or less	Charred new oak barrels at 125° or less.	No	Yes, except for bourbon whisky.
(3) Corn Whisky. (Whisky conforming to this standard must be designated as ''corn whisky.'').	Fermented mash of not less than 80% corn.	160° or less	Required only if age is claimed on the label. If stored, must be stored at 125° or less in used or uncharred new oak barrels.	No	Yes.
(4) Straight Whisky	Fermented mash of less than 51% corn, rye, wheat, malted barley, or malted rye grain. (Includes mixtures of straight whiskies made in the same state.).	160º or less	Charred new oak barrels at 125º or less for a minimum of two years.	No	No.
(5) Straight Bourbon Whisky, Straight Rye Whisky, Straight Wheat Whisky, Straight Malt Whisky, or Straight Rye Malt Whisky.	Fermented mash of not less than 51%, respectively: Corn, Rye, Wheat, Malted Barley, Malted Rye Grain.	160° or less	Charred new oak barrels at 125° or less for a minimum of two years.	No	No.
(6) Straight Corn Whisky.	Fermented mash of not less than 80% corn.	160° or less	125° or less in used or uncharred new oak barrels for a minimum of 2 years.	No	No.

TABLE 1 TO PARAGRAPH (c): TYPES OF WHISKY AND PRODUCTION, STORAGE, AND PROCESSING STANDARDS—Continued

Type	Source	Distillation proof	Storage	Neutral spirits permitted	Allowable coloring, flavoring, blending materials permitted
(7) Whisky distilled from Bourbon/Rye/Wheat/Malt/Rye Malt/[Name of other grain] mash.	Fermented mash of not less than 51%, respectively: Corn, Rye, Wheat, Malted Barley, Malted Rye Grain [Other grain].	160° or less	Used oak barrels	No	Yes.
(8) Light Whisky	Fermented grain mash	More than 160°	Used or uncharred new oak barrels.	No	Yes.
(9) Blended Light Whisky (Light Whisky—a blend).	Fermented grain mash but mixed with less than 20% Straight Whisky on a proof gallon basis.	Blend	Used or uncharred new oak barrels.	No	Yes.
(10) Blended Whisky (Whisky—a blend).	At least 20% Straight Whisky on a proof gallon basis plus Whisky or Neutral Spirits alone or in combination.	160° or less	Will contain a blend of spirits, some stored and some not stored.	Maximum of 80% on a proof gallon basis.	Yes.
(11) Blended Bourbon Whisky, Blended Rye Whisky, Blended Wheat Whisky, Blended Malt Whisky, Blended Rye Malt Whisky, Blended Corn Whisky (or ___ Whisky—a blend).	At least 51% on a proof gallon basis of: Straight Bourbon, Rye, Wheat, Malt, Rye Malt, or Corn Whisky; the rest comprised of Whisky or Neutral Spirits alone or in combination.	Blend	Will contain a blend of spirits, some stored and some not stored.	Maximum of 49% on a proof gallon basis.	Yes.
(12) Blend of Straight Whiskies (Blended Straight Whiskies).	Mixture of Straight Whiskies that does not conform to ''Straight Whisky''.	160° or less	Will contain a blend of spirits which were aged at least two years.	No, except as part of a flavor.	Yes.
(13) Blended Straight Bourbon Whisky, Blended Straight Rye Whisky, Blended Straight Malt Whisky, Blended Straight Rye Malt Whisky, Blended Straight Corn Whisky.	Mixture of Straight Whiskies of the same named type produced in different states or produced in the same state but contains flavoring material.	160° or less	Will contain a blend of spirits which were aged at least two years.	No, except as part of a flavor.	Yes.
(14) Spirit Whisky	Mixture of Neutral Spirits and 5% or more on a proof gallon basis of: Whisky or Straight Whisky or a combination of both. The Straight Whisky component must be less than 20% on a proof gallon basis.	Blend	Will contain a blend of spirits, some stored and some not stored.	Maximum of 95% on a proof gallon basis.	Yes.
(15) White Whisky or Unaged Whisky (Unaged whisky may only be used as a designation if the whisky is not aged.).	Fermented grain mash. When the mash is made up of at least 51% of a single type of grain, the product may be further designated as White [Name of grain] Whisky or Unaged [Name of grain] Whisky.	Less than 190°	Storage is not required for ''white whisky'' and is prohibited for ''unaged whisky.'' If white whisky is stored, oak barrels, with no minimum time requirement, and filtered after storage to remove color.	No	Yes.

TABLE 2 TO PARAGRAPH (C): TYPES OF WHISKY THAT ARE DISTINCTIVE PRODUCTS

(16) Scotch whisky	Whisky which is a distinctive product of Scotland, manufactured in Scotland in compliance with the laws of the United Kingdom regulating the manufacture of Scotch whisky for consumption in the United Kingdom: Provided, That if such product is a mixture of whiskies, such mixture is ''blended Scotch whisky'' or ''Scotch whisky—a blend''.
(17) Irish whisky	Whisky which is a distinctive product of Ireland, manufactured either in the Republic of Ireland or in Northern Ireland, in compliance with their laws regulating the manufacture of Irish whisky for home consumption: Provided, That if such product is a mixture of whiskies, such mixture is ''blended Irish whisky'' or ''Irish whisky—a blend''.
(18) Canadian whisky	Whisky which is a distinctive product of Canada, manufactured in Canada in compliance with the laws of Canada regulating the manufacture of Canadian whisky for consumption in Canada: Provided, That if such product is a mixture of whiskies, such mixture is ''blended Canadian whisky'' or ''Canadian whisky—a blend''.

§ 5.144 Gin.

(a) *The class gin.* ''Gin'' is distilled spirits made by original distillation from mash, or by redistillation of distilled spirits, or by mixing neutral spirits, with or over juniper berries and, optionally, with or over other aromatics, or with or over extracts derived from infusions, percolations, or maceration of such materials, and includes mixtures of gin and neutral spirits. It must derive its main characteristic flavor from juniper berries and be bottled at not less than 40 percent alcohol by volume (80° proof). Gin may be aged in oak containers.

(b) *Distilled gin.* Gin made exclusively by original distillation or by redistillation may be further designated as ''distilled,'' ''Dry,'' ''London,'' ''Old Tom'' or some combination of these four terms.

§ 5.145 Brandy.

(a) *The class brandy.* ''Brandy'' is spirits that are distilled from the fermented juice, mash, or wine of fruit, or from the residue thereof, distilled at less than 95 percent alcohol by volume (190° proof) having the taste, aroma, and characteristics generally attributed to the product, and bottled at not less than 40 percent alcohol by volume (80° proof).

(b) *Label designations.* Brandy conforming to one of the type designations must be designated with the type name or specific designation specified in the requirements for that type. The term ''brandy'' without further qualification (such as ''peach'' or ''marc'') may only be used as a designation on labels of grape brandy as defined in paragraph (c)(1) of this section. Brandy conforming to one of the type designations defined in paragraphs (c)(1) through (12) of this section must be designated on the label with the type name unless a specific designation is included in the requirements for that type. Brandy, or mixtures thereof, not conforming to any of the types defined in this section must be designated on the label as ''brandy'' followed immediately by a truthful and adequate statement of composition.

(c) *Types.* Paragraphs (c)(1) through (12) of this section set out the types of brandy and the standards for each type.

Type	Standards
(1) Fruit brandy	Brandy distilled solely from the fermented juice or mash of whole, sound, ripe fruit, or from standard grape or other fruit wine, with or without the addition of not more than 20 percent by weight of the pomace of such juice or wine, or 30 percent by volume of the lees of such wine, or both (calculated prior to the addition of water to facilitate fermentation or distillation). Fruit brandy includes mixtures of such brandy with not more than 30 percent (calculated on a proof gallon basis) of lees brandy. Fruit brandy derived solely from grapes and stored for at least two years in oak containers must be designated ''grape brandy'' or ''brandy.'' Grape brandy that has been stored in oak barrels for fewer than two years must be designated ''immature grape brandy'' or ''immature brandy.'' Fruit brandy, other than grape brandy, derived from one variety of fruit, must be designated by the word ''brandy'' qualified by the name of such fruit (for example, ''peach brandy''), except that ''apple brandy'' may be designated ''applejack,'' ''plum brandy'' may be designated ''Slivovitz,'' and ''cherry brandy'' may be designated ''Kirschwasser.'' Fruit brandy derived from more than one variety of fruit must be designated as ''fruit brandy'' qualified by a truthful and adequate statement of composition, for example ''Fruit brandy distilled from strawberries and blueberries.''
(2) Cognac or ''Cognac (grape) brandy''.	Grape brandy distilled exclusively in the Cognac region of France, which is entitled to be so designated by the laws and regulations of the French government.
(3) Armagnac	Grape brandy distilled exclusively in France in accordance with the laws and regulations of France regulating the manufacture of Armagnac for consumption in France.
(4) Brandy de Jerez	Grape brandy distilled exclusively in Spain in accordance with the laws and regulations of Spain regulating the manufacture of Brandy de Jerez for consumption in Spain.
(5) Calvados	Apple brandy distilled exclusively in France in accordance with the laws and regulations of France regulating the manufacture of Calvados for consumption in France.
(6) Pisco	Grape brandy distilled in Peru or Chile in accordance with the laws and regulations of the country of manufacture of Pisco for consumption in the country of manufacture, including: (i) ''Pisco Perú'' (or ''Pisco Peru''), which is Pisco manufactured in Peru in accordance with the laws and regulations of Peru governing the manufacture of Pisco for consumption in that country; and (ii) ''Pisco Chileno'' (or ''Chilean Pisco''), which is Pisco manufactured in Chile in accordance with the laws and regulations of Chile governing the manufacture of Pisco for consumption in that country.
(7) Dried fruit brandy	Brandy that conforms to the standard for fruit brandy except that it has been derived from sound, dried fruit, or from the standard wine of such fruit. Brandy derived from raisins, or from raisin wine, must be designated ''raisin brandy.'' Dried fruit brandy, other than raisin brandy, must be designated by the word ''brandy'' qualified by the name of the dried fruit from which made preceded by the word ''dried'', for example, ''dried apricot brandy.''
(8) Lees brandy	Brandy distilled from the lees of standard grape or other fruit wine, and such brandy derived solely from grapes must be designated ''grape lees brandy'' or ''lees brandy.'' Lees brandy derived from fruit other than grapes must be designated as ''lees brandy,'' qualified by the name of the fruit from which such lees are derived, for example, ''cherry lees brandy.''

Type	Standards
(9) Pomace brandy or Marc brandy.	Brandy distilled from the skin and pulp of sound, ripe grapes or other fruit, after the withdrawal of the juice or wine therefrom. Such brandy derived solely from grape components must be designated ''grape pomace brandy,'' ''grape marc brandy'', ''pomace brandy,'' or ''mark brandy.'' Grape pomace brandy may alternatively be designated as ''grappa'' or ''grappa brandy.'' Pomace or marc brandy derived from fruit other than grapes must be designated as ''pomace brandy'' or ''marc brandy'' qualified by the name of the fruit from which derived, for example, ''apple pomace brandy'' or ''pear marc brandy.''
(10) Residue brandy	Brandy distilled wholly or in part from the fermented residue of fruit or wine. Such brandy derived solely from grapes must be designated ''grape residue brandy,'' or ''residue brandy.'' Residue brandy, derived from fruit other than grapes, must be designated as ''residue brandy'' qualified by the name of the fruit from which derived, for example, ''orange residue brandy.'' Brandy distilled wholly or in part from residue materials which conforms to any of the standards set forth in paragraphs (b)(1) and (7) through (9) of this section may, regardless of such fact, be designated ''residue brandy'', but the use of such designation shall be conclusive, precluding any later change of designation.
(11) Neutral brandy	Any type of brandy distilled at more than 85% alcohol by volume (170° proof) but less than 95% alcohol by volume. Such brandy derived solely from grapes must be designated ''grape neutral brandy,'' or ''neutral brandy.'' Other neutral brandies, must be designated in accordance with the rules for those types of brandy, and be qualified by the word ''neutral''; for example, ''neutral citrus residue brandy''.
(12) Substandard brandy	Any brandy: (i) Distilled from fermented juice, mash, or wine having a volatile acidity, calculated as acetic acid and exclusive of sulfur dioxide, in excess of 0.20 gram per 100 cubic centimeters (20 degrees Celsius); measurements of volatile acidity must be calculated exclusive of water added to facilitate distillation. (ii) distilled from unsound, moldy, diseased, or decomposed juice, mash, wine, lees, pomace, or residue, or which shows in the finished product any taste, aroma, or characteristic associated with products distilled from such material. (iii) Such brandy derived solely from grapes must be designated ''substandard grape brandy,'' or ''substandard brandy.'' Other substandard brandies must be designated in accordance with the rules for those types of brandy, and be qualified by the word ''substandard''; for example, ''substandard fig brandy''.

§ 5.146 Blended applejack.

(a) *The class blended applejack.* ''Blended applejack'' is a mixture containing at least 20 percent on a proof gallon basis of apple brandy (applejack) that has been stored in oak barrels for not less than two years, and not more than 80 percent of neutral spirits on a proof gallon basis. Blended applejack must be bottled at not less than 40 percent alcohol by volume (80° proof).

(b) *Label designation.* The label designation for blended applejack may be ''blended applejack'' or ''applejack–a blend.''

§ 5.147 Rum.

(a) *The class rum.* ''Rum'' is distilled spirits that is distilled from the fermented juice of sugar cane, sugar cane syrup, sugar cane molasses, or other sugar cane by-products at less than 95 percent alcohol by volume (190° proof) having the taste, aroma, and characteristics generally attributed to rum, and bottled at not less than 40 percent alcohol by volume (80° proof); and also includes mixtures solely of such spirits. All rum may be designated as ''rum'' on the label, even if it also meets the standards for a specific type of rum.

(b) *Types.* Paragraph (b)(1) of this section describes a specific type of rum and the standards for that type.

Type	Standards
(1) Cachaça	Rum that is a distinctive product of Brazil, manufactured in Brazil in compliance with the laws of Brazil regulating the manufacture of Cachaça for consumption in that country. The word ''Cachaça'' may be spelled with or without the diacritic mark (*i.e.,* ''Cachaça'' or ''Cachaca''). Cachaça may be designated as ''Cachaça'' or ''rum'' on labels.
(2) [Reserved]	

§ 5.148 Agave spirits.

(a) *The class agave spirits.* ''Agave spirits'' are distilled from a fermented mash, of which at least 51 percent is derived from plant species in the genus Agave and up to 49 percent is derived from sugar. Agave spirits must be distilled at less than 95 percent alcohol by volume (190° proof) and bottled at or above 40 percent alcohol by volume (80° proof). Agave spirits may be stored in wood barrels. Agave spirits may not contain added flavoring or coloring materials, except as specified in § 5.155. This class also includes mixtures of agave spirits. Agave spirits that meet the standard of identity for ''Tequila'' or ''Mezcal'' may be designated as ''agave spirits,'' or as ''Tequila'' or ''Mezcal'', as applicable.

(b) *Types.* Paragraphs (b)(1) and (2) of this section describe the types of agave spirits and the rules for each type.

Type	Standards
(1) Tequila	An agave spirit that is a distinctive product of Mexico. Tequila must be made in Mexico, in compliance with the laws and regulations of Mexico governing the manufacture of Tequila for consumption in that country.
(2) Mezcal	An agave spirit that is a distinctive product of Mexico. Mezcal must be made in Mexico, in compliance with the laws and regulations of Mexico governing the manufacture of Mezcal for consumption in that country.

§ 5.149 Absinthe or absinth.

(a) *The class absinthe.* Absinthe is distilled spirits distilled at less than 95 percent alcohol by volume (190° proof) made with wormwood (*Artemisia absinthium*), anise, and fennel (with or without other flavoring materials) and possessing the taste, aroma, and characteristics generally attributed to absinthe. Absinthe may contain added sugar. When bottled, absinthe must be at least 30 percent alcohol by volume (60° of proof). The designations ''absinthe'' and ''absinth'' are interchangeable.

(b) *Thujone-free requirement.* Absinthe must be thujone-free in accordance with U.S. Food and Drug Administration (FDA) regulations and standards.

§ 5.150 Cordials and liqueurs.

(a) *The class cordials and liqueurs.* Cordials and liqueurs are flavored distilled spirits that are made by mixing or redistilling distilled spirits with or over fruits, flowers, plants, or pure juices therefrom, or other natural flavoring materials, or with extracts derived from infusions, percolation, or maceration of such materials, and containing sugar (such as sucrose, fructose, dextrose, or levulose) in an amount of not less than 2½ percent by weight of the finished product. Designations on labels may be ''Cordial'' or ''Liqueur,'' or, in the alternative, may be one of the type designations below. Cordials and liqueurs may not be designated as ''distilled,'' ''compound,'' or ''straight''. The designation of a cordial or liqueur may include the word ''dry'' if sugar is less than 10 percent by weight of the finished product.

(b) *Types.* Paragraph (b)(1) through (12) of this section list definitions and standards for optional type designations.

The Types of Cordials and Liqueurs

Type	Rule
(1) Sloe gin	A cordial or liqueur with the main characteristic flavor derived from sloe berries.
(2) Rye liqueur, bourbon liqueur (or rye cordial or bourbon cordial).	Liqueurs, bottled at not less than 30 percent alcohol by volume, in which not less than 51 percent, on a proof gallon basis, of the distilled spirits used are, respectively, rye or bourbon whisky, straight rye or straight bourbon whisky, or whisky distilled from a rye or bourbon mash, and which possess a predominant characteristic rye or bourbon flavor derived from such whisky. Wine, if used, must be within the 2½ percent limitation provided in § 5.155 for coloring, flavoring, and blending materials.
(3) Rock and rye; Rock and bourbon; Rock and brandy; Rock and rum.	Liqueurs, bottled at not less than 24 percent alcohol by volume, in which, in the case of rock and rye and rock and bourbon, not less than 51 percent, on a proof gallon basis, of the distilled spirits used are, respectively, rye or bourbon whisky, straight rye or straight bourbon whisky, or whisky distilled from a rye or bourbon mash, and, in the case of rock and brandy and rock and rum, the distilled spirits used are all grape brandy or rum, respectively; containing rock candy or sugar syrup, with or without the addition of fruit, fruit juices, or other natural flavoring materials, and possessing, respectively, a predominant characteristic rye, bourbon, brandy, or rum flavor derived from the distilled spirits used. Wine, if used, must be within the 2½ percent limitation provided in § 5.155 for harmless coloring, flavoring, and blending materials.
(4) Rum liqueur, gin liqueur, brandy liqueur.	Liqueurs, bottled at not less than 30 percent alcohol by volume, in which the distilled spirits used are entirely rum, gin, or brandy, respectively, and which possess, respectively, a predominant characteristic rum, gin, or brandy flavor derived from the distilled spirits used. In the case of brandy liqueur, the type of brandy must be stated in accordance with paragraph (d) of this section, except that liqueurs made entirely with grape brandy may be designated simply as ''brandy liqueur.'' Wine, if used, must be within the 2½ percent limitation provided for in § 5.155 for harmless coloring, flavoring, and blending materials.
(5) Amaretto	Almond flavored liqueur/cordial.
(6) Kummel	Caraway flavored liqueur/cordial.
(7) Ouzo, Anise, Anisette	Anise flavored liqueurs/cordials.
(8) Sambuca	Anise flavored liqueur. See § 5.154(b)(3) for designation rules for Sambuca not produced in Italy.
(9) Peppermint Schnapps	Peppermint flavored liqueur/cordial.
(10) Triple Sec and Curacao	Orange flavored liqueurs/cordials. Curacao may be preceded by the color of the liqueur/cordial (for example, Blue Curacao).
(11) Crème de _____	A liqueur/cordial where the blank is filled in with the predominant flavor (for example, Crème de menthe is mint flavored liqueur/cordial.)
(12) Goldwasser	Herb flavored liqueur/cordial and containing gold flakes. See § 5.154(b)(3) for designation rules for goldwasser not made in Germany.

§ 5.151 Flavored spirits.

(a) *The class flavored spirits.* ''Flavored spirits'' are distilled spirits that are spirits conforming to one of the standards of identity set forth in §§ 5.142 through 5.150 (the ''base spirits'') to which have been added nonbeverage flavors, wine, or nonalcoholic natural flavoring materials, with or without the addition of sugar, and bottled at not less than 30 percent alcohol by volume (60° proof). The flavored spirits must be specifically designated by the single base spirit and one or more of the most predominant flavors (for example, ''Pineapple Flavored Tequila'' or ''Cherry Vanilla Flavored Bourbon Whisky''). The base spirit must conform to the standard of identity for that spirit before the flavoring is added. Base spirits that are a distinctive product of a particular place must be manufactured in accordance with the laws and regulations of the country as designated in the base spirit's standard of identity. If the finished product contains more than 2½ percent by volume of wine, the kinds and percentages by volume of wine must be stated as a part of the designation (whether the wine is added directly to the product or whether it is first mixed into an intermediate product), except that a flavored brandy may contain an additional 12½ percent by volume of wine, without label disclosure, if the additional wine is derived from the particular fruit corresponding to the labeled flavor of the product.

§ 5.152 Imitations.

(a) Imitations must bear, as a part of the designation thereof, the word ''imitation'' and include the following:

(1) Any class or type of distilled spirits to which has been added coloring or flavoring material of such nature as to cause the resultant product to simulate any other class or type of distilled spirits;

(2) Any class or type of distilled spirits (other than distilled spirits specialty products as defined in § 5.156) to which has been added flavors considered to be artificial or imitation. (*Note:* TTB Procedure XXXX–XX, available on the TTB website (*https://www.ttb.gov*) provides guidance on the use of the terms ''natural'' and ''artificial'' when referencing flavoring materials);

(3) Any class or type of distilled spirits (except cordials, liqueurs and specialties marketed under labels which do not indicate or imply that a particular class or type of distilled spirits was used in the manufacture thereof) to which has been added any whisky essence, brandy essence, rum essence, or similar essence or extract which simulates or enhances, or is used by the trade or in the particular product to simulate or enhance, the characteristics of any class or type of distilled spirits;

(4) Any type of whisky to which beading oil has been added;

(5) Any rum to which neutral spirits or distilled spirits other than rum have been added;

(6) Any brandy made from distilling material to which has been added any amount of sugar other than the kind and amount of sugar expressly authorized in the production of standard wine; and

(7) Any brandy to which neutral spirits or distilled spirits other than brandy have been added, except that this provision shall not apply to any product conforming to the standard of identity for blended applejack.

(b) If any of the standards set forth in paragraphs (a)(1) through (7) of this section apply, the ''Imitation'' class designation must be used in front of the appropriate class designation (for example, Imitation Whisky).

§ 5.153 Diluted spirits.

(a) *The class diluted spirits.* When a minimum bottling alcohol content (proof) is required for a class or type and a product would meet one of the classes or types prescribed in this subpart except that that product does not meet the minimum bottling alcohol content, the product must be designated with the applicable class or type designation (and statement of composition, if required) immediately preceded by the word ''Diluted'' in readily legible type at least half as large as the class or type designation to which it refers. Examples of such designations are ''Diluted Vodka,'' ''Diluted Cherry Lees Brandy,'' and ''Diluted flavored whisky.''

(b) [Reserved]

§ 5.154 Rules for geographical designations.

(a) *Geographical designations.* (1) Geographical names for distilled spirits found by the appropriate TTB officer to have lost their geographical significance by usage and common knowledge to such extent that they have become generic may be used without regard to where the product is actually manufactured or bottled. The following names have been found to be generic: London dry gin, Geneva (Hollands) gin.

(2) Except as provided in paragraph (a)(3) of this section, geographical names that have not become generic shall not be applied to distilled spirits made in any place other than the particular place or region indicated in the name. Examples are Greek brandy, Jamaica rum, Puerto Rico rum, Demerara rum, and Andong Soju.

(3) Geographical names that are not generic may be used as the designation for types of distilled spirits made in a place other than the particular region indicated by the name if:

(i) The appropriate TTB officer has determined that the name represents a type of distilled spirits;

(ii) The word ''type,'' ''style,'' or some other statement indicating the true place of production appears as part of the designation; and

(iii) The distilled spirits to which the name is applied conforms to the standard of identity identified in this subpart.

(iv) The following geographical names are recognized as types of distilled spirits in accordance with paragraph (a)(3)(i) of this section: Eau de Vie de Dantzig (Danziger Goldwasser), Ojen, and Swedish punch.

(b) *Products without geographical designations that are associated with a particular geographical region.* (1) A name that is not a geographical name but that is generally perceived as a name associated with a particular geographic place, region, or country may not be used on the label of a product of any other place, region or country, except as otherwise provided in this paragraph.

(2) Designations for distilled spirits listed in this paragraph and that by usage and common knowledge have lost any geographical significance to such an extent that the appropriate TTB officer finds they have become generic may be used to designate spirits of any origin. Examples of names that TTB has found to be generic include: Zubrovka, Aquavit, Arrack, Kummel, Amaretto, and Ouzo.

(3) Designations for distilled spirits listed in this paragraph that the appropriate TTB officer has determined have, by usage and common knowledge, become associated with distilled spirits produced in geographic areas other than the region with which the name was originally associated may be used to designate products of any origin, as long as the designation for such product includes the word ''type'' or an adjective such as ''American'' that clearly indicates the true place of production. TTB has determined that the names ''Habanero,'' ''Sambuca,'' and ''Goldwasser'' fall into this category.

§ 5.155 Alteration of class and type.

(a) *Definitions*—(1) *Coloring, flavoring, or blending material.* For the purposes of this section, the term ''coloring, flavoring, or blending material'' means a harmless substance that is an essential component of the class or type of distilled spirits to which it is added; or a harmless substance, such as caramel, straight malt or straight rye malt whiskies, fruit juices, sugar, infusion of oak chips when approved by the Administrator, or wine, that is not an essential component part of the distilled spirits product to which it is added but which is customarily employed in the product in accordance with established trade usage.

(2) *Certified color.* For purposes of this section, the term ''certified color'' means a color additive that is required to undergo batch certification in accordance with part 74 or part 82 of the Food and Drug Administration regulations (21 CFR parts 74 and 82). An example of a certified color is FD&C Blue No. 2.

(b) *Allowable additions.* Except as provided in paragraph (c) of this section, the following may be added to distilled spirits without changing the class or type designation:

(1) Coloring, flavoring, and blending materials that are essential components of the class or type of distilled spirits to which added;

(2) Coloring, flavoring, and blending materials that are not essential component parts of the distilled spirits to which added, provided that such coloring, flavoring, or blending materials do not total more than 2 ½ percent by volume of the finished product; and

(3) Wine, when added to Canadian whisky in Canada in accordance with the laws and regulations of Canada governing the manufacture of Canadian whisky.

(c) *Exceptions.* The addition of the following will require a redesignation of the class or type of the distilled spirits product to which added:

(1) Coloring, flavoring, or blending materials that are not essential component parts of the class or type of

distilled spirits to which they are added, if such coloring, flavoring, and blending materials total more than 2½ percent by volume of the finished product;

(2) Any material, other than caramel, infusion of oak chips, and sugar, added to Cognac brandy;

(3) Any material whatsoever added to neutral spirits or straight whisky, except that vodka may be treated with sugar, in an amount not to exceed two grams per liter, and with citric acid, in an amount not to exceed one gram per liter;

(4) Certified colors, carmine, or cochineal extract;

(5) Any material that would render the product to which it is added an imitation, as defined in § 5.152; or

(6) For products that are required to be stored in oak barrels in accordance with a standard of identity, the storing of the product in an additional barrel made of another type of wood.

(d) *Extractions from distilled spirits.* The removal of any constituents from a distilled spirits product to such an extent that the product no longer possesses the taste, aroma, and characteristics generally attributed to that class or type of distilled spirits will alter the class or type of the product, and the resulting product must be redesignated appropriately. In addition, in the case of straight whisky, the removal of more than 15 percent of the fixed acids, volatile acids, esters, soluble solids, or higher alcohols, or the removal of more than 25 percent of the soluble color, constitutes an alteration of the class or type of the product and requires a redesignation of the product.

(e) *Exceptions.* Nothing in this section has the effect of modifying the standards of identity specified in § 5.150 for cordials and liqueurs, and in § 5.151 for flavored spirits, or of authorizing any product defined in § 5.152 to be designated as other than an imitation.

§ 5.156 Distilled spirits specialty products.

(a) *General.* Distilled spirits that do not meet one of the other standards of identity specified in this subpart are distilled spirits specialty products and must be designated in accordance with trade and consumer understanding, or, if no such understanding exists, with a distinctive or fanciful name (which may be the name of a cocktail) appearing in the same field of vision as a statement of composition. The statement of composition and the distinctive or fanciful name serve as the class and type designation for these products. The statement of composition must follow the rules found in § 5.166. A product may not bear a designation which indicates it contains a class or type of distilled spirits unless the distilled spirits therein conform to such class and type.

(b) *Products designated in accordance with trade and consumer understanding.* Products may be designated in accordance with trade and consumer understanding without a statement of composition if the appropriate TTB officer has determined that there is such understanding.

§§ 5.157–5.165 [Reserved]

§ 5.166 Statements of composition.

(a) *Rules for the statement of composition.* When a statement of composition is required as part of a designation for a distilled spirits specialty product, the statement must contain all of the information specified in this section, as applicable. The statement must specify all harmless coloring, flavoring, and blending materials, except to the extent the materials in the product are part of a distilled spirit that is identified in the statement of composition and the distilled spirit contains the materials within the limitations specified in the standards of identity for the distilled spirit, or the standards set out in § 5.155. If an intermediate product is used to make a distilled spirits specialty product, the materials used to make the intermediate product should be identified in the statement of composition as if they were mixed directly into the distilled spirits without regard to the fact that they were first mixed into an intermediate product.

(1) *Identify the distilled spirits and wines.* The statement of composition must clearly identify the distilled spirits and wines used in the finished product. The statement of composition must show the required class and/or type designation for each distilled spirit (*e.g.,* ''vodka,'' ''whisky,'' ''rum,'' ''gin''). The statement of composition must identify any wines used in the product, but the statement is not required to specifically identify the classes and/or types of the wines. The statement of composition must list each distilled spirit and wine in order of predominance on a proof gallon basis. If a product contains multiple classes and/or types of wine and the statement of composition does not specifically identify each one, the predominance of the wine must be determined based on its total quantity in the product on a proof gallon basis.

(2) *Identify flavoring and blending material(s) (not including distilled spirits and wines) used before, during, and after distillation.* The statement of composition must disclose flavoring and blending materials used in the finished product. If the flavoring materials were used before or during the distillation process, the statement of composition must indicate that the distilled spirits were distilled with the flavoring material (*e.g.,* Vodka Distilled with Cinnamon). If a single flavoring material is used in the production of the distilled spirits product, the flavoring material may be specifically identified (such as, ''strawberry flavor,'' ''strawberry juice,'' or ''whole strawberries'') or generally referenced (such as, ''natural flavor''). If two or more flavoring materials are used in the production of the distilled spirits product, each flavoring material may be specifically identified (such as, ''peach flavor, kiwi flavor,'' or ''peach and kiwi flavors'') or the characterizing flavor may be specifically identified and the remaining flavoring material(s) may be generally referenced (such as, ''peach and other natural and artificial flavor(s)''), or all flavors may be generally referenced (such as, ''with artificial flavors''). (*Note:* TTB Procedure XXXX–XX, available on the TTB website (*https://www.ttb.gov*), provides guidance on the use of the terms ''natural'' and ''artificial'' when referencing flavoring materials.)

(3) *Identify added coloring material(s).* The statement of composition must disclose the addition of coloring material(s), whether added directly or through flavoring material(s), if the addition of such material(s) to the base distilled spirits is not in accordance with the standards of identity. The coloring material(s) may be identified specifically (such as, ''caramel color,'' ''FD&C Red #40,'' ''annatto,'' etc.) or as a general statement, such as, ''Contains certified color'', for colors approved under 21 CFR part 74, or ''artificially colored,'' to indicate the presence of any one or a combination of coloring material(s). However, FD&C Yellow No. 5, cochineal extract, and carmine require specific disclosure in accordance with § 5.71 and may be disclosed either in the statement of composition or elsewhere, in accordance with that section, if the statement of composition contains only a general disclosure of added colors. Where the standard of identity for that base spirit does not require disclosure, caramel used in the production of the base spirit is not required to be disclosed as part of the statement of composition. However, caramel added in the production of the specialty product must be disclosed.

(4) *Identify added artificial or other non-nutritive sweeteners.* The statement of composition must disclose any artificial sweetener that is added to a distilled spirits product, whether the artificial sweetener is added directly or

through flavoring material(s). The artificial sweetener may be identified specifically by either generic name or trademarked brand name, or as a general statement (such as ''artificially sweetened''), to indicate the presence of any one or combination of artificial sweeteners. However, if aspartame is used, an additional warning statement is required in accordance with § 5.63.

(5) *Identify certain ingredients.* The statement of composition must disclose any ingredient that is permitted by a standard of identity, but used in a method or quantity that makes the finished product no longer meet the standard of identity. For example, vodka to which more than two grams of sugar per liter is added is no longer designated as vodka. The statement of composition may read ''Vodka with added sugar.''

(b) [Reserved]

Subpart J—Formulas

§ 5.191 Application.

The requirements of this subpart apply to the following persons:

(a) Proprietors of distilled spirits plants qualified as processors under part 19 of this chapter;

(b) Persons in the Commonwealth of Puerto Rico who manufacture distilled spirits products for shipment to the United States. However, the filing of a formula for approval by TTB is only required for those products that will be shipped to the United States; and

(c) Persons who ship Virgin Islands distilled spirits products into the United States.

§ 5.192 Formula requirements.

(a) *General.* An approved formula is required to blend, mix, purify, refine, compound, or treat distilled spirits in a manner that results in a change of class or type of the spirits.

(b) *Preparation and submission.* In order to obtain formula approval, a person listed in § 5.191 must complete and file TTB Form 5100.51, Formula and Process for Domestic and Imported Alcohol Beverages, electronically or in paper format, in accordance with the instructions for the form. When a product will be made or processed under the same formula at more than one location operated by the distiller or processor, the distiller or processor must identify on the form each place of production or processing by name and address, and by permit number, if applicable, and must ensure that a copy of the approved formula is maintained at each location.

(c) *Existing approvals.* Any approval of a formula will remain in effect until revoked, superseded, or voluntarily surrendered, and if the formula is revoked, superseded, or voluntarily surrendered, any existing qualifying statements on such approval as to the rate of tax or the limited use of alcoholic flavors will be made obsolete.

(d) *Change in formula.* Any change in an approved formula requires the filing of a new Form 5100.51 for approval of the changed formula. After a changed formula is approved, the filer must surrender the original formula approval to the appropriate TTB officer.

§ 5.193 Operations requiring formulas.

The following operations change the class or type of distilled spirits and therefore require formula approval under § 5.192:

(a) The compounding of distilled spirits through the mixing of a distilled spirits product with any coloring or flavoring material, wine, or other material containing distilled spirits (except for harmless coloring, flavoring or blending materials that do not alter the class or type pursuant to § 5.155);

(b) The manufacture of an intermediate product to be used exclusively in other distilled spirits products on bonded premises;

(c) Any filtering or stabilizing process that results in a distilled spirits product's no longer possessing the taste, aroma, and characteristics generally attributed to the class or type of distilled spirits before the filtering or stabilizing, or, in the case of straight whisky, that results in the removal of more than 15 percent of the fixed acids, volatile acids, esters, soluble solids, or higher alcohols, or more than 25 percent of the soluble color;

(d) The mingling of spirits that differ in class or in type of materials from which made;

(e) The mingling of distilled spirits that were stored in charred cooperage with distilled spirits that were stored in plain or reused cooperage, or the mixing of distilled spirits that have been treated with wood chips with distilled spirits not so treated, or the mixing of distilled spirits that have been subjected to any treatment which changes their character with distilled spirits not subjected to such treatment, unless it is determined by the appropriate TTB officer in each of these cases that the composition of the distilled spirits is the same notwithstanding the storage in different kinds of cooperage or the treatment of a portion of the spirits;

(f) Except when authorized for production or storage operations by part 19 of this chapter, the use of any physical or chemical process or any apparatus that accelerates the maturing of the distilled spirits;

(g) The steeping or soaking of plant materials, such as fruits, berries, aromatic herbs, roots, or seeds, in distilled spirits or wines at a distilled spirits plant;

(h) The artificial carbonating of distilled spirits;

(i) In Puerto Rico, the blending of distilled spirits with any liquors manufactured outside Puerto Rico;

(j) The production of gin by:

(1) Redistillation, over juniper berries and other natural aromatics or over the extracted oils of such materials, of spirits distilled at or above 190 degrees of proof that are free from impurities, including such spirits recovered by redistillation of imperfect gin spirits; or

(2) Mixing gin with other distilled spirits;

(k) The treatment of gin by:

(1) The addition or abstraction of any substance or material other than pure water after redistillation in a manner that would change its class and type designation; or

(2) The addition of any substance or material other than juniper berries or other natural aromatics or the extracted oils of such materials, or the addition of pure water, before or during redistillation, in a manner that would change its class and type designation; and

(l) The recovery of spirits by redistillation from distilled spirits products containing other alcoholic ingredients and from spirits that have previously been entered for deposit. However, no formula approval is required for spirits redistilled into any type of neutral spirits other than vodka or for spirits redistilled at less than 190 degrees of proof that lack the taste, aroma and other characteristics generally attributed to whisky, brandy, rum, or gin and that are designated as ''Spirits'' preceded or followed by a word or phrase descriptive of the material from which distilled. Such spirits may not be designated ''Spirits Grain'' or ''Grain Spirits'' on any label.

§ 5.194 Adoption of predecessor's formulas.

A successor to a person listed in § 5.191 may adopt a predecessor's approved formulas by filing an application with the appropriate TTB officer. The application must include a list of the formulas for adoption and must identify each formula by formula number, name of product, and date of approval. The application must clearly show that the predecessor has authorized the use of the previously approved formulas by the successor.

Subpart K—Standards of Fill and Authorized Container Sizes.

§ 5.201 General.

No person engaged in business as a distiller, blender, or other producer, or as an importer or wholesaler, or as a bottler or warehouseman and bottler, directly or indirectly, or through an affiliate, may sell or ship or deliver for sale or shipment in interstate or foreign commerce, or otherwise introduce in interstate or foreign commerce, or receive therein, or remove from customs custody for consumption, any distilled spirits in containers, unless the distilled spirits are bottled in conformity with §§ 5.202 and 5.203.

§ 5.202 Standard liquor containers.

(a) *General.* Except as provided in paragraph (d) of this section and in § 5.205, distilled spirits must be bottled in standard liquor containers, as defined in this paragraph. A standard liquor container is a container that is made, formed, and filled in such a way that it does not mislead purchasers as regards its contents. An individual carton or other container of a bottle may not be so designed as to mislead purchasers as to the size of the bottle it contains.

(b) *Headspace.* A filled liquor container of a capacity of 200 milliliters (6.8 fl. oz.) or more is deemed to mislead the purchaser if it has a headspace in excess of 8 percent of the total capacity of the container after closure.

(c) *Design.* Regardless of the correctness of the stated net contents, a liquor container is deemed to mislead the purchaser if it is made and formed in such a way that its actual capacity is substantially less than the capacity it appears to have upon visual examination under ordinary conditions of purchase or use.

(d) *Exception for distinctive liquor bottles.* The provisions of paragraphs (b) and (c) of this section do not apply to liquor bottles for which a distinctive liquor bottle approval has been issued pursuant to § 5.205.

§ 5.203 Standards of fill (container sizes).

(a) *Authorized standards of fill.* The following metric standards of fill are authorized for distilled spirits, whether domestically bottled or imported:

(1) *Containers other than cans.* For containers other than cans described in paragraph (a)(2) of this section—

(i) 1.75 liters.
(ii) 1.00 liter.
(iii) 750 mL.
(iii) 375 mL.
(iv) 200 mL.
(v) 100 mL.
(vi) 50 mL.

(2) *Metal cans.* For metal containers that have the general shape and design of a can, that have a closure that is an integral part of the container, and that cannot be readily reclosed after opening—

(i) 355 mL.
(ii) 200 mL.
(iii) 100 mL.
(iv) 50 mL.

(b) *Spirits bottled using outdated standards.* Paragraph (a) of this section does not apply to:

(1) Imported distilled spirits in the original containers in which entered into customs custody prior to January 1, 1980 (or prior to July 1, 1989 in the case of distilled spirits imported in 500 mL containers); or

(2) Imported distilled spirits bottled or packed prior to January 1, 1980 (or prior to July 1, 1989 in the case of distilled spirits in 500 mL containers) and certified as to such in a statement signed by an official duly authorized by the appropriate foreign government.

§ 5.204 Aggregate packaging to meet standard of fill requirements.

(a) Under the conditions set forth in paragraphs (b) through (f) of this section, industry members may use aggregate packaging to satisfy a standard of fill required under § 5.203 of this part. That is, industry members may bottle distilled spirits in containers that do not meet a standard of fill, as long as those containers are then packaged together in a larger container and the entire net contents of the aggregate package meets a standard of fill. For example, thirty 25-mL containers may be packaged together to meet the 750 mL standard of fill. The industry member must submit the actual external container and a sample of one of the internal containers to TTB upon request by the appropriate TTB officer as part of the COLA review process.

(b) The distilled spirits in each of the individual internal containers of the aggregate package must have the same alcohol content.

(c) The external container, as well as each of the individual internal containers, must be labeled with all of the mandatory label information required by this part and parts 16 and 19 of this chapter; however, an appropriate standard of fill is not required for internal containers.

(d) The external container must include a net contents statement that indicates how the aggregate package equals an authorized standard of fill (for example, ''750 mL = 30 containers of 25 mL each''). Internal containers must include a net contents statement in accordance with § 5.68 of this part.

(e) The external container must be shrink-wrapped, boxed, or sealed in such a manner that the smaller containers cannot be easily removed.

(f) Each of the smaller containers must be labeled ''NOT FOR INDIVIDUAL SALE.''

§ 5.205 Distinctive liquor bottle approval.

(a) *General.* A bottler or importer of distilled spirits in distinctive liquor bottles may apply for a distinctive liquor bottle approval from the appropriate TTB officer. The distinctive liquor bottle approval will provide an exemption only from those requirements that are specified in paragraph (b) of this section. A distinctive liquor bottle is a container that is not the customary shape and that may obscure the net contents of the distilled spirits.

(b) *Exemptions provided by the distinctive liquor bottle approval.* The distinctive liquor bottle approval issued pursuant to this section will provide that:

(1) The provisions of § 5.202(b) and (c) do not apply to the liquor containers for which the distinctive liquor bottle approval has been issued; and

(2) The information required to appear in the same field of vision pursuant to § 5.63(a) may appear elsewhere on a distinctive liquor bottle for which the distinctive liquor bottle approval has been issued, if the design of the container precludes the presentation of all mandatory information in the same field of vision.

(c) *How to apply.* A bottler or importer of distilled spirits in distinctive liquor bottles may apply for a distinctive liquor bottle approval as part of the application for a COLA.

Subpart L—Recordkeeping and Substantiation Requirements

§ 5.211 Recordkeeping requirements—certificates.

(a) *Certificates of label approval (COLAs).* Upon request by the appropriate TTB officer, a bottler or importer must provide evidence that a container of distilled spirits is covered by a certificate of label approval (COLA) or a certificate of exemption. This requirement may be satisfied by providing original COLAs, photocopies or electronic copies of COLAs, or records showing the TTB Identification number assigned to the approved certificate. TTB may request such information for a period of five years from the date that the products covered by the COLAs were removed from the bottler's premises or from customs custody, as applicable.

(b) *Labels with revisions.* Where labels on containers reflect revisions to the approved label that have been made in compliance with allowable revisions authorized by TTB Form 5100.31 or otherwise authorized by TTB, the bottler or importer must, upon request by the appropriate TTB officer, identify the COLA covering the product if the product is required to be covered by a COLA. TTB may request such information for a period of five years from the date that the products covered by the COLAs were removed from the bottler's premises or from customs custody, as applicable.

(c) *Other recordkeeping requirements under this part.* See §§ 5.26, 5.30, and 5.192(b) for other recordkeeping requirements under this part.

§ 5.212 Substantiation requirements.

(a) *Application.* The substantiation requirements of this section apply to any claim made on any label or container subject to the requirements of this part.

(b) *Reasonable basis in fact.* All claims, whether implicit or explicit, must have a reasonable basis in fact. Claims that contain express or implied statements regarding the amount of support for the claim (such as ''tests prove,'' or ''studies show'') must have the level of substantiation that is claimed. Any labeling claim that does not have a reasonable basis in fact, or cannot be adequately substantiated upon the request of the appropriate TTB officer, will be considered misleading within the meaning of § 5.122(b)(2).

(c) *Evidence that claims are adequately substantiated.* The appropriate TTB officer may request that bottlers and importers provide evidence that labeling claims are adequately substantiated at any time within a period of five years from the time the distilled spirits were removed from the bottling premises or from customs custody, as applicable.

Subpart M—Penalties and Compromise of Liability

§ 5.221 Criminal penalties.

A violation of the labeling provisions of 27 U.S.C. 205(e) is punishable as a misdemeanor. See 27 U.S.C. 207 for the statutory provisions relating to criminal penalties, consent decrees, and injunctions.

§ 5.222 Conditions of basic permit.

A basic permit is conditioned upon compliance with the requirements of 27 U.S.C. 205, including the labeling provisions of this part. A willful violation of the conditions of a basic permit provides grounds for the revocation or suspension of the permit, as applicable, as set forth in part 1 of this chapter.

§ 5.223 Compromise.

Pursuant to 27 U.S.C. 207, the appropriate TTB officer is authorized, with respect to any violation of 27 U.S.C. 205, to compromise the liability arising with respect to such violation upon payment of a sum not in excess of $500 for each offense, to be collected by the appropriate TTB officer and to be paid into the Treasury as miscellaneous receipts.

Subpart N—Paperwork Reduction Act

§ 5.231 OMB control numbers assigned under the Paperwork Reduction Act.

(a) *Purpose.* This subpart displays the control numbers assigned to information collection requirements in this part by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, Public Law 104–13.

(b) *Chart.* The following chart identifies each section in this part that contains an information collection requirement and the OMB control number that is assigned to that information collection requirement.

Section where contained	Current OMB Control No.
5.21	1513–0020.
5.22	1513–0020, 1513–0111.
5.23	1513–0020, 1513–0111.
5.24	1513–0020, 1513–0064, 1513–0122.
5.25	1513–0020, 1513–0111, 1513–0122.
5.27	1513–0020, 1513–0122.
5.28	1513–0122.
5.30	New control number.
5.62	1513–0087.
5.63	1513–0084, 1513–0087.
5.81	1513–0087.
5.82	1513–0087, 1513–0121.
5.83	1513–0087, 1513–0121.
5.84	1513–0087.
5.85	1513–0087.
5.86	1513–0087.
5.87	1513–0087.
5.88	1513–0087.
5.89	1513–0087.
5.90	1513–0087.
5.121	1513–0087.
5.122	1513–0087.
5.123	1513–0087.
5.124	1513–0087.
5.125	1513–0087.
5.126	1513–0087.
5.127	1513–0087.
5.128	1513–0087.
5.129	1513–0087.
5.130	1513–0087.
5.192	1513–0122, 1513–0046.
5.193	1513–0122, 1513–0046.
5.194	1513–0122.
5.203	1513–0064.
5.211	New control number.
5.212	New control number.

■ 3. Revise part 7 to read as follows:

PART 7—LABELING OF MALT BEVERAGES

Subpart A—General Provisions

Sec.

Subpart B—Certificates of Label Approval

Requirements for Malt Beverages Bottled in the United States

Requirements for Malt Beverages Imported in Containers

Administrative Rules

Subpart C—Alteration of Labels, Relabeling, and Adding Information to Containers

Authority: 27 U.S.C. 205 and 207.

§ 7.07.0 Scope.

This part sets forth requirements that apply to the labeling and packaging of malt beverages in containers, including requirements for label approval and rules regarding mandatory, regulated, and prohibited labeling statements.

Subpart A—General Provisions

§ 7.17.1 Definitions.

When used in this part and on forms prescribed under this part, the following terms have the meaning assigned to them in this section, unless the terms appear in a context that requires a different meaning. Any other term defined in the Federal Alcohol Administration Act (FAA Act) and used in this part has the same meaning assigned to it by the FAA Act.

Administrator. The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury.

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any function relating to the administration or enforcement of this part by the current version of TTB Order 1135.7, Delegation of the Administrator's Authorities in 27 CFR part 7, Labeling of Malt Beverages.

Bottler. Any brewer or wholesaler who places malt beverages in containers.

Brand name. The name under which a malt beverage or a line of malt beverages is sold.

Certificate holder. The permittee or brewer whose name, address, and basic permit number, plant registry number, or brewer's notice number appears on an approved TTB Form 5100.31.

Certificate of exemption from label approval. A certificate issued on TTB Form 5100.31, which authorizes the bottling of wine or distilled spirits, under the condition that the product will under no circumstances be sold, offered for sale, shipped, delivered for shipment, or otherwise introduced by the applicant, directly or indirectly, into interstate or foreign commerce.

Certificate of label approval (COLA). A certificate issued on TTB Form 5100.31 that authorizes the bottling of wine, distilled spirits, and malt beverages, or the removal of bottled wine, distilled spirits, and malt beverages from customs custody for introduction into commerce, as long as the product bears labels identical to the labels appearing on the face of the certificate, or labels with changes authorized by TTB on the certificate or otherwise.

Container. Any can, bottle, box with an internal bladder, cask, keg, barrel or other closed receptacle, in any size or material, that is for use in the sale of malt beverages at retail.

Customs officer. An officer of U.S. Customs and Border Protection (CBP) or any agent or other person authorized by law to perform the duties of such an officer.

Distinctive or fanciful name. A descriptive name or phrase chosen to identify a malt beverage product on the label. It does not include a brand name, class or type designation, statement of composition, or designation known to the trade or consumers.

FAA Act. The Federal Alcohol Administration Act.

Gallon. A U.S. gallon of 231 cubic inches of malt beverages at 39.1 degrees Fahrenheit (4 degrees Celsius). All other liquid measures used are subdivisions of the gallon as defined.

Interstate or foreign commerce. Commerce between any State and any place outside of that State or commerce within the District of Columbia or commerce between points within the same State but through any place outside of that State.

Keg collar. A disk that is pushed down over the keg's bung or tap cover.

Malt beverage. A beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human

food consumption. See § 7.5 for standards applying to the use of processing methods and flavors in malt beverage production.

Net contents. The amount, by volume, of a malt beverage held in a container.

Person. Any individual, corporation, partnership, association, joint-stock company, business trust, limited liability company, or other form of business enterprise, including a receiver, trustee, or liquidating agent and including an officer or employee of any agency of a State or political subdivision of a State.

State. One of the 50 States of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

Tap cover. A cap, usually made of plastic, that fits over the top of the tap (or bung) of a keg.

TTB. The Alcohol and Tobacco Tax and Trade Bureau of the Department of the Treasury.

United States (U.S.). The 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 7.27.2 Territorial extent.

The provisions of this part apply to the 50 states, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 7.37.3 General requirements and prohibitions under the FAA Act.

(a) *Certificates of label approval (COLAs).* Subject to the requirements and exceptions set forth in the regulations in subpart B of this part, any brewer or wholesaler who bottles malt beverages, and any person who removes malt beverages in containers from customs custody for sale or any other commercial purpose, is required to first obtain from TTB a COLA covering the label(s) on each container.

(b) *Alteration, mutilation, destruction, obliteration, or removal of labels.* Subject to the requirements and exceptions set forth in the regulations in subpart C of this part, it is unlawful to alter, mutilate, destroy, obliterate, or remove labels on malt beverage containers. This prohibition applies to any person, including retailers, holding malt beverages for sale in interstate or foreign commerce or any person holding malt beverages for sale after shipment in interstate or foreign commerce.

(c) *Labeling requirements for malt beverages.* Subject to the jurisdictional limits of the FAA Act, as set forth in § 7.4, it is unlawful for any person engaged in business as a brewer, wholesaler, or importer of malt beverages, directly or indirectly, or through an affiliate, to sell or ship, or deliver for sale or shipment, or otherwise introduce or receive in interstate or foreign commerce, or remove from customs custody, any malt beverages in containers unless the malt beverages are bottled in containers and the containers are marked, branded, and labeled in conformity with the regulations in this part.

(d) *Labeled in accordance with this part.* In order to be labeled in accordance with the regulations in this part, a container of malt beverages must be in compliance with the following requirements:

(1) It must bear one or more labels meeting the standards for ''labels'' set forth in subpart D of this part;

(2) One or more of the labels on the container must include the mandatory information set forth in subpart E of this part;

(3) Claims on the label(s), containers, and packaging (as defined in § 7.62) must comply with the rules for regulated label statements, as applicable, set forth in subpart F of this part;

(4) Statements or any other representations on any malt beverage label, container, or packaging (as defined in §§ 7.81(b) and 7.121(b)) may not violate the regulations in subparts G and H of this part regarding certain practices on labeling of malt beverages;

(5) The class and type designation on the label(s), as well as any designation appearing on containers or packaging, must comply with the standards for classes and types set forth in subpart I of this part; and

(6) The malt beverage must not be adulterated within the meaning of the Federal Food, Drug, and Cosmetic Act.

§ 7.47.4 Jurisdictional limits of the FAA Act.

(a) *Malt beverages sold in interstate or foreign commerce*—(1) *General.* The labeling provisions of this part apply to malt beverages sold or shipped or delivered for shipment, or otherwise introduced into or received in any State from any place outside thereof, only to the extent that the laws or regulations of such State impose requirements similar to the requirements of the regulations in this part, with respect to the labels and labeling of malt beverages sold within that State.

(2) *Similar State law.* For purposes of this section, a ''similar'' State law may be found in State laws or regulations that apply specifically to malt beverages or in State laws or regulations that provide general labeling requirements that are not specific to malt beverages. In order to be ''similar'' to the Federal requirements, the State requirements need not be identical to the Federal requirements. Nonetheless, if the label in question does not violate the laws or regulations of the State or States into which the brewer, wholesaler, or importer is shipping the malt beverages, it does not violate this part.

(b) *Malt beverages not sold in interstate or foreign commerce.* The regulations in this part do not apply to domestically bottled malt beverages that are not and will not be sold, shipped, delivered for sale or shipment, or otherwise introduced in interstate or foreign commerce.

§ 7.57.5 Ingredients and processes.

(a) *Use of nonbeverage flavors and other nonbeverage ingredients containing alcohol.* (1) Nonbeverage flavors and other nonbeverage ingredients containing alcohol may be used in producing a malt beverage (sometimes referred to as a ''flavored malt beverage''). Except as provided in paragraph (a)(2) of this section, no more than 49 percent of the overall alcohol content (determined without regard to any tolerance otherwise allowed by this part) of the finished product may be derived from the addition of nonbeverage flavors and other nonbeverage ingredients containing alcohol. For example, a finished malt beverage that contains 5.0 percent alcohol by volume must derive a minimum of 2.55 percent alcohol by volume from the fermentation of barley malt and other materials and may derive not more than 2.45 percent alcohol by volume from the addition of nonbeverage flavors and other nonbeverage ingredients containing alcohol.

(2) In the case of malt beverages with an alcohol content of more than 6 percent by volume (determined without regard to any tolerance otherwise allowed by this part), no more than 1.5 percent of the volume of the malt beverage may consist of alcohol derived from added nonbeverage flavors and other nonbeverage ingredients containing alcohol.

(b) *Processing.* Malt beverages may be filtered or otherwise processed in order to remove color, taste, aroma, bitterness, or other characteristics derived from fermentation.

§ 7.67.6 Brewery products not covered by this part.

Certain fermented products that are regulated as ''beer'' under the Internal Revenue Code (IRC) do not fall within the definition of a ''malt beverage'' under the FAA Act and thus are not subject to this part. See § 7.7 for related TTB regulations that may apply to these products. See §§ 25.11 and 27.11 of this

chapter for the definition of ''beer'' under the IRC.

(a) *Saké and similar products.* Saké and similar products (including products that fall within the definition of ''beer'' under parts 25 and 27 of this chapter) that fall within the definition of a ''wine'' under the FAA Act are covered by the labeling regulations for wine in 27 CFR part 4.

(b) *Other beers not made with both malted barley and hops.* The regulations in this part do not cover beer products that are not made with both malted barley and hops, or their parts or their products, or that do not fall within the definition of a ''malt beverage'' under § 7.1 for any other reason. Bottlers and importers of alcohol beverages that do not fall within the definition of malt beverages, wine, or distilled spirits under the FAA Act should refer to the applicable labeling regulations for foods issued by the U.S. Food and Drug Administration. See 21 CFR part 101.

§ 7.77.7 Other TTB labeling regulations that apply to malt beverages.

In addition to the regulations in this part, malt beverages must also comply with the following TTB labeling regulations:

(a) *Health warning statement.* Alcoholic beverages, including malt beverages, that contain at least one-half of one percent alcohol by volume, must be labeled with a health warning statement in accordance with the Alcoholic Beverage Labeling Act of 1988 (ABLA). The regulations implementing the ABLA are contained in 27 CFR part 16.

(b) *Internal Revenue Code requirements.* The labeling and marking requirements for beer under the Internal Revenue Code are found in 27 CFR part 25, subpart J (for domestic breweries) and 27 CFR part 27, subpart E (for importers).

§ 7.87.8 Malt beverages for export.

Malt beverages that are exported in bond without payment of tax directly from a brewery or from customs custody are not subject to this part. For purposes of this section, direct exportation in bond does not include exportation after malt beverages have been removed for consumption or sale in the United States, with appropriate tax determination or payment.

§ 7.97.9 Compliance with Federal and State requirements.

(a) *General.* Compliance with the requirements of this part relating to the labeling and bottling of malt beverages does not relieve industry members from responsibility for complying with other applicable Federal and State requirements, including but not limited to those highlighted in paragraphs (b) and (c) of this section.

(b) *Ingredient safety.* While it remains the responsibility of the industry member to ensure that any ingredient used in production of malt beverages complies fully with all applicable U.S. Food and Drug Administration (FDA) regulations pertaining to the safety of food ingredients and additives, the appropriate TTB officer may at any time request documentation to establish such compliance.

(c) *Containers.* While it remains the responsibility of the industry member to ensure that containers are made of suitable materials that comply with all applicable FDA health and safety regulations for the packaging of beverages for consumption, the appropriate TTB officer may at any time request documentation to establish such compliance.

§ 7.10 Other related regulations.

(a) *TTB regulations.* Other TTB regulations that relate to malt beverages are listed in paragrpahs (a)(1) through (9) of this section:

(1) 27 CFR part 1—Basic Permit Requirements Under the Federal Alcohol Administration Act, Nonindustrial Use of Distilled Spirits and Wine, Bulk Sales and Bottling of Distilled Spirits;

(2) 27 CFR part 13—Labeling Proceedings;

(3) 27 CFR part 14—Advertising of Alcohol Beverage Products;

(4) 27 CFR part 16—Alcoholic Beverage Health Warning Statement;

(5) 27 CFR part 25—Beer;

(6) 27 CFR part 26—Liquors and Articles from Puerto Rico and the Virgin Islands;

(7) 27 CFR part 27—Importation of Distilled Spirits, Wines, and Beer;

(8) 27 CFR part 28—Exportation of Alcohol; and

(9) 27 CFR part 71—Rules of Practice in Permit Proceedings.

(b) *Other Federal regulations.* The regulations listed in paragraphs (b)(1) through (9) of this section issued by other Federal agencies also may apply:

(1) 7 CFR part 205—National Organic Program;

(2) 19 CFR part 11—Packing and Stamping; Marking;

(3) 19 CFR part 102—Rules of Origin;

(4) 19 CFR part 134—Country of Origin Marking;

(5) 21 CFR part 1—General Enforcement Provisions, Subpart I, Prior Notice of Imported Food;

(6) 21 CFR parts 70–82, which pertain to food and color additives;

(7) 21 CFR part 101—Food Labeling;

(8) 21 CFR part 110—Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Human Food; and

(9) 21 CFR parts 170–189, which pertain to food additives and secondary direct food additives for human consumption.

§ 7.11 Forms.

(a) *General.* TTB prescribes and makes available all forms required by this part. Any person completing a form must provide all of the information required by each form as indicated by the headings on the form and the instructions for the form. Each form must be filed in accordance with this part and the instructions for the form.

(b) *Electronically filing forms.* The forms required by this part can be filed electronically by using TTB's online filing systems: COLAs Online and Formulas Online. Anyone who intends to use one of these online filing systems must first register to use the system by accessing the TTB website at *https://www.ttb.gov.*

(c) *Obtaining paper forms.* Forms required by this part are available for printing through the TTB website (*https://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 8002, Cincinnati, OH 45202.

§ 7.12 Delegations of the Administrator.

Most of the regulatory authorities of the Administrator contained in this part are delegated to ''appropriate TTB officers.'' To find out which officers have been delegated specific authorities, see the current version of TTB Order 1135.7, Delegation of the Administrator's Authorities in 27 CFR part 7, Labeling of Malt Beverages. Copies of this order can be obtained by accessing the TTB website (*https://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 8002, Cincinnati, OH 45202.

Subpart B—Certificates of Label Approval

Requirements for Malt Beverages Bottled in the United States

§ 7.21 Requirement for certificates of label approval (COLAs) for malt beverages bottled in the United States.

(a) *COLA requirement.* Subject to the requirements and exceptions set forth in paragraphs (b) and (c) of this section, a brewer or wholesaler bottling malt beverages must obtain a COLA covering

the malt beverages from TTB prior to bottling the malt beverages or removing the malt beverages from the premises where they were bottled.

(b) *Malt beverages shipped or sold in interstate commerce.* Persons bottling malt beverages (other than malt beverages in customs custody) for shipment, or delivery for sale or shipment, into a State (from outside of that State) are required to obtain a COLA covering those malt beverages only if the laws or regulations of the State require that all malt beverages sold or otherwise disposed of in such State be labeled in conformity with the requirements of subparts D through I of this part. This requirement applies when the State has either adopted subparts D through I of this part in their entireties or has adopted requirements identical to those set forth in subparts D through I of this part. In accordance with §§ 7.3 and 7.4, malt beverages that are not subject to the COLA requirements of this section may still be subject to the substantive labeling provisions of subparts D through I of this part to the extent that the State into which the malt beverages are being shipped has similar State laws or regulations.

(c) *Products not shipped or sold in interstate commerce.* Persons bottling malt beverages that will not be shipped or delivered for sale or shipment in interstate or foreign commerce are not required to obtain a COLA or a certificate of exemption from label approval. (Note: A certificate of exemption from label approval is a certificate issued by TTB to cover a wine or distilled spirits product that will not be sold, offered for sale, shipped, delivered for shipment, or otherwise introduced, in interstate or foreign commerce.)

§ 7.22 Rules regarding certificates of label approval (COLAs) for malt beverages bottled in the United States.

(a) *What a COLA authorizes.* An approved TTB Form 5100.31 authorizes the bottling of malt beverages covered by the COLA, as long as the container bears labels identical to the labels appearing on the face of the COLA, or labels with changes authorized by TTB on the COLA or otherwise. The list of allowable changes can be found on the TTB website at *https://www.ttb.gov.*

(b) *What a COLA does not do.* Among other things, the issuance of a COLA does not:

(1) Confer trademark protection;

(2) Relieve the certificate holder from its responsibility to ensure that all ingredients used in the production of the malt beverage comply with applicable requirements of the U.S. Food and Drug Administration with regard to ingredient safety; or

(3) Relieve the certificate holder from liability for violations of the FAA Act, the Alcoholic Beverage Labeling Act, the Internal Revenue Code, or related regulations and rulings.

(i) The issuance of a COLA does not mean that TTB has verified the accuracy of any representations or claims made on the label with respect to the product in the container. It is the responsibility of the applicant to ensure that all information on the application is true and correct, and that all labeling representations and claims are truthful, accurate, and not misleading with respect to the product in the container.

(ii) A malt beverage may be mislabeled even when the label is covered by a COLA. For example, if the label on the container contains representations that are false or misleading when applied to the product in the container, the malt beverage is not labeled in accordance with the regulations in this part, even if it is covered by a COLA.

(c) *When to obtain a COLA.* The COLA must be obtained prior to bottling. No brewer or wholesaler may bottle malt beverages or remove malt beverages from the premises where bottled unless a COLA has been obtained.

(d) *Application for a COLA.* The bottler may apply for a COLA by submitting an application to TTB on Form 5100.31, in accordance with the instructions on the form. The bottler may apply for a COLA either electronically by accessing TTB's online system, COLAs Online, at *https://www.ttb.gov,* or by submitting the paper form. For procedures regarding the issuance of COLAs, see part 13 of this chapter.

§ 7.23 [Reserved]

Requirements for Malt Beverages Imported in Containers

§ 7.24 Certificates of label approval (COLAs) for malt beverages imported in containers.

(a) *Application requirement.* Any person removing malt beverages in containers from customs custody for consumption must first apply for and obtain a COLA covering the malt beverages from the appropriate TTB officer.

(b) *Release of malt beverages from customs custody.* Malt beverages, imported in containers, are not eligible for release from customs custody for consumption, and no person may remove such malt beverages from customs custody for consumption, unless the person removing the malt beverages has obtained and is in possession of a COLA covering the malt beverages.

(c) *Filing requirements.* If filing electronically, the importer must file with U.S Customs and Border Protection (CBP), at the time of filing the customs entry, the TTB-assigned identification number of the valid COLA that corresponds to the label on the brand or lot of malt beverages being imported. If the importer is not filing electronically, the importer must provide a copy of the COLA to CBP at the time of entry. In addition, the importer must provide a copy of the applicable COLA, and proof of the certificate holder's authorization if applicable, upon request by the appropriate TTB officer or a customs officer.

(d) *Scope of this section.* The COLA requirement imposed by this section applies only to malt beverages that are removed for sale or any other commercial purpose. See 27 CFR 27.49, 27.74, and 27.75 for labeling exemptions applicable to certain imported samples of malt beverages.

(e) *Relabeling in customs custody.* Containers of malt beverages in customs custody that are required to be covered by a COLA but are not labeled in conformity with a COLA must be relabeled, under the supervision and direction of customs officers, prior to their removal from customs custody for consumption.

(f) *State law.* Paragraph (a) through (c) of this section apply only if the laws or regulations of the State in which the malt beverages are withdrawn require that all malt beverages sold or otherwise disposed of in such State be labeled in conformity with the requirements of subparts D through I of this part. A State requires that malt beverages be labeled in conformity with the requirements of subparts D through I of this part when the State has either adopted subparts D through I of this part in their entireties or has adopted requirements identical to those set forth in subparts D through I in this part. In accordance with §§ 7.3 and 7.4, malt beverages that are not subject to the COLA requirements of this section may still be subject to the substantive labeling provisions of subparts D through I of this part to the extent that the State into which the malt beverages are being shipped has similar State law or regulation.

§ 7.25 Rules regarding certificates of label approval (COLAs) for malt beverages imported in containers.

(a) *What a COLA authorizes.* An approved TTB Form 5100.31 authorizes

the use of the labels covered by the COLA on containers of malt beverages, as long as the container bears labels identical to the labels appearing on the face of the COLA, or labels with changes authorized by the form or otherwise authorized by TTB.

(b) *What a COLA does not do.* Among other things, the issuance of a COLA does not:

(1) Confer trademark protection;

(2) Relieve the certificate holder from its responsibility to ensure that all ingredients used in the production of the malt beverage comply with applicable requirements of the U.S. Food and Drug Administration with regard to ingredient safety; or

(3) Relieve the certificate holder from liability for violations of the FAA Act, the Alcoholic Beverage Labeling Act, the Internal Revenue Code, or related regulations and rulings.

(i) The issuance of a COLA does not mean that TTB has verified the accuracy of any representations or claims made on the label with respect to the product in the container. It is the responsibility of the applicant to ensure that all information on the application is true and correct and that all labeling representations and claims are truthful, accurate, and not misleading with respect to the product in the container.

(ii) Malt beverages may be mislabeled even when the label is covered by a COLA. For example, if the label on the container contains representations that are false or misleading when applied to the product in the container the malt beverage is not labeled in accordance with the regulations in this part, even if it is covered by a COLA.

(c) *When to obtain a COLA.* The COLA must be obtained prior to the removal of malt beverages in containers from customs custody for consumption.

(d) *Application for a COLA.* The person responsible for the importation of malt beverages must obtain approval of the labels by submitting an application to TTB on Form 5100.31. A person may apply for a COLA either electronically by accessing TTB's online system, COLAs Online, at TTB's website (*https://www.ttb.gov*) or by submitting the paper form. For procedures regarding the issuance of COLAs, see part 13 of this chapter.

Administrative Rules

§ 7.27 Presenting certificates of label approval (COLAs) to Government officials.

A certificate holder must present the original or a paper or electronic copy of the appropriate COLA upon the request of any duly authorized representative of the United States Government.

§ 7.28 Formulas, samples, and documentation.

(a) Prior to or in conjunction with the review of an application for a certificate of label approval (COLA) on TTB Form 5100.31, the appropriate TTB officer may require a bottler or importer to submit a formula, the results of laboratory testing of the malt beverage, or a sample of any malt beverage or ingredients used in producing a malt beverage. The appropriate TTB officer also may request such information after the issuance of such COLA or in connection with any malt beverage that is required to be covered by a COLA. A formula may be filed electronically by using Formulas Online, or it may be submitted on paper on TTB Form 5100.51. See § 7.11 for more information on forms and Formulas Online.

(b) Upon request of the appropriate TTB officer, a bottler or importer must submit a full and accurate statement of the contents of any container to which labels are to be or have been affixed, as well as any other documentation on any issue pertaining to whether the malt beverages are labeled in accordance with this part. TTB may also request such information after the issuance of such a COLA, or in connection with any malt beverage that is required to be covered by a COLA.

§ 7.29 Personalized labels.

(a) *General.* Applicants for label approval may obtain permission from TTB to make certain changes in order to personalize labels without having to resubmit labels for TTB approval. Personalized labels may contain a personal message, picture, or other artwork that is specific to the consumer who is purchasing the product. For example, a brewer may offer individual or corporate customers labels that commemorate an event such as a wedding or grand opening.

(b) *Application.* Any person who intends to offer personalized labels must submit a template for the personalized label with the application for label approval, and must note on the application a description of the specific personalized information that may change.

(c) *Approval of personalized label.* If the application complies with the regulations, TTB will issue a certificate of label approval (COLA) with a qualification allowing the personalization of labels. The qualification will allow the certificate holder to add or change items on the personalized label such as salutations, names, graphics, artwork, congratulatory dates and names, or event dates without applying for a new COLA. All of these items on personalized labels must comply with the regulations of this part.

(d) *Changes not allowed to personalized labels.* Approval of an application to personalize labels does not authorize the addition of any information that discusses either the alcohol beverage or characteristics of the alcohol beverage or that is inconsistent with or in violation of the provisions of this part or any other applicable provision of law or regulations.

Subpart C—Alteration of Labels, Relabeling, and Adding Information to Containers

§ 7.41 Alteration of labels.

(a) *Prohibition.* It is unlawful for any person to alter, mutilate, destroy, obliterate or remove any mark, brand, or label on malt beverages in containers held for sale in interstate or foreign commerce, or held for sale after shipment in interstate or foreign commerce, except as authorized by § 7.42, § 7.43, or § 7.44, or as otherwise authorized by Federal law.

(b) *Authorized relabeling.* For purposes of the relabeling activities authorized by this subpart, the term ''relabel'' includes the alteration, mutilation, destruction, obliteration, or removal of any existing mark, brand, or label on the container, as well as the addition of a new label (such as a sticker that adds information about the product or information engraved on the container) to the container, and the replacement of a label with a new label bearing identical information.

(c) *Obligation to comply with other requirements.* Authorization to relabel under this subpart in no way authorizes the placement of labels on containers that do not accurately reflect the brand, bottler, identity, or other characteristics of the product; nor does it relieve the person conducting the relabeling operations from any obligation to comply the regulations in this part and with State or local law, or to obtain permission from the owner of the brand where otherwise required.

§ 7.42 Authorized relabeling activities by brewers and importers.

(a) *Relabeling at brewery premises.* Brewers may relabel domestically bottled malt beverages prior to removal from, and after return to bond at, the brewery premises, with labels covered by a certificate of label approval (COLA,) without obtaining separate permission from TTB for the relabeling activity.

(b) *Relabeling after removal from brewery premises.* Brewers may relabel

domestically bottled malt beverages after removal from brewery premises with labels covered by a COLA, without obtaining separate permission from TTB for the relabeling activity.

(c) *Relabeling in customs custody.* Under the supervision of U.S. customs officers, imported malt beverages in containers in customs custody may be relabeled without obtaining separate permission from TTB for the relabeling activity. Such containers must bear labels covered by a COLA upon their removal from customs custody for consumption. See § 7.24(b).

(d) *Relabeling after removal from customs custody.* Imported malt beverages in containers may be relabeled by the importer thereof after removal from customs custody without obtaining separate permission from TTB for the relabeling activity, as long as the labels are covered by a COLA.

§ 7.43 Relabeling activities that require separate written authorization from TTB.

Any persons holding malt beverages for sale who need to relabel the containers but are not eligible to obtain a COLA to cover the labels that they wish to affix to the containers may apply for written permission for the relabeling of malt beverage containers. The appropriate TTB officer may permit relabeling of malt beverages in containers if the facts show that the relabeling is for the purpose of compliance with the requirements of this part or State law. The written application must include copies of the original and proposed new labels; the circumstances of the request, including the reason for relabeling; the number of containers to be relabeled; the location where the relabeling will take place; and the name and address of the person who will be conducting the relabeling operations.

§ 7.44 Adding a label or other information to a container that identifies the wholesaler, retailer, or consumer.

Any label or other information that identifies the wholesaler, retailer, or consumer of the malt beverage may be added to containers (by the addition of stickers, engraving, stenciling, etc.) without prior approval from the appropriate TTB officer and without being covered by a certificate of label approval. Such information may be added before or after the containers are removed from brewery premises or released from customs custody. The information added:

(a) May not violate the provisions of subparts F, G, and H of this part;

(b) May not contain any reference to the characteristics of the product; and

(c) May not be added to the container in such a way that it obscures any other label on the container.

Subpart D—Label Standards

§ 7.51 Firmly affixed requirements.

(a) *General rule.* Except as otherwise provided in paragraph (b) of this section, any label that is not an integral part of the container must be affixed to the container in such a way that it cannot be removed without thorough application of water or other solvents.

(b) *Exception for keg labels.* A label on a keg with a capacity of 10 gallons or more that is in the form of a keg collar or tap cover is not required to be firmly affixed, provided that the name of the bottler of the malt beverage is permanently or semi-permanently stated on the keg in the form of embossing, engraving, stamping, or through the use of a sticker or ink jet method. This section in no way affects the requirements of part 16 of this chapter regarding the mandatory health warning statement.

§ 7.52 Legibility and other requirements for mandatory information on labels.

(a) *Readily legible.* Mandatory information on labels must be readily legible to potential consumers under ordinary conditions.

(b) *Separate and apart.* Mandatory information on labels, except brand names, must be separate and apart from any additional information. This does not preclude the addition of brief optional phrases of additional information as part of the class or type designation (such as ''premium malt beverage''), the name and address statement (such as ''Proudly brewed and bottled by ABC Brewing Co. in Pittsburgh, PA, for over 30 years''), or other information required by § 7.63(a) as long as the additional information does not detract from the prominence of the mandatory information. The statements required by § 7.63(b) may not include additional information.

(c) *Contrasting background.* Mandatory information must appear in a color that contrasts with the background on which it appears, except that if the net contents or the name and address are blown into a glass container, they need not be contrasting. The color of the container and of the malt beverages must be taken into account if the label is transparent or if mandatory label information is etched, engraved, sandblasted, or otherwise carved into the surface of the container or is branded, stenciled, painted, printed, or otherwise directly applied on to the surface of the container. Examples of acceptable contrasts are:

(1) Black lettering appearing on a white or cream background; or

(2) White or cream lettering appearing on a black background.

(d) *Capitalization.* Except for the aspartame statement when required by § 7.63(b)(4), which must appear in all capital letters, mandatory information may appear in all capital letters, in all lower case letters, or in mixed-case using both capital and lower-case letters.

§ 7.53 Type size of mandatory information.

All capital and lowercase letters in statements of mandatory information on labels must meet the following type size requirements.

(a) *Minimum type size*—(1) *Containers of more than one-half pint.* All mandatory information (including the alcohol content statement) must be in script, type, or printing that is at least two millimeters in height.

(2) *Containers of one-half pint or less.* All mandatory information (including the alcohol content statement) must be in script, type, or printing that is at least one millimeter in height.

(b) *Maximum type size for alcohol content statement*—(1) *Containers of more than 40 fluid ounces.* The alcohol content statement may not appear in script, type, or printing that is more than four millimeters in height on containers of malt beverages of more than 40 fluid ounces.

(2) *Containers of 40 fluid ounces or less.* The alcohol content statement may not appear in script, type, or printing that is more than three millimeters in height on containers of malt beverages of 40 fluid ounces or less.

§ 7.54 Visibility of mandatory information.

Mandatory information on a label must be readily visible and may not be covered or obscured in whole or in part. See § 7.62 for rules regarding packaging of containers (including cartons, coverings, and cases). See part 14 of this chapter for regulations pertaining to advertising materials.

§ 7.55 Language requirements.

(a) *General.* Mandatory information must appear in the English language, with the exception of the brand name and except as provided in paragraphs (c) and (d) of this section.

(b) *Foreign languages.* Additional statements in a foreign language, including translations of mandatory information that appears elsewhere in English on the label, are allowed on labels and containers as long as they do not in any way conflict with, or contradict, the requirements of this part.

(c) *Malt beverages for consumption in the Commonwealth of Puerto Rico.* Mandatory information may be stated solely in the Spanish language on labels of malt beverages bottled for consumption within the Commonwealth of Puerto Rico.

(d) *Exception for country of origin statements.* The country of origin statement for malt beverages may appear in a language other than English when allowed by U.S. Customs and Border Protection regulations.

§ 7.56 Additional information.

Information (other than mandatory information) that is truthful, accurate, and specific, and that does not violate subpart F, G, or H of this part, may appear on labels. Such additional information may not conflict with, modify, qualify or restrict mandatory information in any manner.

Subpart E—Mandatory Label Information

§ 7.61 What constitutes a label for purposes of mandatory information.

(a) *Label.* Certain information, as outlined in § 7.63, must appear on a label. When used in this part for purposes of determining where mandatory information must appear, the term ''label'' includes:

(1) Material affixed to the container, whether made of paper, plastic, film, or other matter;

(2) For purposes of the net contents statement and the name and address statement only, information blown, embossed, or molded into the container as part of the process of manufacturing the container;

(3) Information etched, engraved, sandblasted, or otherwise carved into the surface of the container;

(4) Information branded, stenciled, painted, printed, or otherwise directly applied on to the surface of the container; and

(5) Information on a keg collar or a tap cover of a keg, only if it includes mandatory information that is not repeated elsewhere on a label firmly affixed to the container and only if it meets the requirements of § 7.51.

(b) *Information appearing elsewhere on the container.* Information appearing on the following parts of the container is subject to all of the restrictions and prohibitions set forth in subparts F, G and H of this part, but will not satisfy any requirements for mandatory information that must appear on labels in this part:

(1) Material affixed to, or information appearing on, the bottom surface of the container;

(2) Caps, corks, or other closures unless authorized to bear mandatory information by the appropriate TTB officer; and

(3) Foil or heat shrink bottle capsules.

(c) *Materials not firmly affixed to the container.* Any materials that accompany the container to the consumer but are not firmly affixed to the container, including booklets, leaflets, and hang tags, are not ''labels'' for purposes of this part. Such materials are instead subject to the advertising regulations in part 14 of this chapter.

§ 7.62 Packaging (cartons, coverings, and cases).

(a) *General.* The term ''packaging'' includes any covering, carton, case, carrier, or other packaging of malt beverage containers used for sale at retail, but does not include shipping cartons or cases that are not intended to accompany the container to the consumer.

(b) *Prohibition.* Any packaging of malt beverage containers may not contain any statement, design, device, or graphic, pictorial, or emblematic representation that violates the provisions of subpart F, G, or H of this part.

(c) *Requirements for closed packaging.* If containers are enclosed in closed packaging, including sealed opaque coverings, cartons, cases, carriers, or other packaging used for sale at retail, such packaging must bear all mandatory label information required on the label under § 7.63.

(1) Packaging is considered closed if the consumer must open, rip, untie, unzip, or otherwise manipulate the package to remove the container in order to view any of the mandatory information.

(2) Packaging is not considered closed if a consumer could view all of the mandatory information on the container by merely lifting the container up, or if the packaging is transparent or designed in a way that all of the mandatory information can be easily read by the consumer without having to open, rip, untie, unzip, or otherwise manipulate the package.

(d) *Packaging that is not closed.* The following requirements apply to packaging that is not closed.

(1) The packaging may display any information that is not in conflict with the label on the container that is inside the packaging.

(2) If the packaging displays a brand name, it must display the brand name in its entirety. For example, if a brand name is required to be modified with additional information on the container, the packaging must also display the same modifying language.

(3) If the packaging displays a class or type designation it must be identical to the class or type designation appearing on the container. For example, if the packaging displays a class or type designation for a specialty product for which a statement of composition is required on the container, the packaging must include the statement of composition as well.

(e) *Labeling of containers within the packaging.* The container within the packaging is subject to all labeling requirements of this part, including mandatory labeling information requirements, regardless of whether the packaging bears such information.

§ 7.63 Mandatory label information.

(a) *Mandatory information.* Malt beverage containers must bear a label or labels (as defined in § 7.61(a)) containing the following information:

(1) Brand name, in accordance with § 7.64;

(2) Class, type, or other designation, in accordance with subpart I of this part;

(3) Alcohol content, in accordance with § 7.65, for malt beverages that contain any alcohol derived from added nonbeverage flavors or other added nonbeverage ingredients (other than hops extract) containing alcohol;

(4) Name and address of the bottler or importer (which may be blown, embossed, or molded into the container as part of the process of manufacturing the container), in accordance with § 7.66, § 7.67, or § 7.68 as applicable; and

(5) Net contents (which may be blown, embossed, or molded into the container as part of the process of manufacturing the container), in accordance with § 7.70.

(b) *Disclosure of certain ingredients.* Certain ingredients must be declared on a label without the inclusion of any additional information as part of the statement as follows:

(1) *FD&C Yellow No. 5.* If a malt beverage contains the coloring material FD&C Yellow No. 5, the label must include a statement to that effect, such as ''FD&C Yellow No. 5'' or ''Contains FD&C Yellow No. 5.''

(2) *Cochineal extract or carmine.* If a malt beverage contains the color additive cochineal extract or the color additive carmine, the label must include a statement to that effect, using the respective common or usual name (such as, ''contains cochineal extract'' or ''contains carmine''). This requirement applies to labels when either of the coloring materials is used in a malt beverage that is removed from bottling

premises or from customs custody on or after April 16, 2013.

(3) *Sulfites.* If a malt beverage contains 10 or more parts per million of sulfur dioxide or other sulfiting agent(s) measured as total sulfur dioxide, the label must include a statement to that effect. Examples of acceptable statements are ''Contains sulfites'' or ''Contains (a) sulfiting agent(s)'' or a statement identifying the specific sulfiting agent. The alternative terms ''sulphites'' or ''sulphiting'' may be used.

(4) *Aspartame.* If the malt beverage contains aspartame, the label must include the following statement, in capital letters, separate and apart from all other information: ''PHENYLKETONURICS: CONTAINS PHENYLALANINE.''

§ 7.64 Brand name.

(a) *Requirement.* The malt beverage label must include a brand name. If the malt beverage is not sold under a brand name, then the name of the bottler or importer, as applicable, appearing in the name and address statement is treated as the brand name.

(b) *Misleading brand names.* Labels may not include any misleading brand names. A brand name is misleading if it creates (by itself or in association with other printed or graphic matter) any erroneous impression or inference as to the age, origin, identity, or other characteristics of the malt beverage. A brand name that would otherwise be misleading may be qualified with the word ''brand'' or with some other qualification if the appropriate TTB officer determines that the qualification dispels any misleading impression that might otherwise be created.

§ 7.65 Alcohol content.

(a) *General.* Alcohol content and the percentage and quantity of the original gravity or extract may be stated on any malt beverage label. When alcohol content is stated, it must be stated as prescribed in paragraph (b) of this section.

(b) *How the alcohol content must be expressed.* The following rules apply to both mandatory and optional statements of alcohol content.

(1) A statement of alcohol content must be expressed as a percentage of alcohol by volume and not by proof, by a range, or by maximums or minimums. Other truthful, accurate, and specific factual representations of alcohol content, such as alcohol by weight, may be made, as long as they appear together with, and as part of, the statement of alcohol content as a percentage of alcohol by volume.

(2) For malt beverages containing one half of one percent (0.5 percent) or more alcohol by volume, statements of alcohol content must be expressed to the nearest one-tenth of a percentage point, subject to the tolerance permitted by paragraph (c) of this section. For malt beverages containing less than one half of one percent alcohol by volume, alcohol content may be expressed either to the nearest one-tenth or the nearest one-hundredth of a percentage point, and such statements are not subject to any tolerance. See paragraph (e) of this section for the rules applicable to such statements.

(3)(i) The alcohol content statement must be expressed in one of the following formats:

(A) ''Alcohol ____ percent by volume'';

(B) ''____ percent alcohol by volume''; or

(C) ''Alcohol by volume: ____ percent.''

(ii) Any of the words or symbols may be enclosed in parentheses and authorized abbreviations may be used with or without a period. The alcohol content statement does not have to appear with quotation marks.

(4) The statements listed in paragraph (b)(3) of this section must appear as shown, except that the following abbreviations may be used: Alcohol may be abbreviated as ''alc''; percent may be represented by the percent symbol ''%''; alcohol and volume may be separated by a slash ''/'' in lieu of the word ''by''; and volume may be abbreviated as ''vol''.

(5) *Examples.* The following are examples of alcohol content statements that comply with the requirements of this part:

(i) ''4.2% alc/vol'';

(ii) ''Alc. 4.0 percent by vol.'';

(iii) ''Alc 4% by vol''; and

(iv) ''5.9% Alcohol by Volume.''

(c) *Tolerances.* Except as provided by paragraph (d) of this section, a tolerance of up to one percentage point will be permitted, either above or below the stated alcohol content, for malt beverages containing 0.5 percent or more alcohol by volume. However, any malt beverage that is labeled as containing 0.5 percent or more alcohol by volume may not contain less than 0.5 percent alcohol by volume, regardless of any tolerance. The tolerance provided by this paragraph does not apply in determining compliance with the provisions of § 7.5 regarding the percentage of alcohol derived from added nonbeverage flavors and other nonbeverage ingredients containing alcohol.

(d) *Low alcohol and reduced alcohol.* The terms ''low alcohol'' or ''reduced alcohol'' may be used only on labels of malt beverages containing less than 2.5 percent alcohol by volume. The actual alcohol content may not equal or exceed 2.5 percent alcohol by volume, regardless of any tolerance permitted by paragraph (c) of this section.

(e) *Non-alcoholic.* The term ''non-alcoholic'' may be used on labels of malt beverages only if the statement ''contains less than 0.5 percent (or 0.5%) alcohol by volume'' appears immediately adjacent to it, in readily legible printing, and on a completely contrasting background. No tolerances are permitted for malt beverages labeled as ''non-alcoholic'' and containing less than 0.5 percent alcohol by volume. A malt beverage may not be labeled with an alcohol content of 0.0 percent alcohol by volume, unless it is also labeled as ''alcohol free'' in accordance with paragraph (f) of this section, and contains no alcohol.

(f) *Alcohol free.* The term ''alcohol free'' may be used only on malt beverages containing no alcohol. No tolerances are permitted for ''alcohol free'' malt beverages.

§ 7.66 Name and address for domestically bottled malt beverages that were wholly fermented in the United States.

(a) *General.* Domestically bottled malt beverages that were wholly fermented in the United Sates and contain no imported malt beverages must be labeled in accordance with this section. (See §§ 7.67 and 7.68 for name and address requirements applicable to malt beverages that are not wholly fermented in the United States.)

(b) *Mandatory statement.* A label on the container must state the name and address of the bottler, in accordance with the rules set forth in this section.

(c) *Form of address.* The address consists of the city and State and must be consistent with the information reflected on the brewer's notice required under part 25 of this chapter. Addresses may, but are not required to, include additional information such as street names, counties, zip codes, phone numbers, and website addresses. The postal abbreviation of the State name may be used; for example, California may be abbreviated as CA.

(d) *Optional statements.* The bottler may, but is not required to, be identified by a phrase describing the function performed by that person, such as ''bottled by,'' ''canned by,'' ''packed by,'' or ''filled by,'' followed by the name and address of the bottler. If one person performs more than one function, the label may so indicate (for

example, ''brewed and bottled by XYZ Brewery.'') If different functions are performed by more than one person, statements on the label may not create the misleading impression that the different functions were performed by the same person. The appropriate TTB officer may require specific information about the functions performed if necessary to prevent a misleading impression on the label.

(e) *Principal place of business.* The bottler's principal place of business may be shown in lieu of the actual place where the malt beverage was bottled if the address shown is a location where a bottling operation takes place. The appropriate TTB officer may disapprove the listing of a principal place of business if its use would create a false or misleading impression as to the geographic origin of the malt beverage. See 27 CFR 25.141 and 25.142 for coding requirements applicable in these circumstances.

(f) *Multiple breweries under the same ownership.* If two or more breweries are owned or operated by the same person, the place where the malt beverage is bottled within the meaning of paragraph (a) of this section may be shown in one of the following two ways:

(1) *Listing of where bottled.* The place where the malt beverage is bottled may be shown as the only location on the label; or

(2) *Listing of all brewer's locations.* The place where the malt beverage is bottled may appear in a listing of the locations of breweries owned by that person if the place of bottling is not given less emphasis than any of the other locations. See 27 CFR 25.141 and 25.142 for coding requirements applicable in these circumstances.

(g) *Malt beverages bottled for another person.* (1) If malt beverages are brewed and bottled for another person, the label may state, in addition to (but not in lieu of) the name and address of the bottler, the name and address of such other person, immediately preceded by the words ''brewed and bottled for'' or ''bottled for'' or another similar appropriate phrase. Such statements must clearly indicate the relationship between the two persons (for example, contract brewing).

(2) If the same brand of malt beverage is brewed and bottled by two or more breweries that are not under the same ownership, the label for each brewery may set forth all the locations where bottling takes place, as long as the label uses the actual location (and not the principal place of business) and as long as the nature of the arrangement is clearly set forth.

(h) *Use of trade names.* The name of the person appearing on the label may be the trade name or the operating name, as long as it is identical to a trade or operating name appearing on the brewer's notice, and as long as use of that name would not create a misleading impression as to the age, origin, or identity of the product. For example, if a brewery authorizes the use of its trade name by another brewery that is not under the same ownership, that trade name may not be used on a label in a way that tends to mislead consumers as to the identity or location of the bottler.

§ 7.67 Name and address for domestically bottled malt beverages that were bottled after importation.

(a) *General.* This section applies to domestically bottled malt beverages that were bottled after importation. See § 7.68 for name and address requirements applicable to imported malt beverages that are imported in a container. See 19 CFR parts 102 and 134 for U.S. Customs and Border Protection country of origin marking requirements.

(b) *Malt beverages that were subject to blending or other production activities after importation.* Malt beverages that were subject, after importation, to blending or other production may not bear an ''imported by'' statement on the label, but must instead be labeled in accordance with the rules set forth in § 7.66 with regard to mandatory and optional labeling statements.

(c) *Malt beverages bottled after importation without blending or other production activities.* The label on malt beverages that are bottled without being subject to blending or other production activities in the United States after the malt beverages were imported state must state the words ''imported by'' or a similar appropriate phrase, followed by the name and address of the importer. The label must also state the words ''bottled by'' or ''packed by,'' followed by the name and address of the bottler, except that the following phrases are acceptable in lieu of the name and address of the bottler under the circumstances set forth below:

(1) If the malt beverages were bottled for the person responsible for the importation, the words ''imported and bottled (canned, packed or filled) in the United States for'' (or a similar appropriate phrase) followed by the name and address of the principal place of business in the United States of the person responsible for the importation;

(2) If the malt beverages were bottled by the person responsible for the importation, the words ''imported and bottled (canned, packed or filled) in the United States by'' (or a similar appropriate phrase) followed by the name and address of the principal place of business in the United States of the person responsible for the importation;

(3) In the situations set forth in paragraphs (c)(1) and (2) of this section, the address shown on the label may be that of the principal place of business of the importer who is also the bottler, provided that the address shown is a location where bottling takes place.

(d) *Use of trade names.* A trade name may be used if the trade name is listed on the importer's basic permit and if its use on the label would not create any misleading impression as to the age, origin, or identity of the product. In addition, the label may, but is not required to, state the name and principal place of business of the foreign manufacturer, bottler, or shipper.

§ 7.68 Name and address for malt beverages that are imported in a container.

(a) *General.* This section applies to malt beverages that are imported in a container, as defined in § 7.1. See § 7.67 for rules regarding name and address requirements applicable to malt beverages that are domestically bottled after importation. See 19 CFR parts 102 and 134 for U.S. Customs and Border Protection country of origin marking requirements.

(b) *Mandatory labeling statement.* The label on malt beverages imported in containers, as defined in § 7.1, must state the words ''imported by'' or a similar appropriate phrase, followed by the name and address of the importer.

(1) For purposes of this section, the importer is the holder of the importer's basic permit that either makes the original Customs entry or is the person for whom such entry is made, or the holder of the importer's basic permit that is the agent, distributor, or franchise holder for the particular brand of imported alcohol beverages and that places the order abroad.

(2) The address of the importer must be stated as the city and State of the principal place of business and must be consistent with the address reflected on the importer's basic permit. Addresses may, but are not required to, include additional information such as street names, counties, zip codes, phone numbers, and website addresses. The postal abbreviation of the State name may be used; for example, California may be abbreviated as CA.

§ 7.69 Country of origin.

(a) Pursuant to U.S. Customs and Border Protection (CBP) regulations at 19 CFR parts 102 and 134, a country of origin statement must appear on the

container of malt beverages imported in containers or bottled in the United States after importation. Labeling statements with regard to the country of origin must be consistent with CBP regulations. The determination of the country (or countries) of origin, for imported malt beverages, as well as for blends of imported malt beverages with domestically fermented malt beverages, must comply with CBP regulations.

(b) It is the responsibility of the importer or bottler, as appropriate, to ensure compliance with the country of origin marking requirement, both when malt beverages are imported in containers and when imported malt beverages are subject to bottling, blending, or production activities in the United States. Industry members may seek a ruling from CBP for a determination of the country of origin for their product.

§ 7.70 Net contents.

The following rules apply to the net contents statement required by § 7.63.

(a) The volume of malt beverage in the container must appear on a label as a net contents statement using the following measures:

(1) If less than one pint, the net contents must be stated in fluid ounces or fractions of a pint.

(2) If one pint, one quart, or one gallon, the net contents must be so stated.

(3) If more than one pint, but less than one quart, the net contents must be stated in fractions of a quart, or in pints and fluid ounces.

(4) If more than one quart, but less than one gallon, the net contents must be stated in fractions of a gallon, or in quarts, pints, and fluid ounces.

(5) If more than one gallon, the net contents must be stated in gallons and fractions thereof.

(b) All fractions must be expressed in their lowest denominations.

(c) Metric measures may be used in addition to, but not in lieu of, the U.S. standard measures and must appear in the same field of vision.

Subpart F—Restricted Labeling Statements

§ 7.81 General.

(a) *Application.* The labeling practices, statements, and representations in this subpart may be used on malt beverage labels only when used in compliance with this subpart. In addition, if any of the practices, statements, or representations in this subpart are used elsewhere on containers or in packaging, they must comply with the requirements of this subpart. For purposes of this subpart:

(1) The term ''label'' includes all labels on malt beverage containers on which mandatory information may appear, as set forth in § 7.61(a), as well as any other label on the container.

(2) The term ''container'' includes all parts of the malt beverage container, including any part of a malt beverage container on which mandatory information may appear, as well as those parts of the container on which information does not satisfy mandatory labeling requirements, as set forth in § 7.61(b).

(3) The term ''packaging'' includes any carton, case, carrier, individual covering, or other packaging of such containers used for sale at retail, but does not include shipping cartons or cases that are not intended to accompany the container to the consumer.

(b) *Statement or representation.* For purposes of this subpart, the term ''statement or representation'' includes any statement, design, device, or representation, and includes pictorial or graphic designs or representations as well as written ones. The term ''statement or representation'' includes explicit and implicit statements and representations.

Food Allergen Labeling

§ 7.82 Voluntary disclosure of major food allergens.

(a) *Definitions.* For purposes of this section, the following terms have the meanings indicated.

(1) *Major food allergen* means any of the following:

(i) Milk, egg, fish (for example, bass, flounder, or cod), Crustacean shellfish (for example, crab, lobster, or shrimp), tree nuts (for example, almonds, pecans, or walnuts), wheat, peanuts, and soybeans; or

(ii) A food ingredient that contains protein derived from a food specified in paragraph (a)(1)(i) of this section, except:

(A) Any highly refined oil derived from a food specified in paragraph (a)(1)(i) of this section and any ingredient derived from such highly refined oil; or

(B) A food ingredient that is exempt from major food allergen labeling requirements pursuant to a petition for exemption approved by the Food and Drug Administration (FDA) under 21 U.S.C. 343(w)(6) or pursuant to a notice submitted to the FDA under 21 U.S.C. 343(w)(7), provided that the food ingredient meets the terms or conditions, if any, specified for that exemption.

(2) *Name of the food source from which each major food allergen is derived* means the name of the food as listed in paragraph (a)(1)(i) of this section, except that:

(i) In the case of a tree nut, it means the name of the specific type of nut (for example, almonds, pecans, or walnuts);

(ii) In the case of Crustacean shellfish, it means the name of the species of Crustacean shellfish (for example, crab, lobster, or shrimp); and

(iii) The names ''egg'' and ''peanuts,'' as well as the names of the different types of tree nuts, may be expressed in either the singular or plural form, and the names ''soy,'' ''soybean,'' or ''soya'' may be used instead of ''soybeans.''

(b) *Voluntary labeling standards.* Major food allergens used in the production of a malt beverage product may, on a voluntary basis, be declared on a label. However, if any one major food allergen is voluntarily declared, all major food allergens used in production of the malt beverage product, including major food allergens used as fining or processing agents, must be declared, except when covered by a petition for exemption approved by the appropriate TTB officer under § 7.83. The major food allergens declaration must consist of the word ''Contains'' followed by a colon and the name of the food source from which each major food allergen is derived (for example, ''Contains: egg'').

(c) *Cross reference.* For mandatory labeling requirements applicable to malt beverage products containing FD&C Yellow No. 5, sulfites, aspartame, and cochineal extract or carmine, see § 7.63(b).

§ 7.83 Petitions for exemption from major food allergen labeling.

(a) *Submission of petition.* Any person may petition the appropriate TTB officer to exempt a particular product or class of products from the labeling requirements of § 7.82. The burden is on the petitioner to provide scientific evidence (as well as the analytical method used to produce the evidence) that demonstrates that the finished product or class of products, as derived by the method specified in the petition, either:

(1) Does not cause an allergic response that poses a risk to human health; or

(2) Does not contain allergenic protein derived from one of the foods identified in § 7.82(a)(1)(i), even though a major food allergen was used in production.

(b) *Decision on petition.* TTB will approve or deny a petition for exemption submitted under paragraph (a) of this section in writing within 180 days of receipt of the petition. If TTB does not provide a written response to the petitioner within that 180-day

period, the petition will be deemed denied unless an extension of time for decision is mutually agreed upon by the appropriate TTB officer and the petitioner. TTB may confer with the Food and Drug Administration (FDA) on petitions for exemption, as appropriate and as FDA resources permit. TTB may require the submission of product samples and other additional information in support of a petition; however, unless required by TTB, the submission of samples or additional information by the petitioner after submission of the petition will be treated as the withdrawal of the initial petition and the submission of a new petition. An approval or denial under this section will constitute final agency action.

(c) *Resubmission of a petition.* After a petition for exemption is denied under this section, the petitioner may resubmit the petition along with supporting materials for reconsideration at any time. TTB will treat this submission as a new petition.

(d) *Availability of information*—(1) *General.* TTB will promptly post to its website (*https://www.ttb.gov*) all petitions received under this section as well as TTB's responses to those petitions. Any information submitted in support of the petition that is not posted to the TTB website will be available to the public pursuant to the Freedom of Information Act (5 U.S.C. 552), except where a request for confidential treatment is granted under paragraph (d)(2) of this section.

(2) *Requests for confidential treatment of business information.* A person who provides trade secrets or other commercial or financial information in connection with a petition for exemption under this section may request that TTB give confidential treatment to that information. A failure to request confidential treatment at the time the information in question is submitted to TTB will constitute a waiver of confidential treatment. A request for confidential treatment of information under this section must conform to the following standards:

(i) The request must be in writing;

(ii) The request must clearly identify the information to be kept confidential;

(iii) The request must relate to information that constitutes trade secrets or other confidential, commercial, or financial information regarding the business transactions of an interested person, the disclosure of which would cause substantial harm to the competitive position of that person;

(iv) The request must set forth the reasons why the information should not be disclosed, including the reasons the disclosure of the information would prejudice the competitive position of the interested person; and

(v) The request must be supported by a signed statement by the interested person, or by an authorized officer or employee of that person, certifying that the information in question is a trade secret or other confidential, commercial, or financial information and that the information is not already in the public domain.

Production and Other Claims

§ 7.84 Use of the term "organic."

Use of the term ''organic'' is permitted if any such use complies with the United States Department of Agriculture (USDA) National Organic Program rules (7 CFR part 205), as interpreted by the USDA.

§ 7.85 Environmental, sustainability, and similar statements.

Statements related to environmental or sustainable agricultural practices, social justice principles, and other similar statements (such as, ''Produced using 100% solar energy'' or ''Carbon Neutral'') may appear as long as the statements are truthful, specific and not misleading. Statements or logos indicating environmental, sustainable agricultural, or social justice certification (such as, ''Biodyvin,'' ''Salmon-Safe,'' or ''Fair Trade Certified'') may appear on malt beverages that are actually certified by the appropriate organization.

§ 7.86 [Reserved]

§ 7.87 Use of the term "draft."

(a) *General.* A malt beverage may be labeled with the term ''draft'' only if it complies with the requirements of paragraph (b)(1), (2), or (3) of this section. The word ''draft'' may be spelled ''draft'' or ''draught.''

(b) *Requirements.* (1) Malt beverages in a container of one gallon or more that dispenses the malt beverages through a tap, spigot, faucet, or similar device may be described as draft.

(2) Malt beverages packaged in customary bottles or cans may be described as draft if they are unpasteurized and require refrigeration for preservation, or if the beer has been sterile filtered and aseptically filled (but not pasteurized).

(3) Malt beverages that have been pasteurized that are packaged in customary bottles or cans may be described as ''draft brewed,'' ''draft beer flavor,'' ''old time on-tap taste,'' or with a similar expression only if the word ''pasteurized'' appears conspicuously on the label or container.

Subpart G—Prohibited Labeling Practices

§ 7.101 General.

(a) *Application.* The prohibitions set forth in this subpart apply to any malt beverage label, container, or packaging. For purposes of this subpart:

(1) The term ''label'' includes all labels on malt beverage containers on which mandatory information may appear, as set forth in § 7.61(a), as well as any other label on the container;

(2) The term ''container'' includes all parts of the malt beverage container, including any part of a malt beverage container on which mandatory information may appear, as well as those parts of the container on which information does not satisfy mandatory labeling requirements as set forth in § 7.61(b); and

(3) The term ''packaging'' includes any carton, case, carrier, individual covering, or other packaging of such containers used for sale at retail but does not include shipping cartons or cases that are not intended to accompany the container to the consumer.

(b) *Statement or representation.* For purposes of the practices in this subpart, the term ''statement or representation'' includes any statement, design, device, or representation, and includes pictorial or graphic designs or representations as well as written ones. The term ''statement or representation'' includes explicit and implicit statements and representations.

§ 7.102 False or untrue statements.

Malt beverage labels, containers, or packaging may not contain any statement or representation that is false or untrue in any particular.

§ 7.103 Obscene or indecent depictions.

Malt beverage labels, containers, or packaging may not contain any statement or representation that is obscene or indecent.

Subpart H—Labeling Practices That Are Prohibited if They Are Misleading

§ 7.121 General.

(a) *Application.* The labeling practices that are prohibited if misleading set forth in this subpart apply to any malt beverage label, container, or packaging. For purposes of this subpart:

(1) The term ''label'' includes all labels on malt beverage containers on which mandatory information may appear, as set forth in § 7.61(a), as well as any other label on the container;

(2) The term ''container'' includes all parts of the malt beverage container, including any part of a malt beverage

container on which mandatory information may appear, as well as those parts of the container on which information does not satisfy mandatory labeling requirements, as set forth in § 7.61(b); and

(3) The term ''packaging'' includes any carton, case, carrier, individual covering, or other packaging of such containers used for sale at retail but does not include shipping cartons or cases that are not intended to accompany the container to the consumer.

(b) *Statement or representation.* For purposes of this subpart, the term ''statement or representation'' includes any statement, design, device, or representation, and includes pictorial or graphic designs or representations as well as written ones. The term ''statement or representation'' includes explicit and implicit statements and representations.

§ 7.122 Misleading statements or representations.

(a) *General prohibition.* Malt beverage labels, containers, or packaging may not contain any statement or representation, irrespective of falsity, that is misleading to consumers as to the age, origin, identity, or other characteristics of the malt beverage, or with regard to any other material factor.

(b) *Ways in which statements or representations may be misleading.* (1) A statement or representation is prohibited, irrespective of falsity, if it directly creates a misleading impression or if it does so indirectly through ambiguity, omission, inference, or by the addition of irrelevant, scientific, or technical matter. For example, an otherwise truthful statement may be misleading because of the omission of material information, the disclosure of which is necessary to prevent the statement from being misleading.

(2) As set forth in § 7.212(b), all claims, whether implicit or explicit, must have a reasonable basis in fact. Any claim on malt beverage labels, containers, or packaging that does not have a reasonable basis in fact or cannot be adequately substantiated upon the request of the appropriate TTB officer is considered misleading.

§ 7.123 Guarantees.

Malt beverage labels, containers, or packaging may not contain any statement relating to guarantees if the appropriate TTB officer finds it is likely to mislead the consumer. However, money-back guarantees are not prohibited.

§ 7.124 Disparaging statements.

(a) *General.* Malt beverage labels, containers, or packaging may not contain any false or misleading statement that explicitly or implicitly disparages a competitor's product.

(b) *Examples.* (1) An example of an explicit statement that falsely disparages a competitor's product is ''Brand X is not aged in oak barrels'' when such statement is not true.

(2) An example of an implicit statement that disparages competitors' products in a misleading fashion is ''We do not add arsenic to our malt beverage,'' where such a claim is true but it may lead consumers to falsely believe that other brewers do add arsenic to their malt beverages.

(c) *Truthful and accurate comparisons.* This section does not prevent truthful and accurate comparisons between products (such as ''Our ale contains more hops than Brand X'') or statements of opinion (such as ''We think our beer tastes better than any other beer on the market'').

§ 7.125 Tests or analyses.

Malt beverage labels, containers, or packaging may not contain any statement or representation of or relating to analyses, standards, or tests, whether or not it is true, that is likely to mislead the consumer. An example of a misleading statement is ''tested and approved by our research laboratories'' if the testing and approval does not in fact have any significance.

§ 7.126 Depictions of government symbols.

(a) *Representations of the armed forces or flags.* Malt beverage labels, containers, or packaging may not show an image of any government's flag or any representation related to the armed forces of the United States if the representation, standing alone or considered together with any additional language or symbols on the label, creates a false or misleading impression that the product was endorsed by, made by, used by, or made under the supervision of the government represented by that flag or by the armed forces of the United States. This section does not prohibit the use of a flag as part of a claim of American origin or another country of origin.

(b) *Government seals.* Malt beverage labels, containers, or packaging may not contain any government seal or other insignia that is likely to create a false or misleading impression that the product has been endorsed by, made by, used by, or produced for, under the supervision of, or in accordance with the specification of that government. Seals required or specifically authorized by applicable law or regulations and used in accordance with such law or regulations are not prohibited.

§ 7.127 Depictions simulating government stamps or relating to supervision.

Malt beverage labels, containers, or packaging may not contain any statements, images, or designs that mislead consumers to believe that the malt beverage is manufactured or processed under government authority. Malt beverage labels, containers, or packaging may not contain images or designs resembling a stamp of the U.S. Government or any State or foreign government, other than stamps authorized or required by this or any other government, and may not contain statements or indications that the malt beverage is produced, blended, bottled, packed, or sold under, or in accordance with any municipal, State, Federal, or foreign authorization, law, or regulations unless such statement is required or specifically authorized by applicable law or regulation. If a municipal, State, or Federal Government permit number is stated on malt beverage labels, containers, or packaging, it may not be accompanied by any additional statement relating to that permit number.

§ 7.128 Claims related to distilled spirits or wines.

(a) *General.* Except as provided in paragraph (b) of this section, no malt beverage labels, containers, or packaging may contain a statement, design, or representation that tends to create a false or misleading impression that the malt beverage product is a distilled spirits or wine product, or that it contains distilled spirits or wine. For example, the use of the name of a class or type designation of a wine or distilled spirits product, as set forth in parts 4 and 5 of this chapter, is prohibited if the use of that name tends to create a false or misleading impression as to the identity of the product. Homophones or coined words that simulate or imitate a class or type designation are also prohibited.

(b) *Exceptions.* This section does not prohibit:

(1) A truthful and accurate statement of alcohol content;

(2) The use of a brand name of a wine or distilled spirits product as a malt beverage brand name, provided that the overall label does not create a misleading impression as to the identity of the product;

(3) The use of a cocktail name as a brand name or a distinctive or fanciful name of a malt beverage, provided that

the overall labeling does not present a misleading impression about the identity of the product;

(4) The use of truthful and accurate statements about the production of the malt beverage as part of a statement of composition or otherwise, such as ''aged in whisky barrels,'' ''fermented with grapes,'' or ''Beer brewed with chardonnay grapes'' as long as such statements do not create a misleading impression as to the identity of the product;

(5) The use of the designation ''barley (or wheat or rye) wine ale'' or ''barley (or wheat or rye) style wine ale''; or

(6) The use of terms that simply compare malt beverage products to wine or distilled spirits products without creating a misleading impression as to the identity of the product.

§ 7.129 Health-related statements.

(a) *Definitions.* When used in this section, the following terms have the meaning indicated:

(1) *Health-related statement* means any statement related to health (other than the warning statement required under part 16 of this chapter) and includes statements of a curative or therapeutic nature that, expressly or by implication, suggest a relationship between the consumption of alcohol, malt beverages, or any substance found within the malt beverage, and health benefits or effects on health. The term includes both specific health claims and general references to alleged health benefits or effects on health associated with the consumption of alcohol, a malt beverage, or any substance found within the malt beverage product, as well as health-related directional statements. The term also includes statements and claims that imply that a physical or psychological sensation results from consuming the alcohol beverage product, as well as statements and claims of nutritional value (for example, statements of vitamin content). Numerical statements of the calorie, carbohydrate, protein, and fat content of the product do not constitute claims of nutritional value.

(2) *Specific health claim* means a type of health-related statement that, expressly or by implication, characterizes the relationship of malt beverages, alcohol, or any substance found within the malt beverage, to a disease or health-related condition. Implied specific health claims include statements, symbols, vignettes, or other forms of communication that suggest, within the context in which they are presented, that a relationship exists between alcohol, malt beverages, or any substance found within the malt beverage, and a disease or health-related condition.

(3) *Health-related directional statement* means a type of health-related statement that directs or refers consumers to a third party or other source for information regarding the effects on health of malt beverage or alcohol consumption.

(b) *Rules for malt beverage labels, containers, and packaging*—(1) *Health-related statements.* In general, malt beverage labels, containers, or packaging may not contain any health-related statement that is untrue in any particular or tends to create a misleading impression as to the effects on health of alcohol consumption. TTB will evaluate such statements on a case-by-case basis and may require as part of the health-related statement a disclaimer or some other qualifying statement to dispel any misleading impression conveyed by the health-related statement.

(2) *Specific health claims.* (i) TTB will consult with the Food and Drug Administration (FDA) as needed on the use of specific health claims on labels, containers, or packaging. If FDA determines that the use of such a claim is a drug claim that is not in compliance with the requirements of the Federal Food, Drug, and Cosmetic Act, TTB will not approve the use of that specific health claim on the malt beverage label.

(ii) TTB will approve the use of a specific health claim on a malt beverage label only if the claim is truthful and adequately substantiated by scientific or medical evidence; is sufficiently detailed and qualified with respect to the categories of individuals to whom the claim applies; adequately discloses the health risks associated with both moderate and heavier levels of alcohol consumption; and outlines the categories of individuals for whom any levels of alcohol consumption may cause health risks. This information must appear as part of the specific health claim.

(3) *Health-related directional statements.* A health-related directional statement is presumed misleading unless it:

(i) Directs consumers in a neutral or other non-misleading manner to a third party or other source for balanced information regarding the effects on health of malt beverage or alcohol consumption; and

(ii)(A) Includes as part of the health-related directional statement the following disclaimer: ''This statement should not encourage you to drink or to increase your alcohol consumption for health reasons''; or

(B) Includes as part of the health-related directional statement some other qualifying statement that the appropriate TTB officer finds is sufficient to dispel any misleading impression conveyed by the health-related directional statement.

§ 7.130 Appearance of endorsement.

(a) *General.* Malt beverage labels, containers, or packaging may not include the name, or the simulation or abbreviation of the name, of any living individual of public prominence or an existing private or public organization, or any graphic, pictorial, or emblematic representation of the individual or organization if its use is likely to lead a consumer to falsely believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization. This section does not prohibit the use of such names where the individual or organization has provided authorization for their use.

(b) *Documentation.* The appropriate TTB officer may request documentation from the bottler or importer to establish that the person or organization has provided authorization to use the name of that person or organization.

(c) *Disclaimers.* Statements or other representations do not violate this section if, taken as a whole, they create no misleading impression as to an implied endorsement either because of the context in which they are presented or because of the use of an adequate disclaimer.

§ 7.131 The word ''bonded'' and similar terms.

Malt beverage labels, containers, or packaging may not contain the words ''bonded,'' ''bottled in bond,'' ''aged in bond,'' ''bonded age,'' ''bottled under Customs supervision,'' or other phrases containing these or synonymous terms that create a misleading impression as to governmental supervision over production or bottling.

§ 7.132 Strength claims.

(a) *General.* For purposes of this section, the term ''strength claim'' means a statement that directly or indirectly makes a claim about the alcohol content of the product. This section does not apply to the use of the terms ''low alcohol,'' ''reduced alcohol,'' ''non-alcoholic,'' and ''alcohol-free'' in accordance with § 7.65; to claims about low alcohol content in general; or to labeling with an alcohol content statement in accordance with § 7.65.

(b) *Prohibition.* The use of a strength claim on malt beverage labels,

containers, or packaging is prohibited if it misleads consumers by implying that products should be purchased or consumed on the basis of higher alcohol strength. Examples of strength claims are ''full strength,'' ''extra strength,'' ''high test,'' and ''high proof.''

Subpart I—Classes and Types of Malt Beverages

§ 7.141 Class and type.

(a) *Products known to the trade.* The class of the malt beverage must be stated on the label (see § 7.63). The type of the malt beverage may be stated, but is not required to appear on the label. Statements of class and type must conform to the designation of the product as known to the trade. All parts of the designation must appear together.

(b) *Malt beverage specialty products*—(1) *General.* A malt beverage specialty product is a malt beverage that does not fall under any of the class designations set forth in §§ 7.142 through 7.144 and is not known to the trade under a particular designation, usually because of the addition of ingredients such as colorings, flavorings, or food materials or the use of certain types of production processes where the appropriate TTB officer has not determined that such ingredients or processes are generally recognized as traditional in the production of a fermented beverage designated as ''beer,'' ''ale,'' ''porter,'' ''stout,'' ''lager,'' or ''malt liquor.''

(2) *Designation.* A malt beverage specialty product must be designated with a distinctive or fanciful name, together with a statement of the composition of the product, in accordance with § 7.147. This statement will be considered the class designation for the purposes of this part. All parts of the designation must appear together.

§ 7.142 Class designations.

The following class designations may be used in accordance with this section:

(a) Any malt beverage, as defined in § 7.1, may be designated simply as a ''malt beverage.''

(b)(1) The class designations ''beer,'' ''ale,'' ''porter,'' ''stout,'' ''lager,'' and ''malt liquor'' may be used to designate malt beverages that contain at least 0.5 percent alcohol by volume and that conform to the trade understanding of those designations. These designations may be preceded or followed by descriptions of the color of the product (such as ''amber,'' ''brown,'' ''red,'' or ''golden'') as well as descriptive terms such as ''dry,'' ''export,'' ''cream,'' and ''pale.''

(2) No product other than a malt beverage fermented at a comparatively high temperature, possessing the characteristics generally attributed to ''ale,'' ''porter,'' or ''stout'' and produced without the use of coloring or flavoring materials (other than those recognized in standard brewing practices) may bear any of these class designations.

(c) The name ''Pilsen'' (or ''Pilsener'' or ''Pilsner'') may be used as the class designation for beers produced in the Czech Republic or the United States without use of the word ''type'' or a similar qualifying statement. See § 7.106. The name also may be used as the class designation for beer produced outside of those countries, as long as it is qualified in accordance with the requirements of § 7.146.

§ 7.143 Class and type—special rules.

The following special rules apply to specified class and type designations:

(a) *Reconstituted malt beverages.* Malt beverages that have been concentrated by the removal of water therefrom and reconstituted by the addition of water and carbon dioxide must for the purpose of this part be labeled in the same manner as malt beverages which have not been concentrated and reconstituted, except that there must appear immediately adjacent to, and as a part of, the class designation the statement ''PRODUCED FROM _____ CONCENTRATE'' (the blank to be filled in with the appropriate class designation). All parts of the class designation must appear in lettering of substantially the same size and kind. However, ice beers, described in paragraph (c) of this section, which are produced by the removal of less than 0.5 percent of the volume of the beer in the form of ice crystals and that retain beer character are not considered concentrated.

(b) *Half and half.* No product may be designated with the type designation ''half and half'' unless it is in fact composed of equal parts of two classes of malt beverages, the names of which are conspicuously stated immediately adjacent to the designation ''half and half.'' For example, ''Half and Half, Porter and Stout.'' This does not preclude the use of terms such as ''half and half'' as part of a distinctive or fanciful name that refers to flavors added to a malt beverage designated in accordance with trade understanding or with a statement of composition.

(c) *Ice beer.* Malt beverages supercooled during the brewing process to form ice crystals may be labeled with the type designation ''ice'' preceding the class designation (beer, ale, etc.).

(d) *Black and tan.* A product composed of two classes of malt beverages may be designated with the type designation ''black and tan,'' and the class and type designation is the names of the two classes of malt beverages in conjunction with ''black and tan'' (for example, ''Black and Tan, Stout and Ale'').

(e) *Wheat beer.* Any ''beer,'' ''ale,'' ''porter,'' ''stout,'' ''lager,'' ''malt liquor,'' or other malt beverage made from a fermentable base that consists of at least 25 percent by weight malted wheat may be designated with the type designation ''wheat'' preceding the applicable class designation.

(f) *Rye beer.* Any ''beer,'' ''ale,'' ''porter,'' ''stout,'' ''lager,'' ''malt liquor,'' or other malt beverage made from a fermentable base that consists of at least 25 percent by weight malted rye may be designated with the type designation ''rye'' preceding the applicable class designation.

(g) *Barley wine ale.* The term ''barley (or wheat or rye) wine ale'' or ''barley (or wheat or rye) wine style ale'' may be used in accordance with trade understanding.

(h) *Malt beverages aged in barrels*—(1) *General.* Label designations for malt beverages aged in barrels or with woodchips, spirals, or staves derived from barrels may, but are not required to, include a description of how the product was aged. Thus, for example, acceptable designations for a standard beer aged in an oak barrel would include ''beer,'' ''oak aged beer,'' and ''beer aged in an oak barrel.''

(2) *Barrels previously used in the production or storage of wine or distilled spirits.* Malt beverages aged in barrels previously used in the production or storage of wine or distilled spirits, or with woodchips, spirals, or staves derived from barrels previously used in the production or storage of wine or distilled spirits, or from woodchips previously used in the aging of distilled spirits or wine may, but are not required to, include a description of how the product was aged.

(i) Examples of acceptable designations for a standard beer aged in a wine barrel include ''beer,'' ''beer aged in a wine barrel,'' and ''wine barrel aged beer.''

(ii) Examples of acceptable designations for an ale brewed with honey and aged in a bourbon barrel include ''honey ale'' and ''bourbon barrel aged honey ale'' but not simply ''ale'' or ''bourbon barrel aged ale.''

(3) *Misleading designations.* Designations that create a misleading impression as to the identity of the product by emphasizing certain words or terms are prohibited. As set forth in

§ 7.122, malt beverage labels may not include misleading representations that imply that a malt beverage contains distilled spirits or wine or is a distilled spirits or wine product. Examples of designations that would be prohibited under this provision are ''bourbon ale,'' ''bourbon-flavored lager,'' ''Chardonnay lager,'' or ''lager with whisky flavors.''

(i) *Other designations.* Other type designations (such as ''milk'' preceding the class designation ''stout'') may be applied in conformance with trade understanding.

§ 7.144 Malt beverages fermented or flavored with certain traditional ingredients.

(a) *General.* Any malt beverage that has been fermented or flavored only with one or more ingredients (such as honey or certain fruits) that the appropriate TTB officer has determined are generally recognized as traditional ingredients in the production of a fermented beverage designated as ''beer,'' ''ale,'' ''porter,'' ''stout,'' ''lager,'' or ''malt liquor'' may be labeled in accordance with trade understanding following the rules set forth in this section.

(1) A list of such traditional ingredients may be found on the TTB website (*https://www.ttb.gov*).

(2) If the malt beverage has also been fermented or flavored with ingredients that the appropriate TTB officer has not determined are generally recognized as traditional ingredients in the production of a fermented beverage designated as ''beer,'' ''ale,'' ''porter,'' ''stout,'' ''lager,'' or ''malt liquor,'' it is a malt beverage specialty and must be labeled in accordance with the statement of composition rules in § 7.147

(b) *Rules for designation.* (1) A designation in accordance with trade understanding must identify the base product, such as ''malt beverage,'' ''beer,'' ''ale,'' ''porter,'' ''stout,'' ''lager,'' or ''malt liquor'' along with a modifier or explanation that provides the consumer with adequate information about the fruit, honey, or other food ingredient used in production of the malt beverage. The label may include additional information about the production process (such as ''beer fermented with cherry juice'').

(2) Where more than one exempted ingredient is included, a designation in accordance with trade understanding may identify each ingredient (such as ''Ale with cherry juice, cinnamon, and nutmeg''), refer to the ingredients by category (such as ''Fruit ale,'' ''Spiced ale,'' or ''Ale with natural flavors''), or simply include the ingredient or ingredients that the bottler or importer believes best identify the product (such as ''Cherry ale,'' ''Cinnamon ale,'' or ''Nutmeg ale''). The designation must distinguish the product from a malt beverage, beer, ale, porter, stout, lager, or malt liquor that is not brewed or flavored with any of these ingredients; thus, unmodified designations such as ''beer,'' ''stout,'' or ''ale'' would not be acceptable.

(c) *Other requirements.* All parts of the designation must appear together and must be readily legible on a contrasting background. Designations that create a misleading impression as to the identity of the product by emphasizing certain words or terms are prohibited.

§ 7.145 Malt beverages containing less than 0.5 percent alcohol by volume.

(a) Products containing less than one-half of 1 percent (0.5%) of alcohol by volume must bear the class designation ''malt beverage,'' ''cereal beverage,'' or ''near beer.''

(b) If the designation ''near beer'' is used, both words must appear in the same size and style of type, in the same color of ink, and on the same background.

(c) No product containing less than one-half of 1 percent of alcohol by volume may bear the class designations ''beer,'' ''lager beer,'' ''lager,'' ''ale,'' ''porter,'' ''stout,'' or any other class or type designation commonly applied to malt beverages containing one-half of 1 percent or more of alcohol by volume.

§ 7.146 Geographical names.

(a) *General.* Except as provided further in paragraphs (b) through (e) of this section, any geographical name that may be interpreted as designating the origin of the malt beverage may not be used unless it is a truthful representation as to the origin of the malt beverage.

(b) *Generic names.* The appropriate TTB officer may find certain geographic names of types of malt beverages to be generic if they have lost their geographic significance through use and common knowledge. Generic names may be used to designate a malt beverage regardless of its origin. TTB publishes a list of generic names on its website (*https://www.ttb.gov*). The following are examples of names that have been found to be generic: India Pale Ale, Scotch ale (Scottish ale), and Russian Imperial Stout (Imperial Russian Stout).

(c) *Brand names.* A geographical name may be used as part of the brand name for a product that does not come from the geographical area named in the brand as long as the name is qualified with the word ''brand'' or with some other qualification that is adequate to dispel any misleading impression that might otherwise be created in accordance with § 7.64.

(d) *References to types and styles.* (1) A geographical name may be used on a label to precede a class designation where the name refers to a particular type or style of product rather than the geographical origin of the malt beverage, under the following conditions:

(i) The word ''type'' or ''style'' appears immediately adjacent to, and in type size at least half as large as, the geographical name (such as ''Irish style ale''); or some other statement indicating the true place of production appears in the same field of vision as, and in type size at least half as large as, the geographical name (such as ''Irish ale—brewed in California'' or ''American Vienna lager''); and

(ii) The malt beverage to which the name is applied conforms to the type or style so designated.

(2) The following are examples of references to types or styles of malt beverages: Dortmund, Dortmunder, Vienna, Wien, Wiener, Bavarian, Munich, Munchner, Salvator, Kulmbacher, Wurtzburger, and California Common. These names of types or styles of malt beverages may be used in addition to, but not in lieu of, a class designation (for example, ''Vienna style Beer,'' ''Bavarian Stout—Brewed in the United States,'' or ''California Common Lager—Brewed in Michigan'').

(3) The words ''type'' or ''style'' may also be used to designate malt beverages that are manufactured in the geographic area indicated by the name (such as ''German style Dortmunder beer'' or ''Vienna beer—an Austrian type of malt beverage'') as long as the label does not create confusion as to the origin of the malt beverage. Such products may also be designated without the words ''type'' or ''style'' (for example, ''Dortmunder beer'' or ''Vienna beer'') for products that originate in the geographical area named.

(e) *Pilsen or Pilsener or Pilsner.* The name ''Pilsen'' (or ''Pilsener'' or ''Pilsner'') has not been recognized as generic, but it may be used to designate beers produced in the Czech Republic or the United States without use of the word ''type'' or a similar qualifying statement and without an additional class or type designation. See § 7.102(c).

§ 7.147 Statement of composition.

(a) A statement of composition is required to appear on the label for malt beverage specialty products, as defined in § 7.141(b), which are not known to the trade under a particular designation. For example, the addition of flavoring

materials, colors, or artificial sweeteners may change the class and type of the malt beverage. The statement of composition along with a distinctive or fanciful name serves as the class and type designation for these products.

(b) When required by this part, a statement of composition must contain all of the following information, as applicable:

(1) *Identify the base class and/or type designation.* The statement of composition must clearly identify the base class and/or type designation of the malt beverage product (*e.g.,* ''beer,'' ''lager beer,'' ''lager,'' ''ale,'' ''porter,'' ''stout,'' or ''malt beverage'').

(2) *Identify added flavoring material(s) used before, during, and after fermentation.* The statement of composition must disclose fermentable or non-fermentable flavoring materials added to the malt beverage base class.

(i) If the flavoring material is used before or during the fermentation process, the statement of composition must indicate that the malt beverage was fermented or brewed with the flavoring material (such as ''Beer Fermented with grapefruit juice'' or ''Grapefruit Ale''). If the flavoring material is added after fermentation, the statement of composition must describe that process, using terms such as ''added,'' ''with,'' ''infused,'' or ''flavored'' (such as ''Grapefruit-flavored ale.'')

(ii) If a single flavoring material is used in the production of the malt beverage product, the flavoring material may be specifically identified (such as ''Ale Fermented with grapefruit juice'') or generally referenced (such as ''Ale with natural flavor''). If two or more flavoring materials are used in the production of the malt beverage, each flavoring material may be specifically identified (such as ''lemon juice, kiwi juice'' or ''lemon and kiwi juice'') or the characterizing flavoring material may be specifically identified and the remaining flavoring materials may be generally referenced (such as ''kiwi and other natural and artificial flavor(s)''), or all flavors may be generally referenced (such as ''with artificial flavors''). (*Note:* TTB Procedure XXXX–XX, available on the TTB website (*https://www.ttb.gov*), provides guidance on the use of the terms ''natural'' and ''artificial'' when referencing flavoring materials.)

(3) *Identify Added Coloring Material(s).* The statement of composition must disclose the addition of coloring material(s), whether added directly or through flavoring material(s). The coloring materials may be identified specifically (such as ''caramel color,'' ''FD&C Red #40,'' ''annatto,'' etc.) or as a general statement, such as ''Contains certified color'' for colors approved under 21 CFR subpart 74 or ''artificially colored'' to indicate the presence of any one or a combination of coloring material(s). However, FD&C Yellow No. 5, carmine, and cochineal extract require specific disclosure in accordance with § 7.63(b)(1) and (2) and that specific disclosure may appear either in the statement of composition or elsewhere in accordance with those sections.

(4) *Identify added artificial sweeteners.* The statement of composition must disclose any artificial sweetener that is added to a malt beverage product, whether the artificial sweetener is added directly or through flavoring material(s). The artificial sweetener may be identified specifically by either generic name or trademarked brand name, or as a general statement (such as ''artificially sweetened'') to indicate the presence of any one or combination of artificial sweeteners. However, if aspartame is used, an additional warning statement is required in accordance with § 7.63(b)(4).

Subpart J–K—Reserved

Subpart L—Recordkeeping and Substantiation Requirements

§ 7.211 Recordkeeping requirements—certificates.

(a) *Certificates of label approval (COLAs).* Upon request by the appropriate TTB officer, a bottler or importer must provide evidence of label approval for a label used on a container of malt beverages that is subject to the COLA requirements of this part. This requirement may be satisfied by providing original COLAs, photocopies, or electronic copies of COLAs, or records showing the TTB Identification number assigned to the approved COLA. TTB may request such information for a period of five years from the date that the products covered by the COLAs were removed from the bottler's premises or from customs custody, as applicable.

(b) *Labels with revisions.* Where labels on containers reflect revisions to the approved label that have been made in compliance with allowable revisions authorized by TTB Form 5100.31 or otherwise authorized by TTB, the bottler or importer must, upon request by the appropriate TTB officer, identify the COLA covering the product if the product is required to be covered by a COLA. TTB may request such information for a period of five years from the date that the products covered by the COLA were removed from the bottler's premises or from customs custody, as applicable.

(c) *Other recordkeeping requirements under this part.* See § 7.26 for other recordkeeping requirements under this part.

§ 7.212 Substantiation requirements.

(a) *Application.* The substantiation requirements of this section apply to any claim made on any label or container subject to the requirements of this part.

(b) *Reasonable basis in fact.* All claims, whether implicit or explicit, must have a reasonable basis in fact. Claims that contain express or implied statements regarding the amount of support for the claim (such as ''tests prove'' or ''studies show'') must have the level of substantiation that is claimed. Any labeling claim that does not have a reasonable basis in fact or cannot be adequately substantiated upon the request of the appropriate TTB officer will be considered misleading within the meaning of § 7.122(b)(2).

(c) *Evidence that claims are adequately substantiated.* The appropriate TTB officer may request that bottlers and importers provide evidence that labeling claims are adequately substantiated at any time within a period of five years from the time the malt beverages were removed from the bottling premises or from customs custody, as applicable.

Subpart M—Penalties and Compromise of Liability

§ 7.221 Criminal penalties.

A violation of the labeling provisions of 27 U.S.C. 205(e) is punishable as a misdemeanor. See 27 U.S.C. 207 for the statutory provisions relating to criminal penalties, consent decrees, and injunctions.

§ 7.222 Conditions of basic permit.

A basic permit is conditioned upon compliance with the requirements of 27 U.S.C. 205, including the labeling provisions of this part. A willful violation of the conditions of a basic permit provides grounds for the revocation or suspension of the permit, as applicable, as set forth in part 1 of this chapter.

§ 7.223 Compromise.

Pursuant to 27 U.S.C. 207, the appropriate TTB officer is authorized, with respect to any violation of 27 U.S.C. 205, to compromise the liability arising with respect to such violation upon payment of a sum not in excess of $500 for each offense, to be collected by the appropriate TTB officer and to be

paid into the Treasury as miscellaneous receipts.

Subpart N—Paperwork Reduction Act

§ 7.231 OMB control numbers assigned under the Paperwork Reduction Act.

(a) *Purpose.* This subpart displays the control numbers assigned to information collection requirements in this part by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, Public Law 104–13.

(b) *Chart.* The following chart identifies each section in this part that contains an information collection requirement and the OMB control number that is assigned to that information collection requirement.

Section where contained	Current OMB Control No.
7.21	1513–0020, 1513–0087.
7.22	1513–0020, 1513–0087, 1513–0111.
7.24	1513–0020, 1513–0064.
7.25	1513–0020, 1513–0111.
7.27	1513–0020, 1513–0087.
7.28	1513–0122.
7.62	1513–0087.
7.63	1513–0084, 1513–0087.
7.66	1513–0085.
7.67	1513–0085.
7.81	1513–0087.
7.82	1513–0087, 1513–0121.
7.83	1513–0087, 1513–0121.
7.84	1513–0087.
7.85	1513–0087.
7.121	1513–0087.
7.122	1513–0087.
7.123	1513–0087.
7.124	1513–0087.
7.125	1513–0087.
7.126	1513–0087.
7.127	1513–0087.
7.128	1513–0087.
7.129	1513–0087.
7.130	1513–0087.
7.131	1513–0087.
7.132	1513–0087.
7.211	New control number.
7.212	New control number.

■ 4. Add part 14 to read as follows:

PART 14—ADVERTISING OF WINE, DISTILLED SPIRITS, AND MALT BEVERAGES

Sec.

Authority: 27 U.S.C. 205, unless otherwise noted.

§ 14.014.0 Applicability.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, the provisions of this part prescribe rules under section 105(f) of the Federal Alcohol Administration Act for the advertising of wine, distilled spirits, and malt beverages.

(b) *Malt beverages.* The provisions of this part apply to the advertising of malt beverages intended to be sold or shipped or delivered for shipment, or otherwise introduced into or received in any State from any place outside the State, only to the extent that the laws or regulations of such State impose similar requirements with respect to the advertising of malt beverages sold within that State.

Subpart A—General Provisions

§ 14.114.1 Definitions.

Administrator. The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury.

Advertisement or Advertising. The term ''advertisement'' or ''advertising'' includes any written or verbal statement, illustration, or depiction that is in, or calculated to induce sales in, interstate or foreign commerce, or is disseminated by mail, whether it appears in a newspaper, magazine, trade booklet, menu, wine card, leaflet, circular, mailer, book insert, catalog, promotional material, sales pamphlet, internet or other electronic site or social network, or any written, printed, graphic, or other matter (such as hang tags) accompanying, but not firmly affixed to, the container, representations made on shipping cases, or in any billboard, sign, or other outdoor display, public transit card, other periodical literature, and publication, or in a radio or television broadcast, or in any other media. However, the term ''advertisement'' does not include:

(1) Any label, container, or packaging that is subject to the provisions of part 4, 5 or 7 of this chapter; or

(2) Any editorial or other reading material (such as a release) in any periodical or publication or newspaper, for the publication of which no money or valuable consideration or a thing of value is paid or promised, directly or indirectly, by any permittee or brewer, and which is not written by or at the direction of a permittee or brewer.

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any function relating to the administration or enforcement of this part by the current version of TTB Order 1135.14, Delegation of the Administrator's Authorities in 27 CFR part 14, Advertising of Wine, Distilled Spirits, and Malt Beverages.

Consumer Specialty Items. Items that are designed to be carried away by the consumer, such as nonalcoholic mixers, pouring racks, ash trays, bottle or can openers, cork screws, shopping bags, matches, printed recipes, pamphlets, cards, leaflets, blotters, post cards, pencils, shirts, caps, and visors.

Container. Any can, bottle, box used to protect an internal bladder, cask, keg, barrel or other closed receptacle, in any size or material, that is for use in the sale of wine, distilled spirits, or malt beverages at retail.

Distilled spirits. Ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whisky, rum, brandy, gin, and other distilled spirits, including all dilutions and mixtures thereof, for nonindustrial use. The term ''distilled spirits'' does not include mixtures containing wine, bottled at 48 degrees of proof or less, if the mixture contains more than 50 percent wine on a proof gallon basis. The term ''distilled spirits'' also does not include products containing less than 0.5 percent alcohol by volume.

FAA Act. Federal Alcohol Administration Act.

Malt beverage. A beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human food consumption. See § 7.5 of this chapter for standards applying to the

use of processing methods and flavors in malt beverage production.

Permittee. Any person holding a basic permit under the FAA Act.

Person. Any individual, corporation, partnership, association, joint-stock company, business trust, limited liability company, or other form of business enterprise, including a receiver, trustee, or liquidating agent, and including an officer or employee of any agency of a State or political subdivision of a State.

Responsible advertiser. The permittee or brewer responsible for the publication or broadcast of an advertisement.

Spirits. See Distilled spirits.

State. One of the 50 States of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

TTB. The Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury.

United States. The 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

Wine. Section 117(a) of the Federal Alcohol Administration Act (27 U.S.C. 211(a)) defines ''wine'' as any of the following products for nonindustrial use that contain not less than 7 percent and not more than 24 percent alcohol by volume:

(1) Wine as defined in section 610 and section 617 of the Revenue Act of 1918 (26 U.S.C. 5381–5392); and

(2) Other alcoholic beverages not so defined, but made in the manner of wine, including sparkling and carbonated wine, wine made from condensed grape must, wine made from other agricultural products than the juice of sound, ripe grapes, imitation wine, compounds sold as wine, vermouth, cider, perry, and saké.

§ 14.214.2 Territorial extent.

The provisions of this part apply in the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 14.314.3 Delegations of the Administrator's authorities.

Most of the regulatory authorities of the Administrator contained in this part are delegated to ''appropriate TTB officers.'' To determine which officers have been delegated specific authorities, see the current version of TTB Order 1135.14, Delegation of the Administrator's Authorities in 27 CFR part 14, Advertising of Wine, Distilled Spirits, and Malt Beverages. You may obtain a copy of this order by accessing the TTB website (*https://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 8002, Cincinnati, OH 45202.

§ 14.414.4 General requirements under the FAA Act.

(a) *General.* No person engaged in business as a distiller, brewer, blender, or other producer, or as an importer or wholesaler of distilled spirits, wine or malt beverages, or as a processor, bottler, or warehouseman and bottler of distilled spirits, directly or indirectly or through an affiliate, may publish or disseminate or cause to be published or disseminated by radio or television broadcast, or in any newspaper, periodical, or other publication, or by any sign or outdoor advertisement, or by electronic or internet media, or any other printed or graphic matter, any advertisement of wine, distilled spirits, or malt beverages, if such advertising is in, or is calculated to induce sale in, interstate or foreign commerce, or is disseminated by mail, unless such advertisement is in conformity with the provisions of this part.

(b) *Exclusion.* The provisions of this part do not apply to a retailer or to the publisher of any newspaper, periodical, or other publication, or to a radio or television or internet broadcast, unless the retailer or publisher or broadcaster is engaged in business as a distiller, brewer, blender, or other producer, or as an importer or wholesaler of wine, distilled spirits, or malt beverages, or as a processor, bottler, or warehouseman and bottler, of distilled spirits, directly or indirectly, or through an affiliate.

(c) *Substantiation.* The substantiation requirements of this paragraph apply to any claim made on any advertisement subject to the requirements of this part.

(1) *Reasonable basis in fact.* All claims, whether implicit or explicit, must have a reasonable basis in fact. Claims that contain express or implied statements regarding the amount of support for the claim (such as, ''tests prove,'' or ''studies show'') must have the level of substantiation that is claimed. Any advertising claim that does not have a reasonable basis in fact, or cannot be adequately substantiated upon the request of the appropriate TTB officer, will be considered misleading within the meaning of § 14.14 (a)(2).

(2) *Evidence that claims are adequately substantiated.* The appropriate TTB officer may request that the responsible advertiser provide evidence that advertising claims are adequately substantiated at any time within a period of five years from the time the advertisement was last disseminated or published.

§ 14.514.5 Legibility of mandatory information.

(a) Statements required by this part that appear in any written, printed, electronic, internet, or other graphic advertisement must be in legible type of sufficient size and on a contrasting background so as to be readable under ordinary conditions.

(b) In the case of signs, billboards, and displays that are designed for viewing from a distance, the required name and address, or name and other contact information (such as, telephone number, website, or email), of the responsible advertiser may appear in lettering or type size that is smaller than that of the other mandatory information, provided that the name and contact information can be readily ascertained upon closer examination of the sign, billboard, or display.

(c) Information required under this part that appears in an advertisement in any audio-visual medium must be clear and conspicuous and understandable to a consumer viewing or listening to the advertisement under ordinary conditions.

(d) Information required under this part must be presented as being clearly part of the advertisement and may not be separated in any manner from other parts of the advertisement.

(e) If an advertisement covers two or more products, the information required under this part that differs between the products must appear in the advertisement separately for each product.

§ 14.614.6 Mandatory statements.

(a) *General.* Advertisements of wine, distilled spirits, and malt beverages must include the following mandatory information.

(1) *Responsible advertiser.* The advertisement must display the responsible advertiser's name, city, and State or the name and other contact information (such as, telephone number, website, or email address) where the responsible advertiser may be contacted.

(2) *Class, type, or other designation.* An advertisement must contain a statement of the class, type, or other designation that applies to the wine, distilled spirits, or malt beverage, and that is required to appear on the label of the product under subpart I of part 4, 5, or 7 of this chapter. The statement must be clear and conspicuous and be legible in accordance with § 14.5.

(3) *Exceptions.* The following exceptions apply to the rules in paragraphs (a)(1) and (2) of this section:

(i) If an advertisement refers to a general product line or to all of the wine, distilled spirits, or malt beverage

products of one company, whether by the brand name common to all the products in the line or by the company name, the only information required is the name, city, and State or the name and other contact information of the responsible advertiser in accordance with paragraph (a)(1) of this section. However, this exception does not apply when only one type of wine, distilled spirits, or malt beverage product is marketed under the specific brand name advertised; and

(ii) In the case of a consumer specialty item (for example, a T-shirt, hat, bumper sticker, or refrigerator magnet), the only information required is the company name of the responsible advertiser or the brand name of the wine, distilled spirits, or malt beverage product.

(b) *Additional rules for distilled spirits.* The rules set forth in this paragraph apply to distilled spirits advertisements and are in addition to the rules specified in paragraph (a) of this section.

(1) *Alcohol content*—(i) *Mandatory statement.* The alcohol content for distilled spirits must be stated as a percentage of alcohol by volume in the manner set forth in § 5.65 of this chapter.

(ii) *Optional statement.* The advertisement may also state the alcohol content of the distilled spirits product in degrees of proof if that information appears immediately adjacent to the percent-alcohol-by-volume statement prescribed in paragraph (b)(1)(i) of this section.

(2) *Percentage of neutral spirits and name of commodity*—(i) *Production with neutral spirits.* In the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or other processing, if neutral spirits were used in the production of the spirits, the advertisement must state the percentage of neutral spirits so used and the name of the commodity from which the neutral spirits were distilled. The statement of percentage and the name of the commodity must be in substantially the following form: ''____ % neutral spirits distilled from ____ (insert grain, cane products, or fruit as appropriate)''; or ''____% neutral spirits (vodka) distilled from ____ (insert grain, cane products, or fruit, as appropriate)''; or ''____% grain (cane products), (fruit) neutral spirits'', or ''____% grain spirits.'' The statement used under this paragraph must be identical to that on the label of distilled spirits to which the advertisement refers.

(ii) *Neutral spirits and gin produced by continuous distillation.* In the case of neutral spirits or in the case of gin produced by a process of continuous distillation, the advertisement must state the name of the commodity from which the neutral spirits or gin was distilled. The statement of the name of the commodity must appear in substantially the following form: ''Distilled from grain,'' or ''Distilled from cane products,'' or ''Distilled from fruit.'' The statement used under this paragraph must be identical to that on the label of distilled spirits to which the advertisement refers.

Subpart B—Rules Related to Specific Practices in Advertisements

§ 14.11 Statements and representations in advertisements.

(a) *General.* Sections 14.12 through 14.14 specify rules that apply to advertisements for wine, distilled spirits, and malt beverages. Additional rules that apply only to advertisements for wine, only to advertisements for distilled spirits, or only to advertisements for malt beverages are contained in §§ 14.15, 14.16, and 14.17, respectively.

(b) *Statement or representation defined.* For purposes of the rules in this subpart, the term ''statement or representation'' includes any statement, design, device, or representation, and includes pictorial or graphic designs or representations as well as written ones. The term ''statement or representation'' includes explicit and implicit statements and representations.

§ 14.12 Regulated practices.

(a) *General.* The practices, statements, and representations in this section may be used on wine, distilled spirits, and malt beverage labels only when used in compliance with this subpart.

(b) *Statements inconsistent with labeling.* (1) An advertisement may not contain any statement concerning a brand or lot of the product that is inconsistent with any statement appearing on the label.

(2) Any label depicted on a container in an advertisement must be covered by a certificate of label approval (COLA) or certificate of exemption from label approval obtained pursuant to part 4, 5, or 7 of this chapter, except that malt beverage labels not required to be covered by a COLA in accordance with the rules in § 7.21 of this chapter may also appear on advertisements. In all cases, the label appearing on an advertisement must be identical to that appearing on the container.

(c) *Comparative advertising in general.* Comparative advertising for a wine, distilled spirits, or malt beverage may not be disparaging of a competitor's product and may not deceive or mislead the consumer.

(1) *Taste tests.* Taste test results may appear in an advertisement comparing competitors' products, provided that:

(i) The results are not disparaging, deceptive, or likely to mislead the consumer;

(ii) The taste test procedure used must meet scientifically accepted procedures. An example of a scientifically accepted procedure is outlined in the Manual on Sensory Testing Methods, ASTM Special Technical Publication 434, published by the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103 (ASTM, 1968, Library of Congress Catalog Card Number 68–15545); and

(iii) A statement must appear in the advertisement providing the name and address of the testing administrator.

(2) [Reserved]

§ 14.13 Prohibited practices.

An advertisement may not contain any of the following:

(a) Any statement or representation that is obscene or indecent;

(b) Any statement or representation that is false or misleading; or

(c) Any subliminal or other deceptive technique or device that conveys, or attempts to convey, a message to a person by means of images or sounds of a very brief nature that cannot be perceived at a normal level of awareness.

§ 14.14 Misleading statements or representations.

(a) *General prohibition*—(1) *Misleading statements or representations.* No statement or representation, irrespective of falsity, that is misleading to consumers as to the age, origin, identity, or other characteristics of the wine, distilled spirits, or malt beverage, or with regard to any other material factor may appear on an advertisement.

(2) *Ways in which statements or representations may be misleading.* (i) A statement or representation is prohibited, irrespective of falsity, if it directly creates a misleading impression, or if it does so indirectly through ambiguity, omission, inference, or by the addition of irrelevant scientific, or technical matter. For example, an otherwise truthful statement may be misleading because of the omission of material information, the disclosure of which is necessary to prevent the statement from being misleading.

(ii) As set forth in § 14.4(c), all claims, whether implicit or explicit, must have a reasonable basis in fact. Any claim on an advertisement that does not have a reasonable basis in fact, or cannot be

adequately substantiated upon the request of the appropriate TTB officer, is considered misleading.

(b) *Disparaging statements.* False or misleading statements that explicitly or implicitly disparage a competitor's product are prohibited.

(1) *Examples.* (i) An example of an explicit statement that falsely disparages a competitor's product is ''Brand X is not aged in oak barrels,'' when such statement is not true.

(ii) An example of an implicit statement that disparages competitor's products in a misleading fashion is ''We do not add arsenic to our distilled spirits,'' when such a claim may lead consumers to falsely believe that other distillers do add arsenic to their distilled spirits.

(2) This paragraph does not prevent truthful and accurate comparisons between products (such as ''Our wine contains more strawberries than Brand X'') or statements of opinion (such as ''We think our beer tastes better than any other beer on the market'').

(c) *Analyses, standards, or tests.* Any statement, or representation of or relating to analyses, standards, or tests, whether or not it is true, that is likely to mislead the consumer is prohibited. An example of such a misleading statement is ''tested and approved by our research laboratories'' if the testing and approval does not in fact have any significance;

(d) *Guarantees.* Any statement or representation relating to guarantees is prohibited if the appropriate TTB officer finds it is likely to mislead the consumer. However, money-back guarantees are not prohibited.

(e) *Government authority.* Any statement or representation that misleads the consumer to believe that the wine, distilled spirits, or malt beverage is produced, blended, bottled, packed, or sold under Government authority is prohibited, except that:

(1) A municipal, State, or Federal permit number may appear in the advertisement, but the permit number may not be accompanied by any additional statement relating to it; and

(2) Such a statement may appear in an advertisement for distilled spirits if it conforms to the statement permitted in subpart E of part 5 of this chapter for labels of distilled spirits products.

(f) *Cross-commodity claims.* (1) An advertisement may not contain a statement or representation that tends to create the false or misleading impression that a product is a different commodity (as defined in paragraph (f)(2) of this section), or that it contains another commodity. For example, the use of the name of a class or type designation recognized in part 4 or 5 of this chapter is prohibited on a malt beverage advertisement, if the use of that name creates a misleading impression as to the identity of the product. This prohibition includes the use of homophones or coined words that simulate or imitate a class or type designation. This paragraph does not prohibit the following on advertisements:

(i) A truthful and accurate statement of alcohol content;

(ii) The use of a brand name of a wine or distilled spirits product as a malt beverage brand name, of a distilled spirits or malt beverage product as a wine brand name, or of a wine or malt beverage product as a distilled spirits brand name, provided that the overall advertisement does not create a misleading impression about the identity of the product;

(iii) The use of a wine, distilled spirits, or malt beverage cocktail name as a brand name or a distinctive or fanciful name of another commodity's product, provided that a statement of composition, in accordance with part 4, 5, or 7 of this chapter, as appropriate, appears in the same field of vision as the brand name or the distinctive or fanciful name and the overall advertisement does not create a misleading impression about the identity of the product;

(iv) The use of truthful and accurate statements about the production of the product, as part of a statement of composition or otherwise, such as ''finished in whisky barrels,'' ''fermented with rye,'' or ''Beer brewed with chardonnay grapes,'' so long as such statements do not create a misleading impression as to the identity of the product; or

(v) The use of terms that compare a product or products of one commodity to a product or products of a different commodity without creating a misleading impression as to the identity of the product.

(2) When used in this paragraph, ''commodity'' means wine, distilled spirits, or malt beverages.

(g) *Representations of the armed forces or flags.* Advertisements may not show an image of any government's flag or any representation related to the armed forces of the United States if the representation, standing alone or considered together with any additional language or symbols, creates an impression that the product was endorsed by, made by, used by, or made under the supervision of the government represented by that flag or by the armed forces of the United States. This section does not prohibit the use of a flag as part of a claim of American origin or another country of origin.

(h) *Government seals.* Advertisements may not contain any government seal or other insignia that is likely to mislead the consumer to believe that the product has been endorsed by, made by, used by, or produced for, under the supervision of, or in accordance with the specification of that government.

(i) *Health-related statements*—(1) *Definitions.* When used in this section, the following terms have the meaning indicated:

(i) *Health-related statement.* ''Health-related statement'' means any statement related to health (other than the health warning statement required under part 16 of this chapter) and includes any statement of a curative or therapeutic nature that, expressly or by implication, suggest a relationship between the consumption of alcohol, a wine, distilled spirits, or malt beverage product, or any substance found within such a product, and health benefits or effects on health. The term includes both specific health claims and general references to alleged health benefits or effects on health associated with the consumption of alcohol, a wine, distilled spirits, or malt beverage product, or any substance found within such a product, as well as health-related directional statements. The term also includes statements and claims that imply that a physical or psychological sensation results from consuming the wine, distilled spirits, or malt beverage product, as well as statements and claims of nutritional value (for example, statements of vitamin content). Numerical statements of caloric, carbohydrate, protein, and fat content of the product do not constitute claims of nutritional value.

(ii) *Specific health claim.* ''Specific health claim'' means a type of health-related statement that, expressly or by implication, characterizes the relationship of alcohol, a wine, distilled spirits, or malt beverage product, or any substance found within such a product, to a disease or health-related condition. Implied specific health claims include statements, symbols, vignettes, or other forms of communication that suggest, within the context in which they are presented, that a relationship exists between alcohol, a wine, distilled spirits or malt beverage product, or any substance found within such a product, and a disease or health-related condition.

(iii) *Health-related directional statement.* ''Health-related directional statement'' means a type of health-related statement that directs or refers consumers to a third party or other

source for information regarding the effects on health of alcohol or consumption of wine, distilled spirits, or malt beverages.

(2) *Rules for advertising*—(i) *Health-related statements.* In general, an advertisement for a wine, distilled spirits, or malt beverage product may not contain any health-related statement that is untrue in any particular or tends to create a misleading impression as to the effects on health of alcohol consumption. TTB will evaluate such statements on a case-by-case basis and may require as part of the health-related statement a disclaimer or some other qualifying statement to dispel any misleading impression conveyed by the health-related statement. Such a disclaimer or other qualifying statement must appear as prominently as the health-related statement.

(ii) *Specific health claims.* A specific health claim will not be considered misleading if it is truthful and adequately substantiated by scientific or medical evidence; it is sufficiently detailed and qualified with respect to the categories of individuals to whom the claim applies; it adequately discloses the health risks associated with both moderate and heavier levels of alcohol consumption; and it outlines the categories of individuals for whom any levels of alcohol consumption may cause health risks. This information must appear as part of the specific health claim and as prominently as the specific health claim.

(iii) *Health-related directional statements.* A health-related directional statement is presumed misleading unless it—

(A) Directs consumers in a neutral or other non-misleading manner to a third party or other source for balanced information regarding the effects on health of alcohol or wine, distilled spirits, or malt beverage consumption; and

(B)(*1*) Includes as part of the health-related directional statement the following disclaimer: ''This statement should not encourage you to drink or to increase your alcohol consumption for health reasons''; or

(*2*) Includes as part of the health-related directional statement, and as prominently as the health-related directional statement, some other qualifying statement that the appropriate TTB officer finds is sufficient to dispel any misleading impression conveyed by the health-related directional statement.

§ 14.15 Additional rules for wine.

The rules in this section apply to advertisements for wine and are in addition to the rules that apply to all advertisements as set forth in §§ 14.12 through 14.14.

(a) *Statements in advertisements.* An advertisement for wine may not contain:

(1) Any statement of bonded wine cellar and bonded winery numbers, unless stated immediately adjacent to the name and address of the person operating the wine cellar or winery. A statement of bonded wine cellar and bonded winery numbers may appear in the following form: ''Bonded Wine Cellar No. ____,'' ''Bonded Winery No. ____,'' ''B.W.C. No. ____,'' ''B.W. No. ____.'' No additional reference to the statement may be made, and the statement may not be used in a way that might give the impression that the wine has been made or matured under government supervision or in accordance with government specifications or standards; or

(2) Any statement, design, device, or representation that relates to alcohol content or that tends to create the impression that a wine is intoxicating or has intoxicating qualities, other than a truthful and accurate statement of alcohol content.

(b) *Statement of age.* Subject to paragraph (c) of this section, an advertisement for wine may not contain any statement of age or other representation relative to age (including words, symbols, or other devices in any brand name or mark), except for:

(1) Vintage dates on vintage wine, in accordance with § 4.95 of this chapter;

(2) References relating to methods of wine production involving storage or aging which are used for the advertised wine; and

(3) Use of the word ''old'' as part of a brand name.

(c) *Statement of bottling date.* For purposes of paragraph (b) of this section, a statement of the bottling date of a wine will not be deemed to be a representation relative to age, provided that the statement appears in the advertisement without undue emphasis in the following form: ''Bottled in ____'' (inserting the year in which the wine was bottled).

(d) *Miscellaneous date statements.* Except in the case of vintage dates and bottling dates as provided in paragraphs (b)(1) and (c) of this section, an advertisement of wine may not bear any date unless, in addition to the date and immediately adjacent to the date and in the same size and kind of printing, a statement of the significance or relevance of the date is provided, such as ''established'' or ''founded in.'' If the date refers to the date of establishment of any business or brand name, the date and its accompanying statement must appear immediately adjacent to the name of the person, company, or brand name to which it relates if the appropriate TTB officer finds that this is necessary in order to prevent confusion as to the person, company, or brand name to which the establishment date applies.

(e) *Statements indicative of origin.* An advertisement for wine may not contain any statement or representation that indicates or implies an origin other than the true place of origin of the wine, except for brand names of geographical significance, when used in accordance with § 4.64(c) of this chapter, and semi-generic designations, when used in accordance with § 4.174 of this chapter.

§ 14.16 Additional rules for distilled spirits.

The rules in this section apply to advertisements for distilled spirits products and are in addition to the rules that apply to all advertisements as set forth in §§ 14.12 through 14.14.

(a) *Statements in advertisements.* An advertisement for a distilled spirits product may not contain:

(1) The words ''bond,'' ''bonded,'' ''bottled in bond,'' or ''aged in bond,'' or any other phrase containing ''bond'' or ''bonded,'' unless those words or phrases appear in the advertisement in the same manner and form as prescribed in § 5.88 of this chapter for a label for the distilled spirits product in question;

(2) A statement regarding multiple distillations, such as ''double distilled'' or ''triple distilled,'' unless used in accordance with the rules in § 5.89 of this chapter; or

(3) The word ''pure'' unless it:

(i) Refers to a particular ingredient used in the production of the distilled spirits, and is a truthful representation about that ingredient;

(ii) Is part of the bona fide name of a permittee or retailer for whom the distilled spirits are bottled; or

(iii) Is part of the bona fide name of the permittee who bottled the distilled spirits.

(b) *Statements of age.* (1) Except at provided in paragraph (b)(2) of this section, an advertisement for a distilled spirits product may not contain any statement, design, or device, directly or by implication, concerning age or maturity of any brand or lot of distilled spirits, unless a statement of age in accordance with § 5.73 of this chapter appears on the label of the advertised product. When any such statement, design, or device concerning age or maturity is contained in an advertisement, it must include (immediately adjacent to it and with substantially equal conspicuousness) all parts of the statement concerning age

and percentages required to appear on a label of the product under part 5 of this chapter.

(2) An advertisement for any whisky or brandy (except immature brandies) for which a statement of age is not required on a label, or an advertisement for any rum or Tequila that has been aged for four years or more, may contain an inconspicuous, general representation as to age or maturity, or other similar representations, even though a specific age statement does not appear on the label of the advertised product or in the advertisement itself.

(c) *Place of origin and producer or processor.* An advertisement for a distilled spirits product may not contain any statement, design, device, or representation, stating or implying that the distilled spirits were manufactured in, or imported from, a country or place other than their actual country or place of origin, or that the distilled spirits were produced or processed by a person who was not in fact the actual producer or processor.

§ 14.17 Additional rules for malt beverages.

The rules in this section apply to advertisements for malt beverages and are in addition to the prohibited practice rules that apply to for all wine, distilled spirits, or malt beverage advertisements as set forth in §§ 14.12 through14.14.

(a) ''*Bonded*'' *and other terms.* An advertisement may not contain the words ''bonded,'' ''bottled in bond,'' ''aged in bond,'' ''bonded age,'' ''bottled under Customs supervision,'' or other phrases containing these or synonymous terms that may create a misleading impression as to governmental supervision over production or bottling.

(b) *Statement of class.* An advertisement may not identify a product containing less than one-half of one percent (0.5%) of alcohol by volume with the designation ''beer,'' ''lager beer,'' ''lager,'' ''ale,'' ''porter,'' or ''stout,'' or with any other class or type designation commonly applied to fermented malt beverages containing one-half of one percent or more of alcohol by volume. In addition, an advertisement may identify a product with the class designation ''ale,'' ''porter,'' or ''stout'' only if the product was fermented at comparatively high temperature, was produced without the use of coloring or flavoring materials (other than those recognized in standard brewing practices), and possesses the characteristics generally attributed to ale, porter, or stout. Any statement of class or designation used in an advertisement should be identical to the designation on the label.

(c) *Strength claims*—(1) *General.* For purposes of this section, the term ''strength claim'' means a statement that directly or indirectly makes a claim about the alcohol content of the product. This section does not apply to the use of the terms ''low alcohol,'' ''reduced alcohol,'' ''non-alcoholic,'' and ''alcohol-free'' in accordance with § 7.65 of this chapter; to claims about low alcohol content in general; or to the use of an alcohol content statement in accordance with § 7.65 of this chapter.

(2) *Prohibition.* The use of a strength claim on malt beverage advertisements is prohibited if it misleads consumers by implying that products should be purchased or consumed on the basis of higher alcohol strength. Examples of strength claims are ''full strength,'' ''extra strength,'' ''high test,'' and ''high proof.''

Subpart C—Penalties and Compromise of Liability

§ 14.21 Criminal penalties.

A violation of the advertising provisions of 27 U.S.C. 205(f) is punishable as a misdemeanor. See 27 U.S.C. 207 for the statutory provisions relating to criminal penalties, consent decrees, and injunctions.

§ 14.22 Conditions of basic permit.

A basic permit is conditioned upon compliance with the requirements of 27 U.S.C. 205, including the advertising provisions of this part. A willful violation of the conditions of a basic permit provides grounds for the revocation or suspension of the permit, as applicable, as set forth in part 1 of this chapter.

§ 14.23 Compromise.

Pursuant to 27 U.S.C. 207, the appropriate TTB officer is authorized, with respect to any violation of 27 U.S.C. 205, to compromise the liability arising with respect to such violation upon payment of a sum not in excess of $500 for each offense, to be collected by the appropriate TTB officer and to be paid into the Treasury as miscellaneous receipts.

Subpart D—Paperwork Reduction Act

§ 14.31 OMB control numbers assigned under the Paperwork Reduction Act.

(a) *Purpose.* This subpart displays the control numbers assigned to information collection requirements in this part by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, Public Law 104–13.

(b) *Chart.* The following chart identifies each section in this part that contains an information collection requirement and the OMB control number that is assigned to that information collection requirement.

Section where contained	Current OMB Control No.
14.4	New information collection.
14.6	1513–0087.
14.12	1513–0087.
14.14	1513–0087.
14.15	1513–0087.
14.16	1513–0087.
14.17	1513–0087.

PART 19—DISTILLED SPIRITS PLANTS

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

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5010, 5041, 5061, 5062, 5066, 5081, 5101, 5111–5114, 5121–5124, 5142, 5143, 5146, 5148, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

■ 6. In § 19.356, revise paragraphs (c) and (d) to read as follows:

§ 19.356 Alcohol content and fill.

* * * * *

(c) *Variations in alcohol content.* Variations in alcohol content may not exceed 0.3 percent alcohol by volume above or below the alcohol content stated on the label.

(d) *Example.* Under paragraph (c) of this section, a product labeled as containing 40 percent alcohol by volume would be acceptable if the test for alcohol content found that it contained no less than 39.7 percent alcohol by volume and no more than 40.3 percent alcohol by volume.

Signed: August 28, 2018.

John J. Manfreda,

Administrator.

Approved: November 1, 2018.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade and Tariff Policy).

[FR Doc. 2018–24446 Filed 11–23–18; 8:45 am]

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Part III

Environmental Protection Agency

40 CFR Parts 60 and 63
National Emission Standards for Hazardous Air Pollutants and New Source Performance Standards: Petroleum Refinery Sector Amendments; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 63

[EPA–HQ–OAR–2010–0682; FRL–9986–68–OAR]

RIN 2060–AT50

National Emission Standards for Hazardous Air Pollutants and New Source Performance Standards: Petroleum Refinery Sector Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action finalizes amendments to the petroleum refinery National Emission Standards for Hazardous Air Pollutants (NESHAP) (referred to as Refinery MACT 1 and Refinery MACT 2) and to the New Source Performance Standards (NSPS) for Petroleum Refineries to clarify the requirements of these rules and to make technical corrections and minor revisions to requirements for work practice standards, recordkeeping, and reporting which were proposed in the **Federal Register** on April 10, 2018. This action also finalizes amendments to the compliance date of the requirements for existing maintenance vents from August 1, 2017, to December 26, 2018, which were proposed in the **Federal Register** on July 10, 2018.

DATES: This final rule is effective on November 26, 2018. The incorporation by reference of certain publications listed in the rule was approved by the Director of the Federal Register as of June 24, 2008.

ADDRESSES: The Environmental Protection Agency (EPA) has established a docket for this action under Docket ID No. EPA–HQ–OAR–2010–0682. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *https://www.regulations.gov,* or in hard copy at the EPA Docket Center, EPA WJC West Building, Room Number 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For questions about this final action, contact Ms. Brenda Shine, Sector Policies and Programs Division (E143–01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–3608; fax number: (919) 541–0516; and email address: *shine.brenda@epa.gov*. For information about the applicability of the NESHAP to a particular entity, contact Ms. Maria Malave, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, EPA WJC South Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–7027; and email address: *malave.maria@epa.gov*.

SUPPLEMENTARY INFORMATION:

Preamble acronyms and abbreviations. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here.

AFPM American Fuel and Petrochemical Manufacturers
API American Petroleum Institute
AWP Alternative Work Practice
CAA Clean Air Act
CBI confidential business information
CFR Code of Federal Regulations
CEDRI Compliance and Emissions Data Reporting Interface
CDX Central Data Exchange
CRA Congressional Review Act
CRU catalytic reforming unit
DCU delayed coking unit
EPA Environmental Protection Agency
FCCU fluid catalytic cracking unit
FR Federal Register
HAP hazardous air pollutant(s)
lbs pounds
LEL lower explosive limit
MACT maximum achievable control technology
MPV miscellaneous process vent
NAAQS National Ambient Air Quality Standards
NESHAP National Emission Standards for Hazardous Air Pollutants
NOCS Notice of Compliance Status
NSPS New Source Performance Standard
NTTAA National Technology Transfer and Advancement Act
OEL open-ended line
OSHA Occupational Safety and Health Administration
PM particulate matter
ppb parts per billion
ppm parts per million
PRA Paperwork Reduction Act
PRD pressure relief device
psi pounds per square inch
psia pounds per square inch absolute
RFA Regulatory Flexibility Act
RIN Regulatory Information Number
RSR Refinery Sector Rule
SMR steam-methane reforming
TTN Technology Transfer Network
UMRA Unfunded Mandates Reform Act
VOC volatile organic compounds

Background information. On April 10, 2018, and July 10, 2018, the EPA proposed revisions to the Petroleum Refineries NESHAP and NSPS, (April 2018 Proposal and July 2018 Proposal), respectively (83 FR 15458, April 10, 2018; 83 FR 31939, July 10, 2018). After consideration of the public comments we received on these proposed rules, in this action, we are finalizing revisions to the NESHAP and NSPS rules. We summarize the significant comments we received regarding the April 2018 Proposal and the July 2018 Proposal and provide our responses in this preamble. In addition, a Response to Comments document, which is in the docket for this rulemaking, summarizes and responds to additional comments which were received regarding the April 2018 Proposal. A ''track changes'' version of the regulatory language that incorporates the changes in this action is also available in the docket.

Organization of this document. The information in this preamble is organized as follows:

I. General Information

A. Does this action apply to me?

Regulated entities. Categories and entities potentially regulated by this action are shown in Table 1 of this preamble.

TABLE 1—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS FINAL ACTION

NESHAP and source category	NAICS [1] code
40 CFR part 63, subpart CC Petroleum Refineries	324110

[1] North American Industry Classification System.

Table 1 of this preamble is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by the final action for the source category listed. To determine whether your facility is affected, you should examine the applicability criteria in the appropriate NESHAP. If you have any questions regarding the applicability of any aspect of this NESHAP, please contact the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this preamble.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this final action will also be available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this final action at: *https://www.epa.gov/stationary-sources-air-pollution/petroleum-refinery-sector-risk-and-technology-review-and-new-source*. Following publication in the **Federal Register**, the EPA will post the **Federal Register** version and key technical documents at this same website.

C. Judicial Review and Administrative Reconsideration

Under Clean Air Act (CAA) section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by January 25, 2019. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

Section 307(d)(7)(B) of the CAA further provides that only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. This section also provides a mechanism for the EPA to reconsider the rule if the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within the period for public comment or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule. Any person seeking to make such a demonstration should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, EPA WJC South Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

II. Background

On December 1, 2015, the EPA finalized amendments to the Petroleum Refinery NESHAP in 40 Code of Federal Regulations (CFR) part 63, subparts CC and UUU, referred to as Refinery MACT 1 and 2, respectively, and the NSPS for petroleum refineries in 40 CFR part 60, subparts J and Ja (80 FR 75178) (December 2015 Rule). The final amendments to Refinery MACT 1 include a number of new requirements for ''maintenance vents,'' pressure relief devices (PRDs), delayed coking units (DCUs), and flares, and also establishes a fenceline monitoring requirement.

The December 2015 Rule included revisions to the continuous compliance alternatives for catalytic cracking units and provisions specific to startup and shutdown of catalytic cracking units and sulfur recovery plants. The December 2015 Rule also finalized technical corrections and clarifications to Refinery NSPS subparts J and Ja to address issues raised by the American Petroleum Institute (API) in their 2008 and 2012 petitions for reconsideration of the final NSPS Ja rule that had not been previously addressed. These include corrections and clarifications to provisions for sulfur recovery plants, performance testing, and control device operating parameters.

In the process of implementing these new requirements, numerous questions and issues have been identified and we proposed clarifications and technical amendments to address these questions and issues on April 10, 2018 (April 2018 Proposal) (83 FR 15458; April 10, 2018). These issues were raised in petitions for reconsideration and in separately issued letters from industry and in meetings with industry groups.

The EPA received three separate petitions for reconsideration. Two petitions were jointly filed by API and American Fuel and Petrochemical Manufacturers (AFPM). The first of these petitions was filed on January 19, 2016 and requested an administrative reconsideration under section 307(d)(7)(B) of the CAA of certain provisions of Refinery MACT 1 and 2, as promulgated in the December 2015 Rule. Specifically, API and AFPM requested that the EPA reconsider the maintenance vent provisions in Refinery MACT 1; the alternate startup, shutdown, or hot standby standards for fluid catalytic cracking units (FCCUs) in Refinery MACT 2; the alternate startup and shutdown for sulfur recovery units in Refinery MACT 2; and the new catalytic reforming units (CRUs) purging limitations in Refinery MACT 2. The request pertained to providing and/or clarifying the compliance time for these requirements. Based on this request and additional information received, the EPA issued a proposal on February 9, 2016 (81 FR 6814), and a final rule on July 13, 2016 (81 FR 45232), fully responding to the January 19, 2016, petition for reconsideration. The second petition from API and AFPM was filed on February 1, 2016 and outlined a number of specific issues related to the work practice standards for PRDs and flares, and the alternative water overflow provisions for DCUs, as well as a number of other specific issues on other aspects of the rule. The third petition was filed on February 1, 2016, by Earthjustice on behalf of Air Alliance Houston, California Communities Against Toxics, the Clean Air Council, the Coalition for a Safe Environment, the Community In-Power and Development Association, the Del Amo Action Committee, the Environmental Integrity Project, the Louisiana Bucket Brigade, the Sierra Club, the Texas Environmental Justice Advocacy Services, and Utah Physicians for a Healthy Environment. The Earthjustice petition claimed that several aspects of the revisions to Refinery MACT 1 were

not addressed in the proposed rule, and, thus, the public was precluded from commenting on them during the public comment period, including: (1) Work practice standards for PRDs and flares; (2) alternative water overflow provisions for DCUs; (3) reduced monitoring provisions for fenceline monitoring; and (4) adjustments to the risk assessment to account for these changes from what was proposed. On June 16, 2016, the EPA sent letters to petitioners granting reconsideration on issues where petitioners claimed they had not been provided an opportunity to comment. These petitions and letters granting reconsideration are available for review in the rulemaking docket (see Docket ID Nos. EPA–HQ–OAR–2010–0682–0860, EPA–HQ–OAR–2010–0682–0891 and EPA–HQ–OAR–2010–0682–0892).

On October 18, 2016 (81 FR 71661), the EPA proposed for public comment the issues for which reconsideration was granted in the June 16, 2016, letters. The EPA identified five issues for which it was seeking public comment: (1) The work practice standards for PRDs; (2) the work practice standards for emergency flaring events; (3) the assessment of risk as modified based on implementation of these PRD and emergency flaring work practice standards; (4) the alternative work practice (AWP) standards for DCUs employing the water overflow design; and (5) the provision allowing refineries to reduce the frequency of fenceline monitoring at sampling locations that consistently record benzene concentrations below 0.9 micrograms per cubic meter. In that notice, the EPA also proposed two minor clarifying amendments to correct a cross referencing error and to clarify that facilities complying with overlapping equipment leak provisions must still comply with the PRD work practice standards in the December 2015 Rule.

The February 1, 2016, API and AFPM petition for reconsideration included a number of recommendations for technical amendments and clarifications that were not specifically addressed in the October 18, 2016, proposal.[1] In addition, API and AFPM asked for clarification on various requirements of the final amendments in a July 12, 2016, letter.[2] The EPA addressed many of the clarification requests from the July 2016 letter and the petition for reconsideration in a letter issued on April 7, 2017.[3] API and AFPM also raised additional issues associated with the implementation of the final rule amendments in a March 28, 2017, letter to the EPA [4] and provided a list of typographical errors in the rule in a January 27, 2017, meeting [5] with the EPA. On January 10, 2018, AFPM submitted a letter containing a comparison of the electronic CFR, the **Federal Register** documents, and the redline versions of the December 2015 Rule and October 2016 amendments to the Refinery Sector Rule noting differences and providing suggestions as to how these discrepancies should be resolved.[6] These items are located in Docket ID No. EPA–HQ–OAR–2016–0682. On April 10, 2018 (83 FR 15848), the EPA published proposed additional revisions to the December 2015 Rule addressing many of the issues and clarifications identified by API and AFPM in their February 2016 petition for reconsideration and their subsequent communications with the EPA.

On July 10, 2018, the EPA published a proposed rule (July 2018 Proposal) to revise the compliance date for maintenance vents located at sources constructed on or before June 30, 2014, from August 1, 2017, to January 30, 2019, (83 FR 31939; July 10, 2018). We proposed to change the compliance date to address challenges petroleum refinery owners or operators are experiencing in attempting to comply with the December 2015 Rule maintenance vent requirements, notwithstanding the additional compliance time provided by our revision of the compliance date to August 1, 2017, plus an additional 1-year (*i.e.,* August 1, 2018) compliance extension granted by the relevant permitting authorities for each source pursuant to the requirements set forth in the General Provisions at 40 CFR 63.6(i). The requirements for maintenance vents promulgated in the December 2015 Rule resulted in the need for completing the ''management of change process'' for affected sources (81 FR 45232, 45237, July 13, 2016). We also recognized that the Agency had proposed technical revisions and clarifications to the maintenance vent provisions in the April 2018 Proposal and that an extension would also allow the EPA to take final action on that proposal prior to the extended compliance date. Technical revisions and clarifications are being finalized in today's rule.

The April 2018 Proposal provided a 45-day comment period ending on May 25, 2018. The EPA received 16 comments on the proposed amendments from refiners, equipment manufacturers, trade associations, environmental groups, and private citizens. The July 2018 Proposal provided a 30-day comment period ending on August 9, 2018. The EPA received comments on the proposed revisions from refiners, trade associations, environmental groups, and private citizens. This preamble to the final rule provides a discussion of the final revisions, including changes in response to comments on the proposal, as well as a summary of the significant comments received and responses.

III. What is included in this final rule?

A. Clarifications and Technical Corrections to Refinery MACT 1

1. Definitions

What is the history of the definitions addressed in the April 2018 Proposal?

In the April 2018 Proposal, we proposed to amend four definitions: Flare purge gas, supplemental natural gas, relief valve, and reference control technology for storage vessel and to define an additional term. Specific to flare purge gas, we proposed for the term to include gas needed for other safety reasons. For flare supplemental gas, we proposed to amend the definition to specifically exclude assist air or assist steam. For relief valves we narrowed the definition to include PRDs that are designed to re-close after the pressure relief. As a complementary amendment, we proposed to add a definition for PRD. Finally, we proposed to revise the definition of reference control technology for storage vessels to be consistent with the storage vessel rule requirements in section 63.660.

What key comments were received on definitions?

We did not receive public comments on the proposed addition and revisions of these definitions.

[1] Supplemental Request for Administrative Reconsideration of Targeted Elements of EPA's Final Rule ''Petroleum Refinery Sector Risk and Technology Review and New Source Performance Standards; Final Rule,'' Howard Feldman, API, and David Friedman, AFPM. February 1, 2016. Docket ID No. EPA–HQ–OAR–2010–0682–0892.

[2] Letter from Matt Todd, API, and David Friedman, AFPM, to Penny Lassiter, EPA. July 12, 2016. Available in Docket ID No. EPA–HQ–OAR–2010–0682.

[3] Letter from Peter Tsirigotis, EPA, to Matt Todd, API, and David Friedman, AFPM. April 7, 2017. Available at: *https://www.epa.gov/stationarysources-air-pollution/december-2015-refinerysector-rule-response-letters-qa.*

[4] Letter from Matt Todd, API, and David Friedman, AFPM, to Penny Lassiter, EPA. March 28, 2017. Available in Docket ID No. EPA–HQ–OAR–2010–0682.

[5] Meeting minutes for January 27, 2017, EPA meeting with API. Available in Docket ID No. EPA–HQ–OAR–2010–0682.

[6] David Friedman, ''Comparison of Official CFR and e-CFR Postings Regarding MACT CC/UUU and NSPS Ja Postings.'' Message to Penny Lassiter and Brenda Shine. January 10, 2018. Email.

What is the EPA's final decision on the definitions?

We are finalizing the addition and revisions of these definitions as proposed.

2. Miscellaneous Process Vent Provisions

In the April 2018 Proposal, we proposed several amendments to address petitioners' requests for revisions and clarifications to the requirements identifying and managing the subset of miscellaneous process vents (MPV) that result from maintenance activities. In the July 2018 Proposal, we proposed to change the compliance date of the requirements for existing maintenance vents. We describe each of these proposals in the following subparagraphs.

a. Notice of Compliance Status (NOCS) Report

What is the history of the NOCS report for MPV addressed in the April 2018 Proposal?

In their March 28, 2017, letter (Docket ID No. EPA–HQ–OAR–2010–0682–0915), API and AFPM noted that the MPV provisions at section 63.643(c) do not require an owner or operator to designate a maintenance vent as Group 1 or Group 2 MPV. However, they stated that the reporting requirements at section 63.655(f)(1)(ii) are unclear as to whether a NOCS report is needed for some or all maintenance vents. We did not intend for maintenance vents to be included in the NOCS report. The rule has separate requirements for characterizing, recording, and reporting maintenance vents in section 63.655(g)(13) and (h)(12); therefore, it is not necessary to identify each place where equipment may be opened for maintenance in a NOCS report. To clarify this, we proposed to add language to section 63.643(c) to explicitly state that maintenance vents need not be identified in the NOCS report.

What key comments were received on the NOCS report for MPV provisions?

We did not receive comments on the proposed amendment in section 63.643(c) to explicitly state that maintenance vents need not be identified in the NOCS report.

What is the EPA's final decision on the NOCS report for MPV provisions?

We are finalizing the amendment in section 63.643(c) as proposed.

b. Maintenance Vents Associated With Equipment Containing Pyrophoric Catalysts

What is the history of regulatory text for maintenance vents associated with equipment containing pyrophoric catalyst addressed in the April 2018 Proposal?

Under 40 CFR 63.643(c) an owner or operator may designate a process vent as a maintenance vent if the vent is only used as a result of startup, shutdown, maintenance, or inspection of equipment where equipment is emptied, depressurized, degassed, or placed into service. Facilities generally must comply with one of three conditions prior to venting maintenance vents to the atmosphere (section 63.643(c)(1)(i)–(iii)). However, section 63.643(c)(1)(iv) of the December 2015 Rule provides flexibility for maintenance vents associated with equipment containing pyrophoric catalyst (or simply ''pyrophoric units''), such as hydrotreaters and hydrocrackers, at refineries that do not have pure hydrogen supply. At many refineries, pure hydrogen is generated by steam-methane reforming (SMR), with hydrogen concentrations of 98 volume percent or higher. The other source of hydrogen available at refineries is from the CRU. This catalytic reformer hydrogen may have hydrogen concentrations of 50 percent or more and may contain appreciable concentrations of light hydrocarbons which limit the ability of vents associated with this source of hydrogen to meet the lower explosive limit (LEL) of 10 percent or less. The December 2015 Rule limits the flexibility to maintenance vents associated with pyrophoric units at refineries without a pure hydrogen supply. For pyrophoric units at a refinery without a pure hydrogen supply, the December 2015 Rule provides that the LEL of the vapor in the equipment must be less than 20 percent, except for one event per year not to exceed 35 percent.

API and AFPM took issue with the regulatory language that drew a distinction based on whether there is a pure hydrogen supply located at the refinery. As described in the preamble to the April 2018 Proposal (83 FR 15462), we reviewed comments from API and AFPM as well as additional information contained in an August 1, 2017, letter (Docket ID No. EPA–HQ–OAR–2010–0682–0916) which provided evidence that a single refinery may have many pyrophoric units, some that have a pure hydrogen supply and some that do not have a pure hydrogen supply. Thus, our assumption at the time we issued the December 2015 Rule that all pyrophoric units at a single refinery either would or would not have a pure hydrogen supply was incorrect. Therefore, we proposed to modify the portion of the regulatory text that distinguished units based on whether there was a pure hydrogen supply ''at the refinery'' and instead base the regulation on whether a pure hydrogen supply was available for the pyrophoric unit.

What key comments were received on the regulatory text for maintenance vents associated with equipment containing pyrophoric catalyst?

Comment b.1: One commenter (–0953) stated that the proposed language is inadequately defined, and allows the refiner to opt in to the provision providing flexibility by, for example, shutting down the source of the pure hydrogen supply.

Response b.1: In most cases, the pyrophoric unit will be supplied by either pure SMR hydrogen or catalytic reforming hydrogen. As purging with hydrogen is one of the steps used to de-inventory this equipment, the refiner cannot shutdown the hydrogen supply prior to de-inventorying the equipment. If a pyrophoric unit can be supplied with either SMR and catalytic reformer hydrogen, and the SMR hydrogen is being used during normal operations of the pyrophoric unit prior to de-inventorying the unit, we consider it a violation of the good air pollution control practices requirement in section 63.643(n) to switch the hydrogen supply only for de-inventorying the equipment. We also note that the refiner must keep records of the lack of a pure hydrogen supply as required at section 63.655(i)(12)(v).

Comment b.2: One commenter stated that the EPA has not provided any assessment of the potential increase of uncontrolled emissions to the atmosphere, or an analysis of the increase in health risks or the environmental impact of the proposed exemption, or an assessment of the industry-provided cost data.

Response b.2: The docket for the rulemaking includes the information upon which we based our decisions, including costs and environmental impact estimates of the provision providing flexibility to maintenance vents associated with pyrophoric units without a pure hydrogen supply. We had reviewed this information and determined that it was a reasonable estimate of the impacts (see Docket ID Nos. EPA–HQ–OAR–2010–0682–0733 and –0909). This information supports our statement in the April 2018

Proposal that this amendment is not projected to appreciably impact emission reductions associated with the standard. In fact, considering secondary emissions from the flare or other control system needed to comply with the 10 percent LEL limit, this provision providing flexibility to maintenance vents associated with pyrophoric units without a pure hydrogen supply is expected to result in a net environmental benefit.

Comment b.3: One commenter stated that the exemption does not comport with the requirements of CAA section 112(d)(2)–(3), which requires the standards to be no less stringent than the maximum achievable control technology (MACT) floor. The commenter points to the voluntary survey of hydrogen production units as submitted by API and notes that 12 of 62 units not connected to a pure hydrogen supply reported being able to comply with the 10 percent LEL standard. As such, the commenter contends that the MACT floor should be 10 percent LEL for equipment containing pyrophoric catalysts regardless of whether or not they are connected to a pure hydrogen supply and, thus, there should be no alternative based on whether or not a pure hydrogen supply is available. Furthermore, the commenter stated that costs cannot be used as justification for providing a higher emission limit alternative to MACT standards, particularly those based on the MACT floor.

Response b.3: As an initial matter, the EPA did not intend to re-open the issue of what is the MACT floor for pyrophoric units through the proposal. Rather, the issue raised was whether the flexibility provided should only be for pyrophoric units located at a refinery without a pure hydrogen supply or should also apply to pyrophoric units located at a facility that has a pure hydrogen supply but for which pure hydrogen is not available at the unit. Regardless, we disagree with the commenter that the survey results submitted by API support a conclusion that 10 percent LEL is the MACT floor for all pyrophoric units. The survey provided by API was not the type of rigorous survey that could provide a basis for establishing the MACT floor. As an initial matter, the API survey did not include the universe of pyrophoric units and there is no information to suggest whether the best performers for the subset of units addressed in the survey represents the top performing 12 percent of sources across the industry. Also, because the exact questions and definitions of terms were not provided, there may be some misinterpretation of the results. For example, it is unclear from the summary provided if the question was whether the facility owners or operators could meet 10 percent LEL for all events (*i.e.,* a never-to-be-exceeded limit) or if this was more of an operational average.

We agree with the commenter that costs cannot be considered in establishing a MACT standard. We based this provision on an assessment of the overall environmental impacts associated with the emission limitations and concluded that the best performing pyrophoric units without a pure hydrogen supply, when considering secondary impacts, was to meet a 20 percent LEL with one exception not to exceed 35 percent LEL per year. The API survey does not provide support to change our analysis of the MACT floor in the December 2015 Rule.

Comment b.4: One commenter (–0958) pointed out that the proposed amendment to section 63.643(c)(1)(iv) is inconsistent with the description of the amendment included in the preamble to the April 2018 Proposal. Specifically, the description of the amendment in the preamble of the April 2018 Proposal does not contain the additional phrase, ''considering all such maintenance vents at the refinery,'' which was included in the amendatory text. The commenter suggested that the EPA delete this phrase as it could be interpreted to limit the use of the 35 percent allowance to once per year per refinery rather than to once per year per piece of equipment.

Response b.4: We agree that the preamble discussion and the rule language regarding these revisions are not consistent. We did not intend to limit the one time per year 35 percent LEL to the refinery; rather, we intended it to apply to each pyrophoric unit without a pure hydrogen supply. Consistent with our intent as expressed in the preamble discussion of the April 2018 Proposal, 83 FR at 15462, we are removing the phrase, ''considering all such maintenance vents at the refinery'' from the regulatory text at section 63.643(c)(1)(iv) for the final amendments promulgated by this rulemaking.

What is the EPA's final decision on the regulatory text for maintenance vents associated with equipment containing pyrophoric catalyst?

We are finalizing the proposed amendment with one change. In response to the public comments received, we are not including the phrase ''considering all such maintenance vents at the refinery'' in the final regulatory text at section 63.643(c)(1)(iv), as revised by this rulemaking.

c. Control Requirements for Maintenance Vents

What is the history of the provisions for the control requirements for maintenance vents addressed in the April 2018 Proposal?

Paragraph 63.643(a) specifies that Group 1 miscellaneous process vents must be controlled by 98 percent or to 20 parts per million by volume or to a flare meeting the requirements in section 63.670. This paragraph also states in the second sentence that requirements for maintenance vents are specified in section 63.643(c), ''and the owner or operator is only required to comply with the requirements in section 63.643(c).'' Paragraphs (c)(1) through (3) then specify requirements for maintenance vents. Paragraph (c)(1) requires that equipment must be depressured to a control device, fuel gas system, or back to the process until one of the conditions in paragraph (c)(1)(i) through (iv) is met. In reviewing these rule requirements, the EPA noted that we did not specify that the control device in (c)(1) must also meet the Group 1 miscellaneous process vent control device requirements in paragraph (a). The second sentence in section 63.643(a) could be misinterpreted to mean that a facility complying with the maintenance vent provisions in section 63.643(c) must only comply with the requirements in paragraph (c) and not the control requirements in paragraph (a) for the control device referenced by paragraph (c)(1). In omitting these requirements, we did not intend that the control requirement for maintenance vents prior to atmospheric release would not be compliant with Group 1 controls as specified in section 63.643(a). In order to clarify this intent, we proposed to amend paragraph section 63.643(c)(1) to include control device specifications equivalent to those in section 63.643(a).

What key comments were received on the provisions for the control requirements for maintenance vents?

We received one comment in support of this revision.

What is the EPA's final decision on the provisions for the control requirements for maintenance vents?

We are finalizing the amendment to § 63.643(c)(1) to include control device specifications equivalent to those in § 63.643(a), as proposed.

d. Additional Maintenance Vent Alternative for Equipment Blinding

What is the history of the maintenance vent alternative for equipment blinding addressed in the April 2018 Proposal?

We proposed a new alternative compliance option for the subset of maintenance vents subject to the provisions addressed at § 63.643(c)(v). The proposed alternative compliance option would apply to equipment that must be blinded to seal off hydrocarbon-containing streams prior to conducting maintenance activities.

What key comments were received on the maintenance vent alternative for equipment blinding?

We received two comments on the proposed amendment. One commenter expressed concern regarding the burden of the recordkeeping associated with this alternative compliance option. The second commenter asserted that the use of work practice standards for maintenance vents is illegal. As detailed in the comment summaries and responses included in the response to comment document for this final rule (Docket ID No. EPA–HQ–OAR–2010–0682), we were not persuaded to make changes to the proposed amendments.

What is the EPA's final decision on the maintenance vent alternative for equipment blinding?

We are finalizing the new alternative compliance option for the subset of maintenance vents subject to the requirements of § 63.643(c)(v) for which equipment blinding is necessary, as proposed.

e. Recordkeeping for Maintenance Vents on Equipment Containing Less Than 72 Pounds per Day (lbs/day) of Volatile Organic Compounds (VOC)

What is the history of the provisions regarding recordkeeping for maintenance vents on equipment containing less than 72 lbs/day of VOC provisions addressed in the April 2018 Proposal?

Under section 63.643(c) an owner or operator may designate a process vent as a maintenance vent if the vent is only used as a result of startup, shutdown, maintenance, or inspection of equipment where equipment is emptied, depressurized, degassed, or placed into service. The rule specifies that prior to venting a maintenance vent to the atmosphere, process liquids must be removed from the equipment as much as practical and the equipment must be depressured to a control device, fuel gas system, or back to the process until one of several conditions, as applicable, is met. One condition specifies that equipment containing less than 72 lbs/day of VOC can be depressured directly to the atmosphere provided that the mass of VOC in the equipment is determined and provided that refiners keep records of the process units or equipment associated with the maintenance vent and the date of each maintenance vent opening, and the estimate of the total quantity of VOC in the equipment at the time of vent opening. Therefore, each maintenance vent opening would be documented on an event-basis.

Industry petitioners noted that there are numerous routine maintenance activities, such as replacing sampling line tubing or replacing a pressure gauge, that involve potential releases of very small amounts of VOC, often less than 1 lb/day, that are well below the 72 lbs/day of VOC threshold provided in section 63.643(c)(1)(iii). They claimed that documenting each individual event is burdensome and unnecessary. As stated in the preamble to the April 2018 Proposal (83 FR 15463), the EPA agrees that documentation of each release from maintenance vents which serve equipment containing less than 72 lbs/day of VOC is not necessary provided there is a demonstration that the event is compliant with the requirement that the equipment contains less than 72 lbs/day of VOC. Therefore, we proposed to revise the event-specific recordkeeping requirements specific to maintenance vent openings in equipment containing less than 72 lbs/day of VOC to only require a record demonstrating that the total quantity of VOC in the equipment based on the type, size, and contents is less than 72 lbs/day of VOC at the time of the maintenance vent opening.

What key comments were received on the recordkeeping for maintenance vents on equipment containing less than 72 lbs/day of VOC provisions?

We received two comments on this proposed amendment. One commenter maintained that the event-specific recordkeeping requirements are too burdensome, while the other commenter maintained that the recordkeeping requirements are not adequate to assure compliance with the rule. As detailed in the comment summaries and responses included in the response to comment document for this final rule (Docket ID No. EPA–HQ–OAR–2010–0682), we concluded that the proposed amendment struck the right balance between requiring the necessary information needed to demonstrate and enforce compliance with the 72 lbs/day of VOC maintenance vent provision while reducing the recordkeeping and reporting burden with more detailed records.

What is the EPA's final decision on the recordkeeping for maintenance vents on equipment containing less than 72 lbs/day of VOC provisions?

We are finalizing these amendments as proposed.

f. Bypass Monitoring for Open-Ended Lines (OEL)

What is the history of the bypass monitoring provisions for OELs addressed in the April 2018 Proposal?

API and AFPM requested clarification of the bypass monitoring provisions in section 63.644(c) for OEL (Docket ID Nos. EPA–HQ–OAR–2010–0682–0892 and –0915). This provision excludes components subject to the Refinery MACT 1 equipment leak provisions in section 63.648 from the bypass monitoring requirement. Noting that the provisions in section 63.648 only apply to components in organic hazardous air pollutants (HAP) service (*i.e.,* greater than 5-weight percent HAP), API and AFPM asked whether the EPA also intended to exclude open-ended valves or lines that are in VOC service (less than 5-weight percent HAP) and are capped and plugged in compliance with the standards in NSPS subpart VV or VVa or the Hazardous Organic NESHAP (HON; 40 CFR part 63, subpart H) that are substantively equivalent to the Refinery MACT 1 equipment leak provisions in section 63.648. Commenters noted that OELs in conveyances carrying a Group 1 MPV could be in less than 5-weight percent HAP service, but could still be capped and plugged in accordance with another rule, such as NSPS subpart VV or VVa or the HON. As stated in the preamble to the proposed rule (83 FR 15464), the EPA agrees that, because the use of a cap, blind flange, plug, or second valve for an open-ended valve or line is sufficient to prevent a bypass, the Refinery MACT 1 bypass monitoring requirements in section 63.644(c) are redundant with NSPS subpart VV in these cases. Therefore, we proposed to amend section 63.644(c) to make clear that open-ended valves or lines that are capped and plugged sufficient to meet the standards in NSPS subpart VV at § 60.482–6(a)(2), (b), and (c), are not subject to the bypass monitoring in section 63.644(c).

What key comments were received on the bypass monitoring provisions for OELs?

Comment f.1: One commenter (–0958) expressed support for the addition of

the bypass monitoring option for capped or plugged OELs in section 63.644(c)(3). The commenter suggested that the EPA similarly amend section 63.660(i)(2) to provide this new monitoring alternative for vent systems handling Group 1 storage vessel vents. A different commenter (–0953) opposed this revision, stating that the EPA did not show or provide any evidence to support the statement that the monitoring requirements are ''redundant with NSPS subpart VV.'' The commenter recommended that the EPA require a compliance demonstration or otherwise demonstrate that the provisions are equivalent.

Response f.1: The December 2015 Rule bypass provisions require either a flow indicator or the use of a valve locked in a non-diverting position using a car-seal or lock and key. The general equipment leak provisions for OELs are installation of a plug, cap or secondary valve. Based on the effectiveness of this equipment work practice standard, continuous or periodic monitoring of these secondarily-sealed lines are not generally required. With the elimination of the exemption for discharges associated with maintenance activities and process upsets under the definition of ''periodically discharged'' in the December 2015 Rule, there are a number of process lines that are not traditional bypass lines and that were not previously considered an MPV or an MPV bypass, but now are. Many of these lines are small and not conducive to the installation of a car-seal or lock and key so they cannot comply with the current bypass provisions. Most of these small lines have been previously regulated via Refinery MACT 1's requirement to comply with the NSPS open-ended line provisions, which are an effective means to control emissions from these smaller lines. Because the existing equipment leak provisions for these types of OELs serve the same purpose and are more appropriate for these smaller lines, we determined that it is reasonable to provide for this method of compliance for these OELs.

What is the EPA's final decision on the bypass monitoring provisions for OELs?

We are finalizing this amendment as proposed. In response to comments received on the proposed rule, we are providing this new monitoring alternative for vent systems handling Group 1 storage vessel vents at section 63.660(i)(2) in the final rule.

g. Compliance Date Extension for Existing Maintenance Vents

What is the history of the compliance date extension for existing maintenance vents addressed in the July 2018 Proposal?

In the July 2018 Proposal, we proposed to amend the compliance date for maintenance vent provisions applicable to existing sources (*i.e.,* those constructed or reconstructed on or before June 30, 2014) promulgated at 40 CFR 63.643(c). The basis for this proposal was that sources needed additional time to follow the ''management of change'' process. We also noted that we had proposed substantive revisions to the maintenance vent requirements as part of the April 2018 Proposal.

What significant comments were received on the compliance date extension for existing maintenance vents?

Comment g.1: One commenter (–0968) stated that the proposed compliance extension is arbitrary and capricious because the EPA has not provided any evidence as to why refineries could not comply with the August 1, 2017, compliance date and why a revised compliance date of January 30, 2019, is as expeditious as practicable, as required by CAA section 112(i)(3)(A). The commenter noted that the EPA referred to the fact that some number of refinery owners and operators have applied for and received compliance extensions of up to one year from their permitting authorities pursuant to 40 CFR 63.6(i), but does not provide any evidence of these applications or subsequent state agency determinations in the rulemaking record. The commenter further noted that the EPA's failure to provide this information in the record for the rulemaking has inhibited the public's ability to provide fully informed comments, and as such, the EPA is in violation of the notice-and-comment and public participation requirements of CAA section 307(d). The commenter also disagreed with the EPA's statement in the preamble of the July 2018 Proposal that the source requests for an extension from the permitting authorities is demonstrative of refinery owners and operators acting on ''good faith efforts.'' Rather, the commenter asserted that the filing of these requests shows an avoidance of compliance with the rule.

The commenter stated that the proposed compliance extension is particularly harmful since the EPA has acknowledged that there are significant disproportionate impacts of refinery pollution to communities of color and low-income people. The commenter noted that the EPA has not supported the conclusion in the July 2018 Proposal that the extension of compliance would have an insignificant effect on emissions reductions. A separate commenter (–0971) concurred with the EPA's conclusions that the proposed compliance extension would have an insignificant effect on emissions reductions.

The commenter also stated that the EPA's reliance on regulatory uncertainty due to the April 2018 Proposal as part of the justification for the need for a compliance extension is at odds with the CAA's explicit prohibition on any delay or postponement of a final rule based on reconsideration (see CAA section 307(d)(7)(B)). The commenter further added that this provision only allows the EPA to stay a rule's effective date during reconsideration, not to postpone compliance, and only enables the EPA to do so for up to three months. Another commenter (–0971) expressed support for the proposed compliance extension for maintenance vents because of regulatory uncertainty since the EPA proposed amendments in April 2018 Proposal, but has not yet finalized those proposed amendments. The commenter stated that these revisions are critical to providing certainty as to what is required and to assure equipment may be isolated for maintenance under all expected maintenance situations. The commenter noted that maintenance vents are located across the refinery, and time will be needed to review procedures that would implement those revisions under refinery management of change processes, incorporate the changes into refinery compliance procedures and recordkeeping and reporting systems, and provide training to employees.

Response g.1: The EPA is not finalizing the extension of the compliance date as proposed in July 2018. However, in order to provide sources with time to understand the amended maintenance requirements, to determine which maintenance compliance option best meets their needs, and to come into compliance we are modifying the compliance date so that it is 30 days following the effective date of the final rule. Due to the variety of different types of maintenance vents and their ubiquitous nature, there has been some uncertainty as to how the maintenance vent requirements apply; whether the provisions, as promulgated, are appropriate for all types of vents; and the time needed to make the requisite modifications to ensure

compliance. The maintenance vent provisions in their current form were promulgated in the December 2015 Rule in order to replace a start-up, shutdown and malfunction (SSM) provision that was included in the original MACT standard. The EPA was replacing the SSM provisions because in *Sierra Club* v. *EPA,* [551 F.3d 1019 (D.C. Cir. 2008)], the D.C. Circuit determined that SSM provisions, similar to those included in the Refinery MACT were inconsistent with the requirements of the CAA. The EPA originally provided a compliance date as of the effective date of the December 2015 Rule (January 30, 2016), but subsequently extended that date to August 2017 based on information from refineries that they needed more time to comply. As previously noted, many refineries sought a further extension until August 2018 from state permitting authorities. Establishing a compliance date 30 days following promulgation of these revisions will allow refineries a modest amount of time to ensure any remaining maintenance vents not yet in compliance with the MACT, as modified through this final action, are in compliance.

With respect to the comments on the effect of emissions reductions relative to the July 2018 Proposal, we reached this conclusion based on several factors. First, maintenance events typically occur about once per year or less frequently for major equipment. Thus, during the proposed period of the compliance extension (approximately 6 months from the August 2018 compliance date that applied to most refineries due to extensions granted by state permitting authorities), some equipment would have no major events and other equipment, at most, should experience only one event. Second, facilities would still be required to comply with the general requirements to use good air pollution control practices during maintenance events. Many facility owners or operators already have standard procedures for emptying and degassing equipment. While these procedures are not as stringent as the MACT requirements for maintenance vents as adopted in the December 2015 Rule and as we had proposed in April 2018, they would provide some limit on emissions to the atmosphere. In a meeting with industry representatives, an example of the type of emissions occurring from maintenance vents was provided to the Agency (Docket ID No. EPA–HQ–OAR–2010–0682–0909). Based on that example, the Agency estimates that approximately 200 lbs of VOC would be released from purging 6 pieces of equipment containing pyrophoric catalyst when venting at 35 percent LEL rather than 10 percent LEL. Based on our previous analysis of impacts for risk and technology review revisions to Refinery MACT 1, we estimate approximately 10 percent of VOC emissions are HAP, so that we estimate on the order of approximately 3 pounds of HAP emissions ($0.1 \times 200/6$) would occur per major equipment venting event. The maintenance vent provisions as adopted in the December 2015 Rule were projected to reduce emissions of HAP by 5,200 tons per year (80 FR 75178, December 1, 2015). Therefore, based on the low expected emissions from each major equipment venting event, the expected limited occurrence of maintenance venting events, and the likelihood that many types of maintenance venting events are in compliance with the MACT, the compliance extension would have an insignificant effect on emissions.

What is the EPA's final decision on the compliance date extension for existing maintenance vents?

The EPA is not finalizing the compliance extension as proposed in the July 2018 Proposal. However, in order to provide sources with time to understand the amended maintenance requirements, to determine which maintenance compliance option best meets their needs, and to come into compliance, we are modifying the compliance date so that it is 30 days following the effective date of the final rule.[7]

3. Pressure Relief Device Provisions

a. Clarification of Requirements for PRD ''in organic HAP service''

What is the history of the requirements for PRD ''in organic HAP service'' addressed in the April 2018 Proposal?

The introductory text for the equipment leak provisions for PRD in section 63.648(j) requires compliance with no detectable emission provisions for PRD ''in organic HAP gas or vapor service'' and the pressure release management requirements for PRD ''for all pressure relief devices.'' However, the pressure release management requirements for PRD in section 63.648(j)(3) are applicable only to PRD ''in organic HAP service.'' There are five specific provisions within the pressure release management requirements for PRD listed in paragraphs 63.648(j)(3)(i) through (v). In the first four paragraphs, the phrase ''each [or any] affected pressure relief device'' is used, but this phrase is missing in the fifth paragraph. API and AFPM requested that we clarify whether releases listed in section 63.648(j)(3)(v) are limited to PRDs ''in organic HAP service.'' Consistent with the requirements in section 63.648(j)(3)(i) through (iv) and the Agency's intent when promulgating the provisions in section 63.648(j)(3), we proposed to add the phrase, ''affected pressure relief device'' to section 63.648(j)(3)(v). We also proposed to amend the introductory text in paragraph (j) to add the phrase, ''in organic HAP service'' at the end of the last sentence to further clarify that the pressure release management requirements for PRD in section 63.648(j)(3) are applicable to ''all pressure relief devices in organic HAP service.''

What key comments were received on the requirements for PRD ''in organic HAP service''?

We did not receive any public comments on these proposed amendments.

What is the EPA's final decision on the requirements for PRD ''in organic HAP service''?

We are finalizing these amendments as proposed.

b. Redundant Release Prevention Measures in 40 CFR 63.648(j)(3)(ii)

What is the history of the requirements for redundant release prevention measures addressed in the April 2018 Proposal?

Section 63.648(j)(3)(ii) lists options for three redundant release prevention measures that must be applied to affected PRDs. The prevention measures in paragraph (j)(3)(ii) include: (A) Flow, temperature, level, and pressure indicators with deadman switches, monitors, or automatic actuators; (B) documented routine inspection and maintenance programs and/or operator training (maintenance programs and operator training may count as only one redundant prevention measure); (C) inherently safer designs or safety instrumentation systems; (D) deluge systems; and (E) staged relief system where initial pressure relief valves (with lower set release pressure) discharges to a flare or other closed vent system and control device. In their petition for reconsideration (Docket ID No. EPA–HQ–OAR–2010–0682–0892), API and AFPM requested clarification as to whether two prevention measures can be selected from the list in § 63.648(j)(3)(ii)(A). API and AFPM noted that the rule does not state that the measures in paragraph (j)(3)(ii)(A)

[7] Cf. 5 U.S.C. 553(d) providing a 30-day period prior to a rule taking effect.

are to be considered a single prevention measure. The Agency grouped the measures listed in subparagraph A together because of similarities they have; however, they can be separate measures. Therefore, as the EPA explains in the preamble to the April 2018 Proposal (83 FR 15464), if these measures operate independently, they are considered two separate redundant prevention measures.

What key comments were received on the requirements for redundant release prevention measures?

We did not receive any public comments on this proposed amendment.

What is the EPA's final decision on the requirements for redundant release prevention measures?

We are finalizing the amendment to § 63.648(j)(3)(ii)(A), which clarifies that independent, non-duplicative systems count as separate redundant prevention measures, as proposed.

c. Pilot-Operated PRD and Balanced Bellows PRD

What is the history of the provisions for pilot-operated PRD and balanced bellows PRD addressed in the April 2018 Proposal?

In a letter dated March 28, 2017, API and AFPM requested clarification on whether pilot-operated PRDs are required to comply with the pressure release management provisions of section 63.648(j)(1) through (3). Based on our understanding of pilot-operated PRD (see memorandum, ''Pilot- operated PRD,'' in Docket ID No. EPA–HQ–OAR–2010–0682) and balanced bellows PRD, we proposed that pilot-operated and balanced bellows PRD are subject to the requirements in section 63.648(j)(1) and (2), but are not subject to the requirements in section 63.648(j)(3) because the primary releases from these PRD are vented to a control device. We also proposed to amend the reporting requirements in section 63.655(g)(10) and the recordkeeping requirements in section 63.655(i)(11) to retain the requirements to report and keep records of each release to the atmosphere through the pilot vent that exceeds 72 lbs/day of VOC, including the duration of the pressure release through the pilot vent and the estimate of the mass quantity of each organic HAP release.

What key comments were received on the provisions for pilot-operated PRD and balanced bellows PRD?

We received one public comment on this proposed amendment. The commenter was generally opposed to the addition of balanced bellows and pilot-operated PRD to the work practice standard requirements for PRD. The comment and the EPA's response are available in the response to comments document for this rulemaking (Docket ID No. EPA–HQ–OAR–2010–0682).

What is the EPA's final decision on the provisions for pilot-operated PRD and balanced bellows PRD?

We are finalizing these amendments as proposed.

4. Delayed Coking Unit Decoking Operation Provisions

What is the history of the delayed coking unit decoking operation provisions addressed in the April 2018 Proposal?

The provisions in 40 CFR 63.657(a) require owners or operators of DCU to depressure each coke drum to a closed blowdown system until the coke drum vessel pressure or temperature meets the applicable limits specified in the rule (2 psig or 220 degrees Fahrenheit for existing sources). Special provisions are provided in 40 CFR 63.657(e) and (f) for DCU using ''water overflow'' or ''double-quench'' method of cooling, respectively. According to 40 CFR 63.657(e), the owner or operator of a DCU using the ''water overflow'' method of coke cooling must hardpipe the overflow water (*i.e.,* via an overhead line) or otherwise prevent exposure of the overflow water to the atmosphere when transferring the overflow water to the overflow water storage tank whenever the coke drum vessel temperature exceeds 220 degrees Fahrenheit. The provision in 40 CFR 63.657(e) also provides that the overflow water storage tank may be an open or fixed-roof tank provided that a submerged fill pipe (pipe outlet below existing liquid level in the tank) is used to transfer overflow water to the tank.

In the October 18, 2016, reconsideration proposal, we opened the provisions in 40 CFR 63.657(e) for public comment, but we did not propose to amend the requirements. In response to the October 18, 2016, reconsideration proposal, we received several comments regarding the provisions in 40 CFR 63.657(e) for DCU using the water overflow method of coke cooling. Based on these comments, in the April 2018 Proposal we proposed amendments to the water overflow requirements in 40 CFR 63.657(e) to clarify that an owner or operator of a DCU with a water overflow design does not need to comply with the provisions in 40 CFR 63.657(e) if they comply with the primary pressure or temperature limits in 40 CFR 63.657(a) prior to overflowing any water. We also proposed to add a requirement to use a separator or disengaging device when using the water overflow method of cooling to prevent entrainment of gases from the coke drum vessel to the overflow water storage tank and we proposed that gases from the separator must be routed to a closed vent blowdown system or otherwise controlled following the requirements for a Group 1 miscellaneous process vent. As separators appear to be an integral part of the water overflow system design, we did not project any capital investment or additional operating costs associated with this proposed amendment.

What key comments were received on the delayed coking unit decoking operation provisions?

The following is a summary of the key comments received in response to our April 2018 Proposal and our responses to these comments. Detailed public comments and the EPA responses are included in the response to comments document for this final action (Docket ID EPA–HQ–OAR–2010–0682).

Comment 1: Industry commenters (–0955, –0958) stated that the proposed amendment to require DCU using the water overflow compliance option to have a disengaging device is unsupported by the record for the proposed rule and was not included in the Information Collection Request (ICR) or MACT floor analysis supporting the December 2015 Rule. The commenters noted that the EPA has not determined how many DCU use the water overflow method of coke cooling or how many will require the installation of a disengaging device, instead basing the provisions on a report by one facility using such a device. The same commenters stated that the EPA has not quantified the expected emission reductions associated with the proposed amendment to require DCU using the water overflow compliance option to have a disengaging device. One of the commenters (–0955) maintained that the emissions from the overflow water are small and sufficiently controlled via the submerged fill requirement. This commenter provided various analyses to support their contention that the emissions from their overflow water are small, including results of facility-specific industrial hygiene monitoring programs, which the commenter claims have shown that operators exposures to benzene are ''orders of magnitude below the Occupational Safety and Health Administration (OSHA) exposure limit of 1.0 parts per million (ppm), at 0.003 ppm (300 parts per billion (ppb)) and

less.'' Both of these commenters also asserted that the EPA should not finalize the proposed amendment to require DCU using the water overflow compliance option to have a disengaging device.

Another commenter (–0953) asserted that the EPA did not provide any quantitative assessment of emissions from water overflow DCU compared to the primary MACT standard in order to demonstrate that the water overflow is at least as stringent as the MACT floor requirement (no draining or venting until the pressure in the drum is at or below 2 psig). According to the commenter, without this direct supporting analysis, the EPA's inclusion of the water overflow provision is arbitrary and capricious. The commenter recommended that the water overflow provisions not be finalized or that additional control requirements be placed on the storage tank receiving the water overflow. Specifically, the commenter recommended that the rule require these tanks to be vented to a control device that achieves 98-percent destruction efficiency or better. Alternatively, the commenter recommended that the EPA develop minimum requirements for the liquid height and volume of water in the receiving tank and a maximum limit on the temperature of the water in the tank. The commenter also recommended that the EPA set restrictions on the re-use of the overflow water without prior additional treatment to remove organic contaminants.

Two commenters (–0955, –0958) stated that, if the requirement to use a disengaging device is finalized, the EPA should provide a compliance date 3 years after the effective date of the rule, as provided under CAA section 112(i)(3)(A), due to the expected expense and timing needed for equipment installation to comply with this requirement. One commenter (–0955) described the specific steps required for a DCU system not equipped with a disengaging device to comply with the proposed rule including: Design, engineering, permit application submission and permit receipt, and installation, estimating it will take between 24–36 months to complete.

Response 1: We agree that we did not include the water overflow provisions in the MACT floor analysis supporting the December 2015 Rule. The MACT floor analysis resulted in a determination that emissions from the DCU must be controlled (no atmospheric venting, draining or deheading of the coke drum) until the coke drum vessel pressure is at or below 2 psig is the MACT floor. In developing an alternative compliance method, such as the DCU water overflow provisions, we are only required to ensure that the alternative being provided is at least as stringent (achieves the same or lower emissions) as the established MACT floor.

We disagree that the record does not support the proposal. In comments received on the June 30, 2014, proposed risk and technology review ''Sector Rule,'' Phillips 66 requested special provisions for water overflow (see Docket ID No. EPA–HQ–OAR–0682–0614). Further, we understood from background meetings that there are two main suppliers of DCU technology, one of which took over the ConocoPhillips technology licenses (see Docket ID No. EPA–HQ–OAR–2010–0682–0216). As Phillips 66 was an initial developer of the technology, we surmised that the DCU designed for water overflow were likely all based on the Phillips 66 design. They also noted in their comments that they operated two units with water overflow design. While the ICR supporting the December 2015 Rule did not specifically ask about the water overflow method of cooling, we did ask the height of the drum and the height of the water in the drum prior to first draining. Three DCU were reported to have water height when first draining equal to the drum height and two DCU were reported to have water height greater than the drum height. From these data, we estimated that 2 to 5 DCU used the water overflow method of cooling. We understood that Phillips 66 likely operated most of the DCU designed to use the water overflow method of cooling. Therefore, when Phillips 66 provided a water overflow DCU design that included a water-vapor disengaging drum, we expected all water overflow DCU had this design. In subsequent meetings with API and AFPM, we discussed our findings and our intention to add a requirement for a vapor disengaging drum (see Docket ID No. EPA–HQ–OAR–2010–0682–0910 and –0911). These records clearly show we carefully considered this proposed requirement and we informed industry representatives from API, AFPM, and some individual refinery representatives of our conclusions prior to the proposal.

We agree that the EPA has not provided a quantitative assessment of the emissions from the DCU when using water overflow. Rather, for the December 2015 Rule, we relied on a qualitative assessment because the precise mechanism of the emissions from the DCU is not well understood. This qualitative analysis did not consider the entrainment of gases in the overflow water or the need for the use of a disengaging drum. To support this final action, we estimated, to the best of our ability, the emissions from a typical DCU using water overflow method of cooling for units using a vapor disengaging device and one with no vapor disengaging device and compared them with the emissions projected for a DCU using conventional method of cooling complying with the 2 psig MACT standard. We found that the emissions from a DCU using water overflow method of cooling and a vapor disengaging device had emissions significantly less than a conventional DCU complying with the 2 psig standard. We also found that the emissions from a DCU using the water overflow method of cooling without a vapor disengaging device could have emissions exceeding those for a conventional DCU complying with the 2 psig pressure limit (see memorandum entitled ''Estimating Emissions from Delayed Coking Units Using the Water Overflow Method of Cooling'' in Docket ID No. EPA–HQ–OAR–2010–0682). Our emission estimates are higher than the emissions estimated by the commenter because their analyses did not consider entrained gases in the overflow water. In a follow-up meeting with this commenter, we learned that the concentration monitored near the overflow water tank was 0.3 ppm benzene (consistent with the value of 300 ppb). This concentration, while below the OSHA exposure limit of 1 ppm, is not ''orders of magnitude below'' the OSHA exposure limit and provides strong evidence that emissions near the water overflow tank are higher than would be projected based on their analysis submitted during the comment period.

Based on our analysis, we find that the water overflow method of cooling alternative achieves greater emission reductions than the primary 2 psig pressure limit when a vapor disengaging device is used for the overflow water prior to the water storage tank. Because emissions without the disengaging device in the case where the receiving tank is not vented to a control device can exceed that of a conventional DCU complying with the 2 psig pressure limit, we conclude that it is necessary for the alternative compliance method to require use of a disengaging device unless the receiving tank is vented to a control device.

Although cost consideration is not relevant for determining MACT, we disagree that the EPA did not consider the expense of installing a disengaging device. As part of the cost estimates for the DCU MACT requirements established in the December 2015 Rule,

80 FR 75226, we considered compliance costs for every DCU that did not already meet the 2 psig pressure limit. Because we already considered compliance costs in our burden estimates for the December 2015 Rule, there was no basis for assuming that compliance with the alternative standard proposed here would result in additional or otherwise different compliance costs and to do so would result in double-counting the compliance costs.

With respect to the commenter requesting additional controls on the tank receiving the water overflow, our analysis supports the conclusion that the main source of emissions from the water overflow systems is entrained vapors in the overflow water. We agree that venting the receiving tank to a control device is a reasonable alternative to using a disengaging device and we have added this as an alternative compliance option for DCU using the water overflow method of cooling. However, venting the receiving tank to a control device when a vapor disengaging device is already used is unnecessary and redundant. We agree that adding certain limitations on overflow water temperature, receiving tank water volume and temperature can help to reduce emissions when a vapor disengaging device is not used, but we do not believe adding these limitations will make water overflow without a vapor disengaging device equivalent to the primary 2 psig emission limitation. Based on our analysis, we find that the use of a disengaging device with submerged fill requirement is as stringent as the MACT floor and that additional restrictions on the receiving storage vessel for these DCU are not necessary to comply with MACT.

Finally, regarding the compliance date, we agree that it will take time to design, procure, and install a disengaging drum for those DCU using water overflow and that do not currently have a disengaging drum. Similarly, venting the receiving tank to a control device as an alternative to using a disengaging device will also require time to design and retrofit the tank with a fixed roof and closed vent system to control. We originally provided a 3-year compliance schedule due to the design, engineering, and equipment installation that could be required to meet the emission limitations for DCU in the December 2015 Rule. As the December 2015 Rule did not require a vapor disengaging drum or controlled tank and similar enhancements in the enclosed blowdown system will be needed for facilities to comply with the April 2018 Proposal, we are providing a limited compliance extension, of 2 years from the effective date of this final rule that alters the work practice standard by establishing the vapor disengaging drum requirement. This extension will only be afforded for DCU that use the water overflow method of cooling without adequate systems for a vapor disengaging device or controlled tank, which we consider to be as expeditious as practicable based on comments received on the April 2018 Proposal. We are also including operational requirements on the water overflow system for these DCU in the interim to minimize emissions to the greatest extent possible as requested by one of the commenters. These operational limits will not require any additional equipment, so implementation can occur immediately. We do not expect that these operational limits are sufficient to ensure that emissions from these units will be less than conventional DCU complying with the 2 psig standard at all times, but they will help to ensure emissions are not unrestricted in this interim period. We also note that pursuant to the provisions in § 63.6(i), which are generally applicable, refinery owners or operators may seek compliance extensions on a case-by-case basis if necessary.

What is the EPA's final decision on the delayed coking unit decoking operation provisions?

We are finalizing the requirement for DCU using the water overflow provisions in section 63.657(e) to use a separator or disengaging device to prevent entrainment of gases in the cooling water. In response to comments, we are providing a limited compliance extension, of 2 years from the effective date of this final rule, only for DCU that use the water overflow method of cooling that document the need to design, procure, and install a disengaging device, which we consider to be as expeditious as practicable based on comments received on the April 2018 Proposal. We are providing operational restrictions on these DCU in the interim to minimize emissions to the greatest extent possible. Finally, in response to comments, we are including, as an alternative to the use of a vapor disengaging drum, requirements to discharge the overflow water to a storage vessel vented to a control device (*i.e.,* a vessel meeting the requirements for storage vessels in 40 CFR part 63, subpart SS).

5. Fenceline Monitoring Provisions

What is the history of the fenceline monitoring provisions addressed in the April 2018 Proposal?

We proposed several amendments to the fenceline monitoring provisions in Refinery MACT 1. Many of the proposed revisions to the fenceline monitoring provisions are related to requirements for reporting monitoring data.

The December 2015 Rule included new EPA Methods 325A and B specifying monitor siting and quantitative sample analysis procedures. Method 325A requires an additional monitor be placed near known VOC emission sources if the VOC emissions source is located within 50 meters of the monitoring perimeter and the source is between two monitors. In the April 2018 Proposal, we proposed an alternative to the additional monitor siting requirements if the only known VOC emission sources within 50 meters of the monitoring perimeter between two monitors are pumps, valves, connectors, sampling connections, and open-ended line sources. The proposed alternative requires that these sources be actively monitored monthly using audio, visual, or olfactory means and quarterly using Method 21 or the AWP for equipment leaks.

In addition, we proposed to revise the quarterly reporting requirements in section 63.655(h)(8) to specify that it means calendar year quarters (*i.e.,* Quarter 1 is from January 1 to March 31; Quarter 2 is from April 1 through June 30; Quarter 3 is from July 1 through September 30; and Quarter 4 is from October 1 through December 31) rather than being tied to the date compliance monitoring began.

We also proposed to require one field blank per sampling period rather than two as currently required. Similarly, we proposed to decrease the number of duplicate samples that must be collected each sampling period. Instead of requiring a duplicate sample for every 10 monitoring locations, we proposed that facilities with 19 or fewer monitoring locations be required to collect one duplicate sample per sampling period and facilities with 20 or more sampling locations be required to collect two duplicate samples per sampling period. We also proposed to require that duplicate samples be averaged together to determine the sampling location's benzene concentration for the purposes of calculating the benzene concentration difference (Δc).

Consistent with the requirements in section 63.658(k) for requesting an alternative test method for collecting

and/or analyzing samples, we also proposed to revise the Table 6 entry for section 63.7(f) to indicate that section 63.7(f) applies except that alternatives directly specified in 40 CFR part 63, subpart CC, do not require additional notification to the Administrator or the approval of the Administrator.

What key comments were received on the fenceline monitoring provisions?

We received minor comments on these proposed revisions. The comment summaries and the EPA responses are available in the response to comments document for this final rule (Docket ID No. EPA–HQ–OAR–2010–0682).

What is the EPA's final decision on the fenceline monitoring provisions?

The proposed revisions to the fenceline monitoring requirements, as described above, are being finalized as proposed with one minor change. In the April 2018 proposal, § 63.655(h)(8)(viii) specified that CEDRI would calculate the biweekly concentration difference (Δc) for benzene for each sampling period and the annual average Δc for benzene for each sampling period. However, in order to accurately reflect CEDRI's current configuration, we are finalizing § 63.655(h)(8)(viii) to require the reporter to calculate and report the values of the biweekly and annual average Δc for benzene.

6. Storage Vessel Provisions

What is the history of the storage vessel provisions addressed in the April 2018 Proposal?

We received comments from API and AFPM in their February 1, 2016, petition for reconsideration regarding the incorporation of 40 CFR part 63, subpart WW, storage vessel provisions and 40 CFR part 63, subpart SS, closed vent systems and control device provisions into Refinery MACT 1 requirements for Group 1 storage vessels at 40 CFR 63.660. The pre-amended version of the Refinery MACT 1 rule specified (by cross reference at 40 CFR 63.646) that storage vessels containing liquids with a vapor pressure of 76.6 kilopascals (approximately 11 pounds per square inch (psi)) or greater must be vented to a closed vent system or to a control device consistent with the requirements in section 63.119 of the HON. API and AFPM pointed out that the EPA did not retain this provision at 40 CFR 63.660 in the December 2015 Rule. We agree that the language was inadvertently omitted. We did not intend to deviate from the longstanding requirement limiting the vapor pressure of material that can be stored in a floating roof tank. Therefore, we proposed to revise the introductory text in 40 CFR 63.660 to clarify that owners or operators of affected Group 1 storage vessels storing liquids with a maximum true vapor pressure less than 76.6 kilopascals (11.0 psi) can comply with either the requirements in 40 CFR part 63, subpart WW or SS, and that owners or operators storing liquids with a maximum true vapor pressure greater than or equal to 76.6 kilopascals (11.0 psi) must comply with the requirements in 40 CFR part 63, subpart SS.

We also received comments from API and AFPM in their February 1, 2016, petition for reconsideration regarding provisions in section 63.660(b). Section 63.660(b)(1) allows Group 1 storage vessels to comply with alternatives to those specified in section 63.1063(a)(2) of subpart WW. Section 63.660(b)(2) specifies additional controls for ladders having at least one slotted leg. The petitioners explained that section 63.1063(a)(2)(ix) provides extended compliance time for these controls, but that it is unclear whether this additional compliance time extends to the use of the alternatives to comply with section 63.660(b). We proposed language to clarify that the additional compliance time specified in the alternative included at section 63.1063(a)(2) applies to the implementation of controls in section 63.660(b).

We also proposed language to clarify at section 63.660(e) that the initial inspection requirements that apply with initial filling of the storage vessels are not required again if a vessel transitions from the existing source requirements in section 63.646 to new source requirements in section 63.660.

The following is a summary of the comment received in response to our April 2018 Proposal and our response to this comment. We did not receive any other comments related to the proposed amendments for storage vessels.

What comment was received on the storage vessel provisions?

Comment 1: One commenter (–0958) claims that the EPA proposed revisions to the introductory paragraph of section 63.660 to allow certain storage vessels to comply with alternative requirements is not an acceptable control measure. The commenter states that the proposed revisions included 11.0 psia as parenthetical equivalent to the 76.6 kPa threshold. The commenter recommended that the EPA revise the 11.0 psia to 11.1 psia as this represents a more accurate conversion and consistency with historical regulations.

Response 1: Upon reviewing this issue, we agree with the commenter that 11.1 psia is the correct value to use when converting 76.6 kilopascals to psia and we are revising the proposed language to use 11.1 psia rather than 11.0 psia in this introductory paragraph.

What is the EPA's final decision on the storage vessel provisions?

After considering public comments on the proposed amendments, the EPA is finalizing the amendment to the introductory text in 40 CFR 63.660 with a change from 11.0 psia to 11.1 psia. We are finalizing the amendments to section 63.660(b) and section 63.660(e) as proposed.

7. Flare Control Device Provisions

What is the history of the flare control device provisions addressed in the April 2018 Proposal?

API and AFPM requested clarification in a December 1, 2016, letter to the EPA (Docket ID No. EPA–HQ–OAR–2010–0682–0913) regarding assist steam line designs that entrain air into the lower or upper steam at the flare tip. The industry representatives noted that many of the steam-assisted flare lines have this type of air entrainment and likely were part of the dataset analyzed to develop the standards established in the December 2015 Rule for steam-assisted flares. API and AFPM, therefore, maintain that these flares should not be considered to have assist air, and that they are appropriately and adequately regulated under the final standards in the December 2015 Rule for steam-assisted flares. Because flares with assist air are required to comply with both a combustion zone net heating value (NHV_{cz}) and a net heating value dilution parameter (NHV_{dil}), there is increased burden in having to comply with two operating parameters, and API and AFPM contend that this burden is unnecessary.

In the preamble to the April 2018 Proposal, we stated that air intentionally entrained through steam nozzles meets the definition of assist air. However, we also noted that if this is the only assist air introduced prior to or at the flare tip, it is reasonable in most cases for the owner or operator to only need to comply with the NHV_{cz} operating limit. We also noted that, for flare tips with an effective tip diameter of 9 inches or more, there are no flare tip steam induction designs that can entrain enough assist air to cause a flare operator to have a deviation of the NHV_{dil} operating limit without first deviating from the NHV_{cz} operating limit. Therefore, we proposed in section 63.670(f)(1) to allow owners or operators of flares whose only assist air is from perimeter assist air entrained in lower

and upper steam at the flare tip and with a flare tip diameter of 9 inches or greater to comply only with the NHV_{cz} operating limit. Steam-assisted flares with perimeter assist air and an effective tip diameter of less than 9 inches would remain subject to the requirement to account for the amount of assist air intentionally entrained within the calculation of NHV_{dil}. We further proposed to add provisions to section 63.670(i)(6) specifying that owners or operators of these smaller diameter steam-assisted flares use the steam flow rate and the maximum design air-to-steam ratio of the steam tube's air entrainment system for determining the flow rate of this assist air.

We also proposed several clarifying amendments for flares in response to API and AFPM's February 1, 2016, petition for reconsideration (Docket ID No. EPA–HQ–OAR–2010–0682–0892) as outlined below.

- For air assisted flares, we proposed to amend section 63.670(i)(5) to include provisions for continuously monitoring fan speed or power and using fan curves for determining assist air flow rates to clarify that this is an acceptable method of determining air flow rates.
- We proposed two amendments relative to the visible emissions monitoring requirements in section 63.670(h) and (h)(1). We proposed to clarify that the initial 2-hour visible emission demonstration should be conducted the first time regulated materials are routed to the flare. We also proposed to amend section 63.670(h)(1) to clarify that the daily 5-minute observations must only be conducted on days the flare receives regulated materials and that the additional visible emissions monitoring is specific to cases when visible emissions are observed while regulated material is routed to the flare.
- We proposed to amend section 63.670(o)(1)(iii)(B) to clarify that the owner or operator must establish the smokeless capacity of the flare in a 15-minute block average and to amend section 63.670(o)(3)(i) to clarify that the exceedance of the smokeless capacity of the flare is based on a 15-minute block average.

What comments were received on the flare control device provisions?

The following is a summary of one comment received in response to our April 2018 Proposal and our response to this comment. All other comments related to the proposed amendments for the flare provisions are included in the response to comments document for this final action (Docket ID No. EPA–HQ–2010–0682).

Comment 1: One commenter (–0958) explained that assist air may only be entrained in upper steam. Thus, they requested that the proposed revision to section 63.670(f)(1) and section 63.670(i)(6) be changed from ''lower and upper'' to ''lower and/or upper.'' The commenter also requested that the EPA clarify that the tip diameter referenced in section 63.670(i)(6) is the effective diameter as defined in section 63.670(n)(1) and section 63.670(k)(1). Finally, the commenter requested that the EPA clarify that section 63.670(i)(6) applies to flares with an effective diameter less than 9 inches and stated that perimeter air monitoring for a steam-assisted flare with an effective diameter equal to or greater than 9 inches is not required.

Response 1: We did not mean to limit the air entrainment provisions to only instances where air is entrained in both lower and upper steam at the flare tip. We agree that the language ''lower and/or upper steam'' is more accurate and consistent with our intent. We also agree that we should refer to the ''effective diameter'' of the flare tip as defined in the equation for NHV_{dil} in section 63.670(n)(1). This clarification was made in section 63.670(f)(1); this term is not used in section 63.670(i)(6).

What is the EPA's final decision on the flare control device provisions?

After considering the comments, we are finalizing the proposed amendment in section 63.670(f)(1) and section 63.670(i)(6) with a change in language from ''lower and upper'' to ''lower and/or upper.'' We are also finalizing the proposed amendment in section 63.670(f)(1) with a change in language from ''flare tip diameter'' to ''effective diameter,'' a term that is defined in section 63.670(n)(1) and section 63.670(k)(1). The proposed clarifying amendments related to air assisted flares, visible emissions monitoring requirements, and smokeless capacity of the flare are being finalized as proposed.

8. Recordkeeping and Reporting Provisions

What is the history of the recordkeeping and reporting provisions addressed in the April 2018 Proposal?

We proposed several clarifying amendments for recordkeeping and reporting requirements in response to questions received from API and AFPM as well as in response to API and AFPM's March 28, 2017, letter (Docket ID No. EPA–HQ–OAR–2010–0682–0915).

Refinery owners or operators must submit a NOCS with 150 days of the compliance date associated with the provisions in the December 2015 Rule. We proposed to amend sections 63.655(f) and (f)(6) to provide that sources having a compliance date on or after February 1, 2016, may submit the NOCS in the periodic report rather than as a separate submission.

We proposed several amendments for electronic reporting requirements at sections 63.655(f)(1)(i)(B)(3) and (C)(2), (f)(1)(iii), (f)(2), and (f)(4) to clarify that when the results of performance tests or evaluations are reported in the NOCS, the results are due by the date the NOCS is due, whether the results are reported via Compliance and Emissions Data Reporting Interface (CEDRI) or in hard copy as part of the NOCS report. If the results are reported via CEDRI, we also proposed to specify that sources need not resubmit those results in the NOCS, but may instead submit specified information identifying that a performance test or evaluation was conducted and the units and pollutants that were tested. We also proposed to add the phrase ''Unless otherwise specified by this subpart'' to sections 63.655(h)(9)(i) and (ii) to make clear that test results associated with a NOCS report are due at the time the NOCS is due and not within 60 days of completing the performance test or evaluation. We also proposed to amend several references in Table 6—General Provisions Applicability to Subpart CC that discuss reporting requirements for performance tests or performance evaluations.

We proposed to revise the provision in section 63.655(h)(10) to include processes to assert claims of EPA system outage or *force majeure* events as a basis for extending the electronic reporting deadlines.

We also proposed to revise section 63.655(i)(5) to restore the subparagraphs which were inadvertently not included in the published CFR due to a clerical error.

The amendments to section 63.655(h)(5)(iii) included in the December 2015 Rule (80 FR 75247) were not included in the regulations as published by the CFR. As reflected in the instructions to the amendments, we intended for the option to use an automated data compression recording system to be an approved monitoring alternative. In addition, in reviewing this amendment, the EPA noted that 40 CFR 63.655(h)(5) specifically addresses mechanisms for owners or operators to request approval for alternatives to the continuous operating parameter monitoring and recordkeeping provisions, while the provisions in 40 CFR 63.655(i)(3) specifically include

options already approved for continuous parameter monitoring system (CPMS). Consistent with our intent for the use of an automated data compression recording system to be an approved monitoring alternative, we proposed to move paragraph 63.655(h)(5)(iii) to 63.655(i)(3)(ii)(C).

Finally, we proposed a number of editorial and other corrections in Table 2 of the April 2018 Proposal (83 FR 15470).

What significant comments were received on the recordkeeping and reporting provisions?

The following is a summary of the significant comments received in response to our April 2018 Proposal and our response to these comments. All other comments related to the proposed amendments for the recordkeeping and reporting provisions are included in the response to comments document for this final action (Docket ID No. EPA–HQ–2010–0682).

Comment 1: One commenter (–0958) objected to the proposed revisions to section 63.655(f) and section 63.655(f)(6) which require facilities to include their NOCS in the periodic report following the compliance activity. The commenter suggested that the EPA revert to the 150-day NOCS submission requirements as was included in the December 2015 Rule amendments for the sources listed in Table 11 of 40 CFR part 63, subpart CC, which have a compliance date on or after February 1, 2016. The commenter explained that for petroleum refinery owners and operators completing compliance activities requiring an NOCS in the latter half of the periodic reporting period, as little as 60 days could be provided to perform the test and generate the submission in order to include it in the periodic report.

Response 1: The proposed revisions were specifically included to address the commenter's original request to align the new compliance notifications with the semiannual periodic reports to reduce burden. As the commenter has withdrawn the request for these revisions, we are not finalizing these proposed revisions.

Comment 2: One commenter (–0958) supported the proposed revision allowing petroleum refinery owners and operators to request an extension for reporting under specified circumstances. One such circumstance is if the EPA's electronic reporting systems is out-of-service in the five business days prior to the report due date. Proposed revisions in section 63.655(h)(10)(i) and section 63.1575(l)(1) require the extension request to include the date, time, and length of the electronic reporting system outage. The commenter requested that the EPA remove these details from the requirements for the extension request as this is information the EPA, rather than the reporter, keeps. The commenter suggested that the EPA could require reporters to identify the dates on which they attempted to access the system in the 5-day period preceding the reporting due date.

Response 2: We agree with the commenter. While users may know the length of time for a planned outage, as this information is provided to users, it is unlikely that a user will know the length of time for an unplanned outage. However, users will know the dates and times that they attempted but were unable to access the system. Therefore, we have revised the language in section 63.655(h)(10)(i) and section 63.1575(l)(1) to state that owner or operators must provide information on the date(s) and time(s) the Central Data Exchange (CDX) or the CEDRI was unavailable when the user attempted to access it in the 5 business days prior to the submission deadline.

What is the EPA's final decision on the recordkeeping and reporting provisions?

In response to the public comments received, we are not finalizing the proposed amendments to section 63.655(f) and section 63.655(f)(6) which require facilities to include their NOCS in the periodic report following the compliance activity.

Also in response to the public comments received, we are finalizing the proposed amendment to section 63.655(h)(10) with changes. In the final rule, a refinery owner or operator's request for an extension must include information on the date(s) and time(s) the CDX or the CEDRI was unavailable when the user attempted to access it in the 5 business days prior to the submission deadline, rather than requiring information regarding the length of the outage.

We are finalizing the amendments to the electric reporting requirements in sections 63.655(f)(1)(i)(B)(3) and (C)(2), (f)(1)(iii), (f)(2), and (f)(4), sections 63.655(h)(9)(i) and (ii), and Table 6—General Provisions Applicability to 40 CFR part 63, subpart CC, as proposed.

We are finalizing the restoration of paragraph 63.655(i)(5), as proposed. We are also finalizing moving paragraph 63.655(h)(5)(iii) to 63.655(i)(3)(ii)(C), as proposed. We are also finalizing the editorial and other corrections in Table 2 of the April 2018 Proposal (83 FR 15470), as proposed.

B. Clarifications and Technical Corrections to Refinery MACT 2

1. FCCU Provisions

What is the history of the FCCU provisions addressed in the April 2018 Proposal?

In order to demonstrate compliance with the alternative particulate matter (PM) standard for FCCU as provided at section 63.1564(a)(5)(ii), the outlet (exhaust) gas flow rate of the catalyst regenerator must be determined. As provided in section 63.1573(a), owners or operators may determine this flow rate using a flow CPMS or an alternative. Currently, the language in section 63.1573(a) restricts the use of the alternative to occasions when ''the unit does not introduce any other gas streams into the catalyst regenerator vent.'' API and AFPM (Docket ID No. EPA–HQ–OAR–2010–0682–0915) claim that while this restriction is appropriate for determining the flow rate for applying emissions limitations downstream of the regenerator because additional gases introduced to the vent would not be measured using this method, it is not a necessary constraint for determining compliance with the alternative PM limit. This is because the alternative PM standard applies at the outlet of the regenerator prior to the primary cyclone inlet and this is the flow measured by the alternative in section 63.1573(a). As described in the preamble of the April 2018 Proposal (83 FR 15471). We proposed to amend section 63.1573(a) to remove that restriction.

Additionally, API and AFPM noted in their February 1, 2016, petition (EPA–HQ–OAR–2010–0682–0892) for reconsideration that the FCCU alternative organic HAP standard for startup, shutdown, and hot standby in section 63.1565(a)(5)(ii) requires maintaining the oxygen concentration in the regenerator exhaust gas at or above 1 volume percent (dry) (*i.e.,* greater than or equal to 1-percent oxygen (O_2) measured on a dry basis); however, they claim process O_2 analyzers measure O_2 on a wet basis. As described in the preamble of the April 2018 Proposal (83 FR 15471), meeting the 1-percent O_2 standard on a wet basis measurement will always mean that there is more O_2 than if the concentration value is corrected to a dry basis. As such, we proposed to amend section 63.1565(a)(5)(ii) and Table 10 to allow for the use of a wet O_2 measurement for demonstrating compliance with the standard so long as it is used directly with no correction for moisture content.

The following is a summary of the one comment received in response to our April 2018 Proposal and our response to this comment on the proposed amendments to the FCCU provisions.

What comment was received on the FCCU provisions?

Comment 1: One commenter (–0958) supported the EPA's proposed revisions to section 63.1573(a)(1), which allows the use of the inlet velocity requirement during periods of startup, shutdown, and malfunction (SSM) for an FCCU as an alternative to the PM standard regardless of the configuration of the catalytic regenerator exhaust vent stream. The same commenter suggested additional clarifications relative to the alternative PM standard. These clarifications include:

(1) Amending the last sentence in section 63.1573(a)(1) to clarify that the requirement to use the same procedure for performance tests and subsequent monitoring does not apply to the use of the alternative in section 63.1564(c)(5), since the alternative only applies during SSM.

(2) Revising the first sentence of section 63.1573(a)(2) to specifically allow use for demonstrating compliance with section 63.1564(c)(5).

(3) Amending the footnote to Item 12 in Table 3 to make it clear that either alternative in (a)(1) or (a)(2) is acceptable for demonstrating compliance. The commenter also recommended providing a separate footnote as other items reference footnote 1.

(4) Adding the footnote from Item 12 in Table 3 to Item 10 in Table 7.

Response 1: We agree with the commenter that the last sentence in section 63.1573(a)(1) is provided to ensure that the operating limits are established using the same monitoring techniques as the on-going monitoring. As no site-specific operating limit is required for compliance with section 63.1564(c)(5), that requirement is not applicable to this additional allowance of this alternative. We are revising the language in the final rule to clarify.

We disagree that it is appropriate to revise the first sentence in section 63.1573(a)(2), as requested by the commenter, because the flow rate must be determined based on actual flow conditions, not standard conditions; therefore, Equation 2 in section 63.1573 is not applicable to demonstrate compliance with section 63.1564(c)(5).

What is the EPA's final decision on the FCCU provisions?

In consideration of public comments, we are finalizing the amendments to the FCCU provisions, as proposed with one change to section 63.1573(a) to clarify that the provision does not apply to the use of the alternative in section 63.1564(c)(5).

2. Other Provisions

What is the history of the other Refinery MACT 2 provisions addressed in the April 2018 Proposal?

We proposed several clarifying amendments for other Refinery MACT 2 requirements in response to API and AFPM's petition for reconsideration (Docket ID No. EPA–HQ–OAR–2010–0682–0892) as well as in response to the API and AFPM's March 28, 2017, letter (Docket ID No. EPA–HQ–OAR–2010–0682–0915).

We proposed to amend section 63.1572(d)(1) to be consistent with the analogous language in section 63.671(a)(4).

We proposed to amend the recordkeeping requirements in section 63.1576(a)(2)(i) to apply only when facilities elect to comply with the alternative startup and shutdown standards provided in section 63.1564(a)(5)(ii), section 63.1565(a)(5)(ii), or sections 63.1568(a)(4)(ii) or (iii).

We proposed several amendments for electronic reporting including at section 63.1574(a)(3) to clarify that the results of performance tests conducted to demonstrate initial compliance are to be reported by the due date of the NOCS whether the results are reported via CEDRI or in hard copy as part of the NOCS report. If the results are reported via CEDRI, we also proposed to specify that sources need not resubmit those results in the NOCS, but may instead submit information identifying that a performance test or evaluation was conducted and the units and pollutants that were tested. We also proposed to amend the submission of the results of periodic performance tests and the 1-time hydrogen cyanide (HCN) test required in sections 63.1571(a)(5) and (6) to require inclusion with the semiannual compliance reports as specified in section 63.1575(f) instead of within 60 days of completing the performance evaluation. Similarly, we proposed to streamline reporting of the results of performance evaluations and continuous monitoring systems (as provided in item 2 to Table 43) to align with the semiannual compliance reports as specified in section 63.1575(f) rather than requiring a separate submission. We also proposed to add the phrase ''Unless otherwise specified by this subpart'' to sections 63.1575(k)(1) and (2) to make clear that performance tests or performance evaluations required to be reported in a NOCS report or a semiannual compliance report are not subject to the 60-day deadline specified in the paragraphs. We also proposed to add section 63.1575(l) to address extensions to electronic reporting deadlines. We also proposed clarifying amendments to several references in Table 44—Applicability of NESHAP General Provisions to 40 CFR part 63, subpart UUU.

Finally, we proposed a number of editorial and other corrections in Table 3 of the April 2018 Proposal (83 FR 15472).

The following is a summary of the significant comments received in response to our April 2018 Proposal and our response to these comments. It should be noted that the comment summary and response for the reporting extension in section 63.655(h)(10)(i) and section 63.1575(l)(1) is addressed in section III.A.8 of this preamble. All other comments related to the proposed amendments for the other Refinery MACT 2 provisions are included in the response to comments document for this final action (Docket ID No. EPA–HQ–2010–0682).

What significant comment was received on the other Refinery MACT 2 provisions?

Comment 1: One commenter (–0958) recommended that the EPA revise the proposed requirement in section 63.1571(a), (a)(5), (a)(6), and Table 6 Item 1.ii to complete initial PM (or nickel) performance test within 60 days of startup for new units to instead allow for completion and reporting of the performance test by the 150-day notice of compliance status date since a new unit may not be up to full production rates within the first 60 days.

Response 1: In reviewing the existing provisions regarding performance tests in Refinery MACT 2 (40 CFR part 63, subpart UUU), we agree that the initial performance tests are required to be completed and reported no later than 150 days after the compliance date (see section 63.1574(a)(3)(ii)). To better align the proposed revisions with the existing requirements, we are revising the proposed requirement to complete and report these tests no later than 150 days after the compliance date (see section 63.1574(a)(3)(ii)).

What is the EPA's final decision on the other Refinery MACT 2 provisions?

After considering public comment, we are finalizing these amendments with some revisions to the due dates for initial performance tests in sections 63.1571(a), (a)(5), (a)(6), and Table 6

Item 1.ii as well as edits to the proposed language in the extensions to electronic reporting provisions in section 63.1575(l) (as described in section III.A.8 of this preamble). We are finalizing the amendments at section 63.1572(d)(1), section 63.1576(a)(2)(i), and Table 3 of the April 2018 Proposal (83 FR 15472), as proposed.

C. Clarifications and Technical Corrections to NSPS Ja

We proposed three revisions in NSPS Ja to improve consistency, remove redundancy, and correct grammar at section 60.105a(b)(2)(ii), section 60.106a(a)(1)(vi), and section 60.106a(a)(1)(iii), respectively. We did not receive public comments on these proposed amendments. We are finalizing these amendments as proposed.

IV. Summary of Cost, Environmental, and Economic Impacts and Additional Analyses Conducted

As described in the April 2018 Proposal and associated memorandum titled, ''Projected Cost and Burden Reduction for the Proposed Amendments of the 2015 Risk and Technology Review: Petroleum Refineries,'' (Docket ID No. EPA–HQ–OAR–2010–0682–0925), the technical corrections and clarifications included in this final rule are expected to result in overall cost and burden reductions. Consistent with the April 2018 Proposal, the final amendments expected to reduce burden are: Revisions of the maintenance vent provisions related to the availability of a pure hydrogen supply for equipment containing pyrophoric catalyst, revisions of recordkeeping requirements for maintenance vents associated with equipment containing less than 72 lbs/day VOC, inclusion of specific provisions for pilot-operated and balanced bellows PRDs, and inclusion of specific provisions related to steam tube air entrainment for flares. The other final amendments included in this rulemaking will have an insignificant effect on the costs or burdens associated with the standards. Additionally, none of the final amendments are projected to appreciably impact the emissions reductions associated with these standards.

We are finalizing the provisions for maintenance vent recordkeeping and PRD as proposed, and, thus, the cost and burden reductions estimated in the April 2018 Proposal and supporting memorandum are still accurate. The final revisions to the recordkeeping requirements for maintenance vents associated with equipment containing less than 72 lbs/day VOC are estimated to yield savings of approximately $677,000 per year considering the actual estimated annualized burden of the December 2015 Rule. The final provisions for pilot-operated and balanced bellows PRDs included in this final rulemaking yield a reduction in capital investment of $1.1 million and a reduction in annualized costs of $330,000 per year considering the actual estimated annualized burden of the December 2015 Rule.

It should be noted that we are finalizing amendments to the proposed provisions for maintenance vent provisions related to the availability of a pure hydrogen supply for equipment containing pyrophoric catalyst and provisions related to steam tube air entrainment for flares with revisions as described in sections III.A.2 and III.A.7 of this preamble. The revisions described in sections III.A.2 and III.A.7 are not expected to impact the cost and burden reductions estimated in the referenced April 2018 Proposal and memorandum for these provisions, as they are clarifying in nature.

As explained in the April 2018 Proposal, there were no capital costs estimated for the maintenance vent provisions in the December 2015 Rule and only limited recordkeeping and reporting costs. Capital investment estimates provided by industry stakeholders for the maintenance vent provisions included in the December 2015 Rule was approximately $76 million. The inclusion of the capital costs for the maintenance vent provisions would have increased the previously estimated annualized cost included in the December 2015 Rule by $7,174,400 per year. Through the revisions being finalized in this rule, these costs will not be incurred by refinery owners and operators. Similarly, while significant capital and operating costs were projected for flares, we may have underestimated the number of steam-assisted flares that would also have to demonstrate compliance with the NHV_{dil} operating limit in the December 2015 Rule impacts analysis. Considering such flares, the annualized cost of the December 2015 Rule for steam-assisted flares would have increased the previously estimated annualized cost included in the December 2015 Rule by $3,300,000 per year. Through the revisions being finalized in this rulemaking which allows owners or operators of certain steam-assisted flares with air entrainment at the flare tip to comply only with the NHV_{cz} operating limits, these costs will not be incurred by refinery owners and operators.

V. Statutory and Executive Order Reviews

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

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

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

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

This action is considered an Executive Order 13771 deregulatory action. Details on the estimated cost savings of this final rule can be found in the EPA's analysis of the present value and annualized value estimates associated with this action located in Docket ID No. EPA–HQ–OAR–2010–0682.

C. Paperwork Reduction Act (PRA)

The information collection activities in this rule have been submitted for approval to OMB under the PRA. The ICR document that the EPA prepared has been assigned EPA ICR number 1692.12. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

One of the final technical amendments included in this rule impacts the recordkeeping requirements in 40 CFR part 63, subpart CC for certain maintenance vents associated with equipment containing less than 72 lbs/day VOC as found at 40 CFR 63.655(i)(12)(iv). The new recordkeeping requirement specifies records used to estimate the total quantity of VOC in the equipment and the type and size limits of equipment that contain less than 72 lbs/day of VOC at the time of the maintenance vent opening be maintained. As specified in 40 CFR 63.655(i)(12)(iv), additional records are required if the inventory procedures were not followed for each maintenance vent opening or if the equipment opened exceeded the type and size limits (*i.e.,* 72 lbs/day VOC). These additional records include identification of the maintenance vent, the process units or equipment associated with the maintenance vent, the date of maintenance vent opening, and records used to estimate the total quantity of VOC in the equipment at the

time the maintenance vent was opened to the atmosphere. These records will assist the EPA with determining compliance with the standards set forth in 40 CFR 63.643(c)(iv).

Respondents/affected entities: Owners or operators of existing or new major source petroleum refineries that are major sources of HAP emissions. The NAICS code is 324110 for petroleum refineries.

Respondent's obligation to respond: All data in the ICR that are recorded are required by the amendments to 40 CFR part 63, subpart CC, National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries.

Estimated number of respondents: 142.

Frequency of response: Once per year per respondent.

Total estimated burden: 16 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $1,640 (per year), includes $0 annualized capital or operation and maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden, or otherwise has a positive economic effect on the small entities subject to the rule. The action consists of amendments, clarifications, and technical corrections which are expected to reduce regulatory burden. As described in section IV of this preamble, we expect burden reduction for: (1) Revisions of the maintenance vent provisions related to the availability of a pure hydrogen supply for equipment containing pyrophoric catalyst, (2) revisions of recordkeeping requirements for maintenance vents associated with equipment containing less than 72 lbs/day VOC, (3) inclusion of specific provisions for pilot-operated and balanced bellows PRDs, and (4) inclusion of specific provisions related to steam tube air entrainment for flares. Furthermore, as noted in section IV of this preamble, we do not expect the final amendments to change the expected economic impact analysis performed for the existing rule. We have, therefore, concluded that this action will relieve regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

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

F. Executive Order 13132: Federalism

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

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

This action does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effect on tribal governments, 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, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The final amendments serve to make technical clarifications and corrections, as well as revise compliance dates. We expect the final revisions will have an insignificant effect on emission reductions. Therefore, the final amendments should not appreciably increase risk for any populations.

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

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

J. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This rulemaking involves technical standards. As described in section III.C of this preamble, the EPA has decided to use the voluntary consensus standard ANSI/ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' as an acceptable alternative to EPA Methods 3A and 3B for the manual procedures only and not the instrumental procedures. This method is available at the American National Standards Institute (ANSI), 1899 L Street NW, 11th Floor, Washington, DC 20036 and the American Society of Mechanical Engineers (ASME), Three Park Avenue, New York, NY 10016–5990. See *https://wwww.ansi.org* and *https://www.asme.org*.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The final amendments serve to make technical clarifications and corrections, as well as revise compliance dates. We expect the final technical clarifications and corrections will have an insignificant effect on emission reductions. The additional compliance time provided for existing maintenance vents is expected to have an insignificant effect on emission reductions as many refiners already have measures in place due to state and other federal requirements to minimize emissions during these periods. Further, the maintenance vent opening periods are relatively infrequent and are usually of short duration. Additionally, the final compliance date only provides approximately 6 months beyond the August 1, 2018, compliance date for most facilities, which are operating under 1-year compliance extensions (from the previous deadline of August 1, 2017) they received from states based on the procedure in 40 CFR 63.6(i). Therefore, the final amendments should

not appreciably increase risk for any populations.

L. Congressional Review Act (CRA)

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

List of Subjects

40 CFR Part 60

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 8, 2018.

Andrew R. Wheeler,

Acting Administrator.

For the reasons stated in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

■ 1. The authority citation for part 60 continues to read as follows:

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

Subpart A—General Provisions

■ 2. Section 60.17 is amended by revising paragraph (g)(14) to read as follows:

§ 60.17 Incorporations by reference.

* * * * *

(g) * * *

(14) ASME/ANSI PTC 19.10–1981, Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus], (Issued August 31, 1981), IBR approved for §§ 60.56c(b), 60.63(f), 60.106(e), 60.104a(d), (h), (i), and (j), 60.105a(b), (d), (f), and (g), 60.106a(a), 60.107a(a), (c), and (d), tables 1 and 3 to subpart EEEE, tables 2 and 4 to subpart FFFF, table 2 to subpart JJJJ, §§ 60.285a(f), 60.4415(a), 60.2145(s) and (t), 60.2710(s), (t), and (w), 60.2730(q), 60.4900(b), 60.5220(b), tables 1 and 2 to subpart LLLL, tables 2 and 3 to subpart MMMM, §§ 60.5406(c), 60.5406a(c), 60.5407a(g), 60.5413(b), 60.5413a(b), and 60.5413a(d).

* * * * *

Subpart Ja—Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007

■ 3. Section 60.105a is amended by revising paragraph (b)(2)(ii) to read as follows:

§ 60.105a Monitoring of emissions and operations for fluid catalytic cracking units (FCCU) and fluid coking units (FCU).

* * * * *

(b) * * *

(2) * * *

(ii) The owner or operator shall conduct performance evaluations of each CO_2 and O_2 monitor according to the requirements in § 60.13(c) and Performance Specification 3 of appendix B to this part. The owner or operator shall use Method 3, 3A or 3B of appendix A–2 to this part for conducting the relative accuracy evaluations. The method ANSI/ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 3B of appendix A–2 to part 60.

* * * * *

■ 4. Section 60.106a is amended by revising paragraph (a)(1)(iii) to read as follows:

§ 60.106a Monitoring of emissions and operations for sulfur recovery plants.

(a) * * *

(1) * * *

(iii) The owner or operator shall conduct performance evaluations of each SO_2 monitor according to the requirements in § 60.13(c) and Performance Specification 2 of appendix B to part 60. The owner or operator shall use Method 6 or 6C of appendix A–4 to part 60. The method ANSI/ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' (incorporated by reference—see § 60.17) is an acceptable alternative to EPA Method 6.

* * * * *

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 5. The authority citation for part 63 continues to read as follows:

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

Subpart CC—National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries

■ 6. Section 63.641 is amended by:
■ a. Revising the definitions of ''Flare purge gas'' and ''Flare supplemental gas'';
■ b. Adding a definition of ''Pressure relief device'' in alphabetical order;
■ c. Revising the introductory text and adding paragraphs (1)(i) and (ii) to the definition of ''Reference control technology for storage vessels''; and
■ d. Revising the definition of ''Relief valve''.

The revisions and addition read as follows:

§ 63.641 Definitions.

* * * * *

Flare purge gas means gas introduced between a flare header's water seal and the flare tip to prevent oxygen infiltration (backflow) into the flare tip or for other safety reasons. For a flare with no water seal, the function of *flare purge gas* is performed by flare sweep gas and, therefore, by definition, such a flare has no *flare purge gas*.

Flare supplemental gas means all gas introduced to the flare to improve the heat content of combustion zone gas. *Flare supplemental gas* does not include assist air or assist steam.

* * * * *

Pressure relief device means a valve, rupture disk, or similar device used only to release an unplanned, nonroutine discharge of gas from process equipment in order to avoid safety hazards or equipment damage. A pressure relief device discharge can result from an operator error, a malfunction such as a power failure or equipment failure, or other unexpected cause. Such devices include conventional, spring-actuated relief valves, balanced bellows relief valves, pilot-operated relief valves, rupture disks, and breaking, buckling, or shearing pin devices.

* * * * *

Reference control technology for storage vessels means either:

(1) * * *

(i) An internal floating roof, including an external floating roof converted to an internal floating roof, meeting the specifications of § 63.1063(a)(1)(i), (a)(2), and (b) and § 63.660(b)(2);

(ii) An external floating roof meeting the specifications of § 63.1063(a)(1)(ii), (a)(2), and (b) and § 63.660(b)(2); or

* * * * *

Relief valve means a type of pressure relief device that is designed to re-close after the pressure relief.

* * * * *

■ 7. Section 63.643 is amended by:
■ a. Revising paragraphs (c) introductory text, (c)(1) introductory text, and (c)(1)(ii) through (iv); and
■ b. Adding a new paragraph (c)(1)(v).

The revisions and addition read as follows:

§ 63.643 Miscellaneous process vent provisions.

* * * * *

(c) An owner or operator may designate a process vent as a maintenance vent if the vent is only used as a result of startup, shutdown, maintenance, or inspection of equipment where equipment is emptied, depressurized, degassed or placed into service. The owner or operator does not need to designate a maintenance vent as a Group 1 or Group 2 miscellaneous process vent nor identify maintenance vents in a Notification of Compliance Status report. The owner or operator must comply with the applicable requirements in paragraphs (c)(1) through (3) of this section for each maintenance vent according to the compliance dates specified in table 11 of this subpart, unless an extension is requested in accordance with the provisions in § 63.6(i).

(1) Prior to venting to the atmosphere, process liquids are removed from the equipment as much as practical and the equipment is depressured to a control device meeting requirements in paragraphs (a)(1) or (2) of this section, a fuel gas system, or back to the process until one of the following conditions, as applicable, is met.

* * * * *

(ii) If there is no ability to measure the LEL of the vapor in the equipment based on the design of the equipment, the pressure in the equipment served by the maintenance vent is reduced to 5 pounds per square inch gauge (psig) or less. Upon opening the maintenance vent, active purging of the equipment cannot be used until the LEL of the vapors in the maintenance vent (or inside the equipment if the maintenance is a hatch or similar type of opening) is less than 10 percent.

(iii) The equipment served by the maintenance vent contains less than 72 pounds of total volatile organic compounds (VOC).

(iv) If the maintenance vent is associated with equipment containing pyrophoric catalyst (*e.g.,* hydrotreaters and hydrocrackers) and a pure hydrogen supply is not available at the equipment at the time of the startup, shutdown, maintenance, or inspection activity, the LEL of the vapor in the equipment must be less than 20 percent, except for one event per year not to exceed 35 percent.

(v) If, after applying best practices to isolate and purge equipment served by a maintenance vent, none of the applicable criterion in paragraphs (c)(1)(i) through (iv) can be met prior to installing or removing a blind flange or similar equipment blind, the pressure in the equipment served by the maintenance vent is reduced to 2 psig or less, Active purging of the equipment may be used provided the equipment pressure at the location where purge gas is introduced remains at 2 psig or less.

* * * * *

■ 8. Section 63.644 is amended by:
■ a. Revising paragraph (c) introductory text;
■ b. Removing the period at the end of paragraph (c)(2) and adding ''; or'' in its place; and
■ c. Adding paragraph (c)(3).

The revision and addition read as follows:

§ 63.644 Monitoring provisions for miscellaneous process vents.

* * * * *

(c) The owner or operator of a Group 1 miscellaneous process vent using a vent system that contains bypass lines that could divert a vent stream away from the control device used to comply with paragraph (a) of this section either directly to the atmosphere or to a control device that does not comply with the requirements in § 63.643(a) shall comply with either paragraph (c)(1), (2), or (3) of this section. Use of the bypass at any time to divert a Group 1 miscellaneous process vent stream to the atmosphere or to a control device that does not comply with the requirements in § 63.643(a) is an emissions standards violation. Equipment such as low leg drains and equipment subject to § 63.648 are not subject to this paragraph (c).

* * * * *

(3) Use a cap, blind flange, plug, or a second valve for an open-ended valve or line following the requirements specified in § 60.482–6(a)(2), (b) and (c).

* * * * *

■ 9. Section 63.648 is amended by:
■ a. Revising the introductory text of paragraphs (a), (c), and (j); and
■ b. Revising paragraphs (j)(3)(ii)(A) and (E), (j)(3)(iv), (j)(3)(v) introductory text, and (j)(4).

The revisions read as follows:

§ 63.648 Equipment leak standards.

(a) Each owner or operator of an existing source subject to the provisions of this subpart shall comply with the provisions of 40 CFR part 60, subpart VV, and paragraph (b) of this section except as provided in paragraphs (a)(1) through (3), and (c) through (j) of this section. Each owner or operator of a new source subject to the provisions of this subpart shall comply with subpart H of this part except as provided in paragraphs (c) through (j) of this section.

* * * * *

(c) In lieu of complying with the existing source provisions of paragraph (a) in this section, an owner or operator may elect to comply with the requirements of §§ 63.161 through 63.169, 63.171, 63.172, 63.175, 63.176, 63.177, 63.179, and 63.180 except as provided in paragraphs (c)(1) through (12) and (e) through (j) of this section.

* * * * *

(j) Except as specified in paragraph (j)(4) of this section, the owner or operator must comply with the requirements specified in paragraphs (j)(1) and (2) of this section for pressure relief devices, such as relief valves or rupture disks, in organic HAP gas or vapor service instead of the pressure relief device requirements of § 60.482–4 or § 63.165, as applicable. Except as specified in paragraphs (j)(4) and (5) of this section, the owner or operator must also comply with the requirements specified in paragraph (j)(3) of this section for all pressure relief devices in organic HAP service.

* * * * *

(3) * * *

(ii) * * *

(A) Flow, temperature, liquid level and pressure indicators with deadman switches, monitors, or automatic actuators. Independent, non-duplicative systems within this category count as separate redundant prevention measures.

* * * * *

(E) Staged relief system where initial pressure relief device (with lower set release pressure) discharges to a flare or other closed vent system and control device.

* * * * *

(iv) The owner or operator shall determine the total number of release events occurred during the calendar year for each affected pressure relief device separately. The owner or operator shall also determine the total number of release events for each pressure relief device for which the root cause analysis concluded that the root cause was a *force majeure* event, as defined in this subpart.

(v) Except for pressure relief devices described in paragraphs (j)(4) and (5) of this section, the following release events from an affected pressure relief device are a violation of the pressure release management work practice standards:

* * * * *

(4) *Pressure relief devices routed to a control device.* (i) If all releases and potential leaks from a pressure relief device are routed through a closed vent system to a control device, back into the process or to the fuel gas system, the owner or operator is not required to comply with paragraph (j)(1), (2), or (3) (if applicable) of this section.

(ii) If a pilot-operated pressure relief device is used and the primary release valve is routed through a closed vent system to a control device, back into the process or to the fuel gas system, the owner or operator is required to comply only with paragraphs (j)(1) and (2) of this section for the pilot discharge vent and is not required to comply with paragraph (j)(3) of this section for the pilot-operated pressure relief device.

(iii) If a balanced bellows pressure relief device is used and the primary release valve is routed through a closed vent system to a control device, back into the process or to the fuel gas system, the owner or operator is required to comply only with paragraphs (j)(1) and (2) of this section for the bonnet vent and is not required to comply with paragraph (j)(3) of this section for the balanced bellows pressure relief device.

(iv) Both the closed vent system and control device (if applicable) referenced in paragraphs (j)(4)(i) through (iii) of this section must meet the requirements of § 63.644. When complying with this paragraph (j)(4), all references to ''Group 1 miscellaneous process vent'' in § 63.644 mean ''pressure relief device.''

(v) If a pressure relief device complying with this paragraph (j)(4) is routed to the fuel gas system, then on and after January 30, 2019, any flares receiving gas from that fuel gas system must be in compliance with § 63.670.

* * * * *

■ 10. Section 63.655 is amended by:
■ a. Revising paragraphs (f)(1)(i)(A)(*1*) through (*3*), (f)(1)(i)(B)(*3*), (f)(1)(i)(C)(*2*), (f)(1)(iii), (f)(2), (f)(4), (g)(2)(i)(B)(*1*) and (g)(10) introductory text;
■ b. Redesignating paragraph (g)(10)(iii) as (g)(10)(iv);
■ c. Adding new paragraph (g)(10)(iii);
■ d. Revising paragraph (g)(13) introductory text and paragraph (h)(2)(ii);
■ e. Removing and reserving paragraph (h)(5)(iii);
■ f. Revising paragraph (h)(8)
■ g. Revising paragraph (h)(9)(i) introductory text and paragraph (h)(9)(ii) introductory text;
■ h. Adding paragraph (h)(10);
■ i. Revising paragraph (i)(3)(ii)(B);
■ j. Adding paragraphs (i)(3)(ii)(C) and (i)(5)(i) through (v);
■ k. Revising paragraphs (i)(7)(iii)(B) and (i)(11) introductory text;
■ l. Adding paragraph (i)(11)(iv);
■ m. Revising paragraph (i)(12) introductory text and paragraph (i)(12)(iv); and
■ n. Adding paragraph (i)(12)(vi).

The revisions and additions read as follows:

§ 63.655 Reporting and recordkeeping requirements.

* * * * *

(f) * * *

(1) * * *

(i) * * *

(A) * * *

(*1*) For each Group 1 storage vessel complying with either § 63.646 or § 63.660 that is not included in an emissions average, the method of compliance (*i.e.,* internal floating roof, external floating roof, or closed vent system and control device).

(*2*) For storage vessels subject to the compliance schedule specified in § 63.640(h)(2) that are not complying with § 63.646 or § 63.660 as applicable, the anticipated compliance date.

(*3*) For storage vessels subject to the compliance schedule specified in § 63.640(h)(2) that are complying with § 63.646 or § 63.660, as applicable, and the Group 1 storage vessels described in § 63.640(l), the actual compliance date.

(B) * * *

(*3*) If the owner or operator elects to submit the results of a performance test, identification of the storage vessel and control device for which the performance test will be submitted, and identification of the emission point(s) that share the control device with the storage vessel and for which the performance test will be conducted. If the performance test is submitted electronically through the EPA's Compliance and Emissions Data Reporting Interface (CEDRI) in accordance with § 63.655(h)(9), the process unit(s) tested, the pollutant(s) tested, and the date that such performance test was conducted may be submitted in the Notification of Compliance Status in lieu of the performance test results. The performance test results must be submitted to CEDRI by the date the Notification of Compliance Status is submitted.

(C) * * *

(*2*) If a performance test is conducted instead of a design evaluation, results of the performance test demonstrating that the control device achieves greater than or equal to the required control efficiency. A performance test conducted prior to the compliance date of this subpart can be used to comply with this requirement, provided that the test was conducted using EPA methods and that the test conditions are representative of current operating practices. If the performance test is submitted electronically through the EPA's Compliance and Emissions Data Reporting Interface in accordance with § 63.655(h)(9), the process unit(s) tested, the pollutant(s) tested, and the date that such performance test was conducted may be submitted in the Notification of Compliance Status in lieu of the performance test results. The performance test results must be submitted to CEDRI by the date the Notification of Compliance Status is submitted.

* * * * *

(iii) For miscellaneous process vents controlled by control devices required to be tested under § 63.645 and § 63.116(c), performance test results including the information in paragraphs (f)(1)(iii)(A) and (B) of this section. Results of a performance test conducted prior to the compliance date of this subpart can be used provided that the test was conducted using the methods specified in § 63.645 and that the test conditions are representative of current operating conditions. If the performance test is submitted electronically through the EPA's Compliance and Emissions Data Reporting Interface in accordance with § 63.655(h)(9), the process unit(s) tested, the pollutant(s) tested, and the date that such performance test was conducted may be submitted in the Notification of Compliance Status in lieu of the performance test results. The performance test results must be submitted to CEDRI by the date the Notification of Compliance Status is submitted.

* * * * *

(2) If initial performance tests are required by §§ 63.643 through 63.653, the Notification of Compliance Status report shall include one complete test report for each test method used for a particular source. On and after February 1, 2016, for data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT website (*https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert*) at the time of the test, you must submit the results in accordance with § 63.655(h)(9) by the date that you submit the Notification of Compliance Status, and you must include the process unit(s) tested, the pollutant(s) tested, and the date that such performance test was conducted in the Notification of Compliance Status. All other performance test results must

be reported in the Notification of Compliance Status.

* * * * *

(4) Results of any continuous monitoring system performance evaluations shall be included in the Notification of Compliance Status report, unless the results are required to be submitted electronically by § 63.655(h)(9). For performance evaluation results required to be submitted through CEDRI, submit the results in accordance with § 63.655(h)(9) by the date that you submit the Notification of Compliance Status and include the process unit where the CMS is installed, the parameter measured by the CMS, and the date that the performance evaluation was conducted in the Notification of Compliance Status.

* * * * *

(g) * * *

(2) * * *

(i) * * *

(B) * * *

(*1*) A failure is defined as any time in which the internal floating roof has defects; or the primary seal has holes, tears, or other openings in the seal or the seal fabric; or the secondary seal (if one has been installed) has holes, tears, or other openings in the seal or the seal fabric; or, for a storage vessel that is part of a new source, the gaskets no longer close off the liquid surface from the atmosphere; or, for a storage vessel that is part of a new source, the slotted membrane has more than a 10 percent open area.

* * * * *

(10) For pressure relief devices subject to the requirements § 63.648(j), Periodic Reports must include the information specified in paragraphs (g)(10)(i) through (iv) of this section.

* * * * *

(iii) For pilot-operated pressure relief devices in organic HAP service, report each pressure release to the atmosphere through the pilot vent that equals or exceeds 72 pounds of VOC per day, including duration of the pressure release through the pilot vent and estimate of the mass quantity of each organic HAP released.

* * * * *

(13) For maintenance vents subject to the requirements in § 63.643(c), Periodic Reports must include the information specified in paragraphs (g)(13)(i) through (iv) of this section for any release exceeding the applicable limits in § 63.643(c)(1). For the purposes of this reporting requirement, owners or operators complying with § 63.643(c)(1)(iv) must report each venting event for which the lower explosive limit is 20 percent or greater; owners or operators complying with § 63.643(c)(1)(v) must report each venting event conducted under those provisions and include an explanation for each event as to why utilization of this alternative was required.

* * * * *

(h) * * *

(2) * * *

(ii) In order to afford the Administrator the opportunity to have an observer present, the owner or operator of a storage vessel equipped with an external floating roof shall notify the Administrator of any seal gap measurements. The notification shall be made in writing at least 30 calendar days in advance of any gap measurements required by § 63.120(b)(1) or (2) or § 63.1063(d)(3). The State or local permitting authority can waive this notification requirement for all or some storage vessels subject to the rule or can allow less than 30 calendar days' notice.

* * * * *

(8) For fenceline monitoring systems subject to § 63.658, each owner or operator shall submit the following information to the EPA's Compliance and Emissions Data Reporting Interface (CEDRI) on a quarterly basis. (CEDRI can be accessed through the EPA's Central Data Exchange (CDX) (*https://cdx.epa.gov/*). The first quarterly report must be submitted once the owner or operator has obtained 12 months of data. The first quarterly report must cover the period beginning on the compliance date that is specified in Table 11 of this subpart and ending on March 31, June 30, September 30 or December 31, whichever date is the first date that occurs after the owner or operator has obtained 12 months of data (*i.e.,* the first quarterly report will contain between 12 and 15 months of data). Each subsequent quarterly report must cover one of the following reporting periods: Quarter 1 from January 1 through March 31; Quarter 2 from April 1 through June 30; Quarter 3 from July 1 through September 30; and Quarter 4 from October 1 through December 31. Each quarterly report must be electronically submitted no later than 45 calendar days following the end of the reporting period.

(i) Facility name and address.

(ii) Year and reporting quarter (*i.e.,* Quarter 1, Quarter 2, Quarter 3, or Quarter 4).

(iii) For the first reporting period and for any reporting period in which a passive monitor is added or moved, for each passive monitor: The latitude and longitude location coordinates; the sampler name; and identification of the type of sampler (*i.e.,* regular monitor, extra monitor, duplicate, field blank, inactive). The owner or operator shall determine the coordinates using an instrument with an accuracy of at least 3 meters. Coordinates shall be in decimal degrees with at least five decimal places.

(iv) The beginning and ending dates for each sampling period.

(v) Individual sample results for benzene reported in units of $\mu g/m^3$ for each monitor for each sampling period that ends during the reporting period. Results below the method detection limit shall be flagged as below the detection limit and reported at the method detection limit.

(vi) Data flags that indicate each monitor that was skipped for the sampling period, if the owner or operator uses an alternative sampling frequency under § 63.658(e)(3).

(vii) Data flags for each outlier determined in accordance with Section 9.2 of Method 325A of appendix A of this part. For each outlier, the owner or operator must submit the individual sample result of the outlier, as well as the evidence used to conclude that the result is an outlier.

(viii) The biweekly concentration difference (Δc) for benzene for each sampling period and the annual average Δc for benzene for each sampling period.

(9) * * *

(i) Unless otherwise specified by this subpart, within 60 days after the date of completing each performance test as required by this subpart, the owner or operator shall submit the results of the performance tests following the procedure specified in either paragraph (h)(9)(i)(A) or (B) of this section.

* * * * *

(ii) Unless otherwise specified by this subpart, within 60 days after the date of completing each CEMS performance evaluation as required by this subpart, the owner or operator must submit the results of the performance evaluation following the procedure specified in either paragraph (h)(9)(ii)(A) or (B) of this section.

* * * * *

(10)(i) If you are required to electronically submit a report through the Compliance and Emissions Data Reporting Interface (CEDRI) in the EPA's Central Data Exchange (CDX), and due to a planned or actual outage of either the EPA's CEDRI or CDX systems within the period of time beginning 5 business days prior to the date that the submission is due, you will be or are precluded from accessing CEDRI or CDX

and submitting a required report within the time prescribed, you may assert a claim of EPA system outage for failure to timely comply with the reporting requirement. You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or caused a delay in reporting. You must provide to the Administrator a written description identifying the date(s) and time(s) the CDX or CEDRI were unavailable when you attempted to access it in the 5 business days prior to the submission deadline; a rationale for attributing the delay in reporting beyond the regulatory deadline to the EPA system outage; describe the measures taken or to be taken to minimize the delay in reporting; and identify a date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported. In any circumstance, the report must be submitted electronically as soon as possible after the outage is resolved. The decision to accept the claim of EPA system outage and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(ii) If you are required to electronically submit a report through CEDRI in the EPA's CDX and a force majeure event is about to occur, occurs, or has occurred or there are lingering effects from such an event within the period of time beginning 5 business days prior to the date the submission is due, the owner or operator may assert a claim of force majeure for failure to timely comply with the reporting requirement. For the purposes of this paragraph, a force majeure event is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents you from complying with the requirement to submit a report electronically within the time period prescribed. Examples of such events are acts of nature (*e.g.,* hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility (*e.g.,* large scale power outage). If you intend to assert a claim of force majeure, you must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or caused a delay in reporting. You must provide to the Administrator a written description of the force majeure event and a rationale for attributing the delay in reporting beyond the regulatory deadline to the force majeure event; describe the measures taken or to be taken to minimize the delay in reporting; and identify a date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported. In any circumstance, the reporting must occur as soon as possible after the force majeure event occurs. The decision to accept the claim of force majeure and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(i) * * *

(3) * * *

(ii) * * *

(B) Block average values for 1 hour or shorter periods calculated from all measured data values during each period. If values are measured more frequently than once per minute, a single value for each minute may be used to calculate the hourly (or shorter period) block average instead of all measured values; or

(C) All values that meet the set criteria for variation from previously recorded values using an automated data compression recording system.

(*1*) The automated data compression recording system shall be designed to:

(*i*) Measure the operating parameter value at least once every hour.

(*ii*) Record at least 24 values each day during periods of operation.

(*iii*) Record the date and time when monitors are turned off or on.

(*iv*) Recognize unchanging data that may indicate the monitor is not functioning properly, alert the operator, and record the incident.

(*v*) Compute daily average values of the monitored operating parameter based on recorded data.

(*2*) You must maintain a record of the description of the monitoring system and data compression recording system including the criteria used to determine which monitored values are recorded and retained, the method for calculating daily averages, and a demonstration that the system meets all criteria of paragraph (i)(3)(ii)(C)(*1*) of this section.

* * * * *

(5) * * *

(i) Identification of all petroleum refinery process unit heat exchangers at the facility and the average annual HAP concentration of process fluid or intervening cooling fluid estimated when developing the Notification of Compliance Status report.

(ii) Identification of all heat exchange systems subject to the monitoring requirements in § 63.654 and identification of all heat exchange systems that are exempt from the monitoring requirements according to the provisions in § 63.654(b). For each heat exchange system that is subject to the monitoring requirements in § 63.654, this must include identification of all heat exchangers within each heat exchange system, and, for closed-loop recirculation systems, the cooling tower included in each heat exchange system.

(iii) Results of the following monitoring data for each required monitoring event:

(A) Date/time of event.

(B) Barometric pressure.

(C) El Paso air stripping apparatus water flow milliliter/minute (ml/min) and air flow, ml/min, and air temperature, °Celsius.

(D) FID reading (ppmv).

(E) Length of sampling period.

(F) Sample volume.

(G) Calibration information identified in Section 5.4.2 of the ''Air Stripping Method (Modified El Paso Method) for Determination of Volatile Organic Compound Emissions from Water Sources'' Revision Number One, dated January 2003, Sampling Procedures Manual, Appendix P: Cooling Tower Monitoring, prepared by Texas Commission on Environmental Quality, January 31, 2003 (incorporated by reference—see § 63.14).

(iv) The date when a leak was identified, the date the source of the leak was identified, and the date when the heat exchanger was repaired or taken out of service.

(v) If a repair is delayed, the reason for the delay, the schedule for completing the repair, the heat exchange exit line flow or cooling tower return line average flow rate at the monitoring location (in gallons/minute), and the estimate of potential strippable hydrocarbon emissions for each required monitoring interval during the delay of repair.

* * * * *

(7) * * *

(iii) * * *

(B) The pressure or temperature of the coke drum vessel, as applicable, for the 5-minute period prior to the pre-vent draining.

* * * * *

(11) For each pressure relief device subject to the pressure release management work practice standards in § 63.648(j)(3), the owner or operator shall keep the records specified in paragraphs (i)(11)(i) through (iii) of this section. For each pilot-operated pressure relief device subject to the

requirements at § 63.648(j)(4)(ii) or (iii), the owner or operator shall keep the records specified in paragraph (i)(11)(iv) of this section.

* * * * *

(iv) For pilot-operated pressure relief devices, general or release-specific records for estimating the quantity of VOC released from the pilot vent during a release event, and records of calculations used to determine the quantity of specific HAP released for any event or series of events in which 72 or more pounds of VOC are released in a day.

(12) For each maintenance vent opening subject to the requirements in § 63.643(c), the owner or operator shall keep the applicable records specified in paragraphs (i)(12)(i) through (vi) of this section.

* * * * *

(iv) If complying with the requirements of § 63.643(c)(1)(iii), records used to estimate the total quantity of VOC in the equipment and the type and size limits of equipment that contain less than 72 pounds of VOC at the time of maintenance vent opening. For each maintenance vent opening for which the deinventory procedures specified in paragraph (i)(12)(i) of this section are not followed or for which the equipment opened exceeds the type and size limits established in the records specified in this paragraph, identification of the maintenance vent, the process units or equipment associated with the maintenance vent, the date of maintenance vent opening, and records used to estimate the total quantity of VOC in the equipment at the time the maintenance vent was opened to the atmosphere.

* * * * *

(vi) If complying with the requirements of § 63.643(c)(1)(v), identification of the maintenance vent, the process units or equipment associated with the maintenance vent, records documenting actions taken to comply with other applicable alternatives and why utilization of this alternative was required, the date of maintenance vent opening, the equipment pressure and lower explosive limit of the vapors in the equipment at the time of discharge, an indication of whether active purging was performed and the pressure of the equipment during the installation or removal of the blind if active purging was used, the duration the maintenance vent was open during the blind installation or removal process, and records used to estimate the total quantity of VOC in the equipment at the time the maintenance vent was opened to the atmosphere for each applicable maintenance vent opening.

* * * * *

■ 11. Section 63.657 is amended by revising paragraphs (a)(1)(i) and (ii), (a)(2)(i) and (ii), (b)(5), and (e) to read as follows:

§ 63.657 Delayed coking unit decoking operation standards.

(a) * * *

(1) * * *

(i) An average vessel pressure of 2 psig or less determined on a rolling 60-event average; or

(ii) An average vessel temperature of 220 degrees Fahrenheit or less determined on a rolling 60-event average.

(2) * * *

(i) A vessel pressure of 2.0 psig or less for each decoking event; or

(ii) A vessel temperature of 218 degrees Fahrenheit or less for each decoking event.

* * * * *

(b) * * *

(5) The output of the pressure monitoring system must be reviewed each day the unit is operated to ensure that the pressure readings fluctuate as expected between operating and cooling/decoking cycles to verify the pressure taps are not plugged. Plugged pressure taps must be unplugged or otherwise repaired prior to the next operating cycle.

* * * * *

(e) The owner or operator of a delayed coking unit using the ''water overflow'' method of coke cooling prior to complying with the applicable requirements in paragraph (a) of this section must meet the requirements in either paragraph (e)(1) or (e)(2) of this section or, if applicable, the requirements in paragraph (e)(3) of this section. The owner or operator of a delayed coking unit using the ''water overflow'' method of coke cooling subject to this paragraph shall determine the coke drum vessel temperature as specified in paragraphs (c) and (d) of this section and shall not otherwise drain or vent the coke drum until the coke drum vessel temperature is at or below the applicable limits in paragraph (a)(1)(ii) or (a)(2)(ii) of this section.

(1) The overflow water must be directed to a separator or similar disengaging device that is operated in a manner to prevent entrainment of gases from the coke drum vessel to the overflow water storage tank. Gases from the separator or disengaging device must be routed to a closed blowdown system or otherwise controlled following the requirements for a Group 1 miscellaneous process vent. The liquid from the separator or disengaging device must be hardpiped to the overflow water storage tank or similarly transported to prevent exposure of the overflow water to the atmosphere. The overflow water storage tank may be an open or uncontrolled fixed-roof tank provided that a submerged fill pipe (pipe outlet below existing liquid level in the tank) is used to transfer overflow water to the tank.

(2) The overflow water must be directed to a storage vessel meeting the requirements for storage vessels in subpart SS of this part.

(3) Prior to November 26, 2020, if the equipment needed to comply with paragraphs (e)(1) or (2) of this section are not installed and operational, you must comply with all of the requirements in paragraphs (e)(3)(i) through (iv) of this section.

(i) The temperature of the coke drum, measured according to paragraph (c) of this section, must be 250 degrees Fahrenheit or less prior to initiation of water overflow and at all times during the water overflow.

(ii) The overflow water must be hardpiped to the overflow water storage tank or similarly transported to prevent exposure of the overflow water to the atmosphere.

(iii) The overflow water storage tank may be an open or uncontrolled fixed-roof tank provided that all of the following requirements are met.

(A) A submerged fill pipe (pipe outlet below existing liquid level in the tank) is used to transfer overflow water to the tank.

(B) The liquid level in the storage tank is at least 6 feet above the submerged fill pipe outlet at all times during water overflow.

(C) The temperature of the contents in the storage tank remain below 150 degrees Fahrenheit at all times during water overflow.

* * * * *

■ 12. Section 63.658 is amended by revising paragraphs (c)(1), (2) and (3), (d)(1) introductory text and (d)(2), (e) introductory text, (e)(3)(iv), (f)(1)(i) introductory text, and (f)(1)(i)(B) to read as follows:

§ 63.658 Fenceline monitoring provisions.

* * * * *

(c) * * *

(1) As it pertains to this subpart, known sources of VOCs, as used in Section 8.2.1.3 in Method 325A of appendix A of this part for siting passive monitors, means a wastewater

treatment unit, process unit, or any emission source requiring control according to the requirements of this subpart, including marine vessel loading operations. For marine vessel loading operations, one passive monitor should be sited on the shoreline adjacent to the dock. For this subpart, an additional monitor is not required if the only emission sources within 50 meters of the monitoring boundary are equipment leak sources satisfying all of the conditions in paragraphs (c)(1)(i) through (iv) of this section.

(i) The equipment leak sources in organic HAP service within 50 meters of the monitoring boundary are limited to valves, pumps, connectors, sampling connections, and open-ended lines. If compressors, pressure relief devices, or agitators in organic HAP service are present within 50 meters of the monitoring boundary, the additional passive monitoring location specified in Section 8.2.1.3 in Method 325A of appendix A of this part must be used.

(ii) All equipment leak sources in gas or light liquid service (and in organic HAP service), including valves, pumps, connectors, sampling connections and open-ended lines, must be monitored using EPA Method 21 of 40 CFR part 60, appendix A–7 no less frequently than quarterly with no provisions for skip period monitoring, or according to the provisions of § 63.11(c) Alternative Work practice for monitoring equipment for leaks. For the purpose of this provision, a leak is detected if the instrument reading equals or exceeds the applicable limits in paragraphs (c)(1)(ii)(A) through (E) of this section:

(A) For valves, pumps or connectors at an existing source, an instrument reading of 10,000 ppmv.

(B) For valves or connectors at a new source, an instrument reading of 500 ppmv.

(C) For pumps at a new source, an instrument reading of 2,000 ppmv.

(D) For sampling connections or open-ended lines, an instrument reading of 500 ppmv above background.

(E) For equipment monitored according to the Alternative Work practice for monitoring equipment for leaks, the leak definitions contained in § 63.11 (c)(6)(i) through (iii).

(iii) All equipment leak sources in organic HAP service, including sources in gas, light liquid and heavy liquid service, must be inspected using visual, audible, olfactory, or any other detection method at least monthly. A leak is detected if the inspection identifies a potential leak to the atmosphere or if there are indications of liquids dripping.

(iv) All leaks identified by the monitoring or inspections specified in paragraphs (c)(1)(ii) or (iii) of this section must be repaired no later than 15 calendar days after it is detected with no provisions for delay of repair. If a repair is not completed within 15 calendar days, the additional passive monitor specified in Section 8.2.1.3 in Method 325A of appendix A of this part must be used.

(2) The owner or operator may collect one or more background samples if the owner or operator believes that an offsite upwind source or an onsite source excluded under § 63.640(g) may influence the sampler measurements. If the owner or operator elects to collect one or more background samples, the owner or operator must develop and submit a site-specific monitoring plan for approval according to the requirements in paragraph (i) of this section. Upon approval of the site-specific monitoring plan, the background sampler(s) should be operated co-currently with the routine samplers.

(3) If there are 19 or fewer monitoring locations, the owner or operator shall collect at least one co-located duplicate sample per sampling period and at least one field blank per sampling period. If there are 20 or more monitoring locations, the owner or operator shall collect at least two co-located duplicate samples per sampling period and at least one field blank per sampling period. The co-located duplicates may be collected at any of the perimeter sampling locations.

* * * * *

(d) * * *

(1) If a near-field source correction is used as provided in paragraph (i)(2) of this section or if an alternative test method is used that provides time-resolved measurements, the owner or operator shall:

* * * * *

(2) For cases other than those specified in paragraph (d)(1) of this section, the owner or operator shall collect and record sampling period average temperature and barometric pressure using either an on-site meteorological station in accordance with Section 8.3.1 through 8.3.3 of Method 325A of appendix A of this part or, alternatively, using data from a United States Weather Service (USWS) meteorological station provided the USWS meteorological station is within 40 kilometers (25 miles) of the refinery.

* * * * *

(e) The owner or operator shall use a sampling period and sampling frequency as specified in paragraphs (e)(1) through (3) of this section.

* * * * *

(3) * * *

(iv) If every sample at a monitoring site that is monitored at the frequency specified in paragraph (e)(3)(iii) of this section is at or below 0.9 $\mu g/m^3$ for 2 years (*i.e.,* 4 consecutive semiannual samples), only one sample per year is required for that monitoring site. For yearly sampling, samples shall occur at least 10 months but no more than 14 months apart.

* * * * *

(f) * * *

(1) * * *

(i) Except when near-field source correction is used as provided in paragraph (i) of this section, the owner or operator shall determine the highest and lowest sample results for benzene concentrations from the sample pool and calculate Δc as the difference in these concentrations. Co-located samples must be averaged together for the purposes of determining the benzene concentration for that sampling location, and, if applicable, for determining Δc. The owner or operator shall adhere to the following procedures when one or more samples for the sampling period are below the method detection limit for benzene:

* * * * *

(B) If all sample results are below the method detection limit, the owner or operator shall use the method detection limit as the highest sample result and zero as the lowest sample result when calculating Δc.

* * * * *

■ 13. Section 63.660 is amended by revising the introductory text, paragraph (b) introductory text, paragraphs (b)(1) and (e), and paragraph (i)(2) introductory text, and adding paragraph (i)(2)(iii) to read as follows:

§ 63.660 Storage vessel provisions.

On and after the applicable compliance date for a Group 1 storage vessel located at a new or existing source as specified in § 63.640(h), the owner or operator of a Group 1 storage vessel storing liquid with a maximum true vapor pressure less than 76.6 kilopascals (11.1 pounds per square inch) that is part of a new or existing source shall comply with either the requirements in subpart WW or SS of this part according to the requirements in paragraphs (a) through (i) of this section and the owner or operator of a Group 1 storage vessel storing liquid with a maximum true vapor pressure greater than or equal to 76.6 kilopascals (11.1 pounds per square inch) that is

part of a new or existing source shall comply with the requirements in subpart SS of this part according to the requirements in paragraphs (a) through (i) of this section.

* * * * *

(b) A floating roof storage vessel complying with the requirements of subpart WW of this part may comply with the control option specified in paragraph (b)(1) of this section and, if equipped with a ladder having at least one slotted leg, shall comply with one of the control options as described in paragraph (b)(2) of this section. If the floating roof storage vessel does not meet the requirements of § 63.1063(a)(2)(i) through (a)(2)(viii) as of June 30, 2014, these requirements do not apply until the next time the vessel is completely emptied and degassed, or January 30, 2026, whichever occurs first.

(1) In addition to the options presented in §§ 63.1063(a)(2)(viii)(A) and (B) and 63.1064, a floating roof storage vessel may comply with § 63.1063(a)(2)(viii) using a flexible enclosure device and either a gasketed or welded cap on the top of the guidepole.

* * * * *

(e) For storage vessels previously subject to requirements in § 63.646, initial inspection requirements in § 63.1063(c)(1) and (c)(2)(i) (*i.e.,* those related to the initial filling of the storage vessel) or in § 63.983(b)(1)(i)(A), as applicable, are not required. Failure to perform other inspections and monitoring required by this section shall constitute a violation of the applicable standard of this subpart.

* * * * *

(i) * * *

(2) If a closed vent system contains a bypass line, the owner or operator shall comply with the provisions of either § 63.983(a)(3)(i) or (ii) or paragraph (iii) of this section for each closed vent system that contains bypass lines that could divert a vent stream either directly to the atmosphere or to a control device that does not comply with the requirements in subpart SS of this part. Except as provided in paragraphs (i)(2)(i) and (ii) of this section, use of the bypass at any time to divert a Group 1 storage vessel either directly to the atmosphere or to a control device that does not comply with the requirements in subpart SS of this part is an emissions standards violation. Equipment such as low leg drains and equipment subject to § 63.648 are not subject to this paragraph (i)(2).

* * * * *

(iii) Use a cap, blind flange, plug, or a second valve for an open-ended valves or line following the requirements specified in § 60.482–6(a)(2), (b) and (c).

* * * * *

■ 14. Section 63.670 is amended by:
■ a. Revising paragraph (f);
■ b. Revising paragraphs (h) introductory text, (h)(1), and (i) introductory text;
■ c. Adding paragraphs (i)(5) and (6);
■ d. Revising paragraph (j)(6) introductory text;
■ e. Revising the definition of the Q_{cum} term in the equation in paragraph (k)(3);
■ f. Revising paragraph (m)(2) introductory text;
■ g. Revising the definitions of the Q_{NG2}, Q_{NG1}, and NHV_{NG} terms in the equation in paragraph (m)(2);
■ h. Revising paragraph (n)(2) introductory text;
■ i. Revising the definitions of the Q_{NG2}, Q_{NG1}, and NHV_{NG} terms in the equation in paragraph (n)(2); and
■ j. Revising paragraphs (o) introductory text, (o)(1)(ii)(B), (o)(1)(iii)(B), and (o)(3)(i).

The revisions and additions read as follows:

§ 63.670 Requirements for flare control devices.

* * * * *

(f) *Dilution operating limits for flares with perimeter assist air.* Except as provided in paragraph (f)(1) of this section, for each flare actively receiving perimeter assist air, the owner or operator shall operate the flare to maintain the net heating value dilution parameter (NHVdil) at or above 22 British thermal units per square foot (Btu/ft^2) determined on a 15-minute block period basis when regulated material is being routed to the flare for at least 15-minutes. The owner or operator shall monitor and calculate NHV_{dil} as specified in paragraph (n) of this section.

(1) If the only assist air provided to a specific flare is perimeter assist air intentionally entrained in lower and/or upper steam at the flare tip and the effective diameter is 9 inches or greater, the owner or operator shall comply only with the NHV_{cz} operating limit in paragraph (e) of this section for that flare.

(2) [Reserved]

* * * * *

(h) *Visible emissions monitoring.* The owner or operator shall conduct an initial visible emissions demonstration using an observation period of 2 hours using Method 22 at 40 CFR part 60, appendix A–7. The initial visible emissions demonstration should be conducted the first time regulated materials are routed to the flare. Subsequent visible emissions observations must be conducted using either the methods in paragraph (h)(1) of this section or, alternatively, the methods in paragraph (h)(2) of this section. The owner or operator must record and report any instances where visible emissions are observed for more than 5 minutes during any 2 consecutive hours as specified in § 63.655(g)(11)(ii).

(1) At least once per day for each day regulated material is routed to the flare, conduct visible emissions observations using an observation period of 5 minutes using Method 22 at 40 CFR part 60, appendix A–7. If at any time the owner or operator sees visible emissions while regulated material is routed to the flare, even if the minimum required daily visible emission monitoring has already been performed, the owner or operator shall immediately begin an observation period of 5 minutes using Method 22 at 40 CFR part 60, appendix A–7. If visible emissions are observed for more than one continuous minute during any 5-minute observation period, the observation period using Method 22 at 40 CFR part 60, appendix A–7 must be extended to 2 hours or until 5-minutes of visible emissions are observed. Daily 5-minute Method 22 observations are not required to be conducted for days the flare does not receive any regulated material.

* * * * *

(i) *Flare vent gas, steam assist and air assist flow rate monitoring.* The owner or operator shall install, operate, calibrate, and maintain a monitoring system capable of continuously measuring, calculating, and recording the volumetric flow rate in the flare header or headers that feed the flare as well as any flare supplemental gas used. Different flow monitoring methods may be used to measure different gaseous streams that make up the flare vent gas provided that the flow rates of all gas streams that contribute to the flare vent gas are determined. If assist air or assist steam is used, the owner or operator shall install, operate, calibrate, and maintain a monitoring system capable of continuously measuring, calculating, and recording the volumetric flow rate of assist air and/or assist steam used with the flare. If pre-mix assist air and perimeter assist are both used, the owner or operator shall install, operate, calibrate, and maintain a monitoring system capable of separately measuring, calculating, and recording the volumetric flow rate of premix assist air and perimeter assist air used with the

flare. Flow monitoring system requirements and acceptable alternatives are provided in paragraphs (i)(1) through (6) of this section.

* * * * *

(5) Continuously monitoring fan speed or power and using fan curves is an acceptable method for continuously monitoring assist air flow rates.

(6) For perimeter assist air intentionally entrained in lower and/or upper steam, the monitored steam flow rate and the maximum design air-to-steam volumetric flow ratio of the entrainment system may be used to determine the assist air flow rate.

(j) * * *

(6) Direct compositional or net heating value monitoring is not required for gas streams that have been demonstrated to have consistent composition (or a fixed minimum net heating value) according to the methods in paragraphs (j)(6)(i) through (iii) of this section.

* * * * *

(k) * * *

(3) * * *

* * * * *

Q_{cum} = Cumulative volumetric flow over 15-minute block average period, standard cubic feet.

* * * * *

(m) * * *

(2) Owners or operators of flares that use the feed-forward calculation methodology in paragraph (l)(5)(i) of this section and that monitor gas composition or net heating value in a location representative of the cumulative vent gas stream and that directly monitor flare supplemental gas flow additions to the flare must determine the 15-minute block average NHV_{cz} using the following equation.

* * * * *

Q_{NG2} = Cumulative volumetric flow of flare supplemental gas during the 15-minute block period, scf.

Q_{NG1} = Cumulative volumetric flow of flare supplemental gas during the previous 15-minute block period, scf. For the first 15-minute block period of an event, use the volumetric flow value for the current 15-minute block period, *i.e.,* $Q_{NG1} = Q_{NG2}$.

NHV_{NG} = Net heating value of flare supplemental gas for the 15-minute block period determined according to the requirements in paragraph (j)(5) of this section, Btu/scf.

* * * * *

(n) * * *

(2) Owners or operators of flares that use the feed-forward calculation methodology in paragraph (l)(5)(i) of this section and that monitor gas composition or net heating value in a location representative of the cumulative vent gas stream and that directly monitor flare supplemental gas flow additions to the flare must determine the 15-minute block average NHV_{dil} using the following equation only during periods when perimeter assist air is used. For 15-minute block periods when there is no cumulative volumetric flow of perimeter assist air, the 15-minute block average NHV_{dil} parameter does not need to be calculated.

* * * * *

Q_{NG2} = Cumulative volumetric flow of flare supplemental gas during the 15-minute block period, scf.

Q_{NG1} = Cumulative volumetric flow of flare supplemental gas during the previous 15-minute block period, scf. For the first 15-minute block period of an event, use the volumetric flow value for the current 15-minute block period, *i.e.,* $Q_{NG1} = Q_{NG2}$.

NHV_{NG} = Net heating value of flare supplemental gas for the 15-minute block period determined according to the requirements in paragraph (j)(5) of this section, Btu/scf.

* * * * *

(o) *Emergency flaring provisions.* The owner or operator of a flare that has the potential to operate above its smokeless capacity under any circumstance shall comply with the provisions in paragraphs (o)(1) through (7) of this section.

(1) * * *

(ii) * * *

(B) Implementation of prevention measures listed for pressure relief devices in § 63.648(j)(3)(ii)(A) through (E) for each pressure relief device that can discharge to the flare.

* * * * *

(iii) * * *

(B) The smokeless capacity of the flare based on a 15-minute block average and design conditions. *Note:* A single value must be provided for the smokeless capacity of the flare.

* * * * *

(3) * * *

(i) The vent gas flow rate exceeds the smokeless capacity of the flare based on a 15-minute block average and visible emissions are present from the flare for more than 5 minutes during any 2 consecutive hours during the release event.

* * * * *

■ 15. Table 6 to Subpart CC is amended by revising the entries ''63.6(f)(3)'', ''63.6(h)(8)'', 63.7(a)(2)'', ''63.7(f)'', ''63.7(h)(3)'', and ''63.8(e)'' to read as follows:

TABLE 6—GENERAL PROVISIONS APPLICABILITY TO SUBPART CC [a]

Reference	Applies to subpart CC	Comment
*	*	* * * * * *
63.6(f)(3)	Yes	Except the cross-references to § 63.6(f)(1) and (e)(1)(i) are changed to § 63.642(n) and performance test results may be written or electronic.
*	*	* * * * * *
63.6(h)(8)	Yes	Except performance test results may be written or electronic.
*	*	* * * * * *
63.7(a)(2)	Yes	Except test results must be submitted in the Notification of Compliance Status report due 150 days after compliance date, as specified in § 63.655(f), unless they are required to be submitted electronically in accordance with § 63.655(h)(9). Test results required to be submitted electronically must be submitted by the date the Notification of Compliance Status report is submitted.
*	*	* * * * * *
63.7(f)	Yes	Except that additional notification or approval is not required for alternatives directly specified in Subpart CC.

TABLE 6—GENERAL PROVISIONS APPLICABILITY TO SUBPART CC [a]—Continued

Reference	Applies to subpart CC	Comment
*	*	* * * * * *
63.7(h)(3)	Yes	Yes, except site-specific test plans shall not be required, and where § 63.7(h)(3)(i) specifies waiver submittal date, the date shall be 90 days prior to the Notification of Compliance Status report in § 63.655(f).
*	*	* * * * * *
63.8(e)	Yes	Except that results are to be submitted electronically if required by § 63.655(h)(9).
*	*	* * * * * *

■ 16. Table 11 to subpart CC is amended by revising items (2)(iv), (3)(iv) and (4)(v) to read as follows:

TABLE 11—COMPLIANCE DATES AND REQUIREMENTS

If the construction/ reconstruction date is . . .	Then the owner or operator must comply with . . .	And the owner or operator must achieve compliance . . .	Except as provided in . . .
*	* * *	* *	* *
(2) * * *	(iv) Requirements for existing sources in § 63.643(c).	On or before December 26, 2018	§§ 63.640(k), (l) and (m) and 63.643(d).
*	* * *	* *	* *
(3) * * *	(iv) Requirements for existing sources in § 63.643(c).	On or before December 26, 2018	§§ 63.640(k), (l) and (m) and 63.643(d).
*	* * *	* *	* *
(4) * * *	(v) Requirements for existing sources in § 63.643(c).	On or before December 26, 2018	§§ 63.640(k), (l) and (m) and 63.643(d).
*	* * *	* *	* *

■ 17. Table 13 to Subpart CC is amended by revising the entry ''Hydrogen analyzer'' to read as follows:

TABLE 13—CALIBRATION AND QUALITY CONTROL REQUIREMENTS FOR CPMS

Parameter	Minimum accuracy requirements	Calibration requirements
*	* * *	* * * *
Hydrogen analyzer	±2 percent over the concentration measured or 0.1 volume percent, whichever is greater.	Specify calibration requirements in your site specific CPMS monitoring plan. Calibration requirements should follow manufacturer's recommendations at a minimum. Where feasible, select the sampling location at least two equivalent duct diameters from the nearest control device, point of pollutant generation, air inleakages, or other point at which a change in the pollutant concentration occurs.

Subpart UUU—National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units

■ 18. Section 63.1564 is amended by revising the introductory text of paragraphs (b)(4)(iii), (c)(3), and (c)(4) and revising paragraph (c)(5)(iii) to read as follows:

§ 63.1564 What are my requirements for metal HAP emissions from catalytic cracking units?

* * * * *

(b) * * *

(4) * * *

(iii) If you elect Option 3 in paragraph (a)(1)(v) of this section, the Ni lb/hr emission limit, compute your Ni emission rate using Equation 5 of this section and your site-specific Ni operating limit (if you use a continuous opacity monitoring system) using Equations 6 and 7 of this section as follows:

* * * * *

(c) * * *

(3) If you use a continuous opacity monitoring system and elect to comply with Option 3 in paragraph (a)(1)(v) of this section, determine continuous compliance with your site-specific Ni

operating limit by using Equation 11 of this section as follows:

* * * * *

(4) If you use a continuous opacity monitoring system and elect to comply with Option 4 in paragraph (a)(1)(vi) of this section, determine continuous compliance with your site-specific Ni operating limit by using Equation 12 of this section as follows:

* * * * *

(5) * * *

(iii) Calculating the inlet velocity to the primary internal cyclones in feet per second (ft/sec) by dividing the average volumetric flow rate (acfm) by the cumulative cross-sectional area of the primary internal cyclone inlets (ft^2) and by 60 seconds/minute (for unit conversion).

* * * * *

■ 19. Section 63.1565 is amended by revising paragraph (a)(5)(ii) to read as follows:

§ 63.1565 What are my requirements for organic HAP emissions from catalytic cracking units?

(a) * * *

(5) * * *

(ii) You can elect to maintain the oxygen (O_2) concentration in the exhaust gas from your catalyst regenerator at or above 1 volume percent (dry basis) or 1 volume percent (wet basis with no moisture correction).

* * * * *

■ 20. Section 63.1569 is amended by revising paragraph (c)(2) to read as follows:

§ 63.1569 What are my requirements for HAP emissions from bypass lines?

* * * * *

(c) * * *

(2) Demonstrate continuous compliance with the work practice standard in paragraph (a)(3) of this section by complying with the procedures in your operation, maintenance, and monitoring plan.

■ 21. Section 63.1571 is amended by revising the introductory text of paragraphs (a), (a)(5) and (a)(6), and by revising the introductory text of paragraphs (d)(1) and (d)(2) to read as follows:

§ 63.1571 How and when do I conduct a performance test or other initial compliance demonstration?

(a) *When must I conduct a performance test?* You must conduct initial performance tests and report the results by no later than 150 days after the compliance date specified for your source in § 63.1563 and according to the provisions in § 63.7(a)(2) and § 63.1574(a)(3). If you are required to do a performance evaluation or test for a semi-regenerative catalytic reforming unit catalyst regenerator vent, you may do them at the first regeneration cycle after your compliance date and report the results in a followup Notification of Compliance Status report due no later than 150 days after the test. You must conduct additional performance tests as specified in paragraphs (a)(5) and (6) of this section and report the results of these performance tests according to the provisions in § 63.1575(f).

* * * * *

(5) *Periodic performance testing for PM or Ni.* Except as provided in paragraphs (a)(5)(i) and (ii) of this section, conduct a periodic performance test for PM or Ni for each catalytic cracking unit at least once every 5 years according to the requirements in Table 4 of this subpart. You must conduct the first periodic performance test no later than August 1, 2017 or within 150 days of startup of a new unit.

* * * * *

(6) *One-time performance testing for Hydrogen Cyanide (HCN).* Conduct a performance test for HCN from each catalytic cracking unit no later than August 1, 2017 or within 150 days of startup of a new unit according to the applicable requirements in paragraphs (a)(6)(i) and (ii) of this section.

* * * * *

(d) * * *

(1) If you must meet the HAP metal emission limitations in § 63.1564, you elect the option in paragraph (a)(1)(v) in § 63.1564 (Ni lb/hr), and you use continuous parameter monitoring systems, you must establish an operating limit for the equilibrium catalyst Ni concentration based on the laboratory analysis of the equilibrium catalyst Ni concentration from the initial performance test. Section 63.1564(b)(2) allows you to adjust the laboratory measurements of the equilibrium catalyst Ni concentration to the maximum level. You must make this adjustment using Equation 1 of this section as follows:

* * * * *

(2) If you must meet the HAP metal emission limitations in § 63.1564, you elect the option in paragraph (a)(1)(vi) in § 63.1564 (Ni per coke burn-off), and you use continuous parameter monitoring systems, you must establish an operating limit for the equilibrium catalyst Ni concentration based on the laboratory analysis of the equilibrium catalyst Ni concentration from the initial performance test. Section 63.1564(b)(2) allows you to adjust the laboratory measurements of the equilibrium catalyst Ni concentration to the maximum level. You must make this adjustment using Equation 2 of this section as follows:

* * * * *

■ 22. Section 63.1572 is amended by revising paragraphs (c)(1) and (d)(1) to read as follows:

§ 63.1572 What are my monitoring installation, operation, and maintenance requirements?

* * * * *

(c) * * *

(1) You must install, operate, and maintain each continuous parameter monitoring system according to the requirements in Table 41 of this subpart. You must also meet the equipment specifications in Table 41 of this subpart if pH strips or colormetric tube sampling systems are used. You must meet the requirements in Table 41 of this subpart for BLD systems. Alternatively, before August 1, 2017, you may install, operate, and maintain each continuous parameter monitoring system in a manner consistent with the manufacturer's specifications or other written procedures that provide adequate assurance that the equipment will monitor accurately.

* * * * *

(d) * * *

(1) Except for monitoring malfunctions, associated repairs, and required quality assurance or control activities (including as applicable, calibration checks and required zero and span adjustments), you must conduct all monitoring in continuous operation (or collect data at all required intervals) at all times the affected source is operating.

* * * * *

■ 23. Section 63.1573 is amended by revising paragraph (a)(1) introductory text to read as follows:

§ 63.1573 What are my monitoring alternatives?

(a) * * * (1) You may use this alternative to a continuous parameter monitoring system for the catalytic regenerator exhaust gas flow rate for your catalytic cracking unit if the unit does not introduce any other gas streams into the catalyst regeneration vent (*i.e.,* complete combustion units with no additional combustion devices). You may also use this alternative to a continuous parameter monitoring system for the catalytic regenerator atmospheric exhaust gas flow rate for your catalytic reforming unit during the coke burn and rejuvenation cycles if the unit operates as a constant pressure system during these cycles. You may

also use this alternative to a continuous parameter monitoring system for the gas flow rate exiting the catalyst regenerator to determine inlet velocity to the primary internal cyclones as required in § 63.1564(c)(5) regardless of the configuration of the catalytic regenerator exhaust vent downstream of the regenerator (*i.e.,* regardless of whether or not any other gas streams are introduced into the catalyst regeneration vent). Except, if you only use this alternative to demonstrate compliance with § 63.1564(c)(5), you shall use this procedure for the performance test and for monitoring after the performance test. You shall:

* * * * *

■ 24. Section 63.1574 is amended by revising paragraph (a)(3)(ii) to read as follows:

§ 63.1574 What notifications must I submit and when?

(a) * * *

(3) * * *

(ii) For each initial compliance demonstration that includes a performance test, you must submit the notification of compliance status no later than 150 calendar days after the compliance date specified for your affected source in § 63.1563. For data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT website (*https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert*) at the time of the test, you must submit the results in accordance with § 63.1575(k)(1)(i) by the date that you submit the Notification of Compliance Status, and you must include the process unit(s) tested, the pollutant(s) tested, and the date that such performance test was conducted in the Notification of Compliance Status. For performance evaluations of continuous monitoring systems (CMS) measuring relative accuracy test audit (RATA) pollutants that are supported by the EPA's ERT as listed on the EPA's ERT website at the time of the evaluation, you must submit the results in accordance with § 63.1575(k)(2)(i) by the date that you submit the Notification of Compliance Status, and you must include the process unit where the CMS is installed, the parameter measured by the CMS, and the date that the performance evaluation was conducted in the Notification of Compliance Status. All other performance test and performance evaluation results (*i.e.,* those not supported by EPA's ERT) must be reported in the Notification of Compliance Status.

* * * * *

■ 25. Section 63.1575 is amended by:

■ a. Revising paragraphs (f)(1), (k)(1) introductory text and (k)(2) introductory text; and

■ b. Adding paragraph (l).

The revisions and additions read as follows:

§ 63.1575 What reports must I submit and when?

* * * * *

(f) * * *

(1) A copy of any performance test or performance evaluation of a CMS done during the reporting period on any affected unit, if applicable. The report must be included in the next semiannual compliance report. The copy must include a complete report for each test method used for a particular kind of emission point tested. For additional tests performed for a similar emission point using the same method, you must submit the results and any other information required, but a complete test report is not required. A complete test report contains a brief process description; a simplified flow diagram showing affected processes, control equipment, and sampling point locations; sampling site data; description of sampling and analysis procedures and any modifications to standard procedures; quality assurance procedures; record of operating conditions during the test; record of preparation of standards; record of calibrations; raw data sheets for field sampling; raw data sheets for field and laboratory analyses; documentation of calculations; and any other information required by the test method. For data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT website (*https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert*) at the time of the test, you must submit the results in accordance with paragraph (k)(1)(i) of this section by the date that you submit the compliance report, and instead of including a copy of the test report in the compliance report, you must include the process unit(s) tested, the pollutant(s) tested, and the date that such performance test was conducted in the compliance report. For performance evaluations of CMS measuring relative accuracy test audit (RATA) pollutants that are supported by the EPA's ERT as listed on the EPA's ERT website at the time of the evaluation, you must submit the results in accordance with paragraph (k)(2)(i) of this section by the date that you submit the compliance report, and you must include the process unit where the CMS is installed, the parameter measured by the CMS, and the date that the performance evaluation was conducted in the compliance report. All other performance test and performance evaluation results (*i.e.,* those not supported by EPA's ERT) must be reported in the compliance report.

* * * * *

(k) * * *

(1) Unless otherwise specified by this subpart, within 60 days after the date of completing each performance test as required by this subpart, you must submit the results of the performance tests following the procedure specified in either paragraph (k)(1)(i) or (ii) of this section.

* * * * *

(2) Unless otherwise specified by this subpart, within 60 days after the date of completing each CEMS performance evaluation required by § 63.1571(a) and (b), you must submit the results of the performance evaluation following the procedure specified in either paragraph (k)(2)(i) or (ii) of this section.

* * * * *

(l) *Extensions to electronic reporting deadlines.* (1) If you are required to electronically submit a report through the Compliance and Emissions Data Reporting Interface (CEDRI) in the EPA's Central Data Exchange (CDX), and due to a planned or actual outage of either the EPA's CEDRI or CDX systems within the period of time beginning 5 business days prior to the date that the submission is due, you will be or are precluded from accessing CEDRI or CDX and submitting a required report within the time prescribed, you may assert a claim of EPA system outage for failure to timely comply with the reporting requirement. You must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or caused a delay in reporting. You must provide to the Administrator a written description identifying the date(s) and time(s) the CDX or CEDRI were unavailable when you attempted to access it in the 5 business days prior to the submission deadline; a rationale for attributing the delay in reporting beyond the regulatory deadline to the EPA system outage; describe the measures taken or to be taken to minimize the delay in reporting; and identify a date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported. In any circumstance, the report must be submitted electronically as soon as possible after the outage is resolved. The decision to accept the

claim of EPA system outage and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(2) If you are required to electronically submit a report through CEDRI in the EPA's CDX and a force majeure event is about to occur, occurs, or has occurred or there are lingering effects from such an event within the period of time beginning 5 business days prior to the date the submission is due, the owner or operator may assert a claim of force majeure for failure to timely comply with the reporting requirement. For the purposes of this section, a force majeure event is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents you from complying with the requirement to submit a report electronically within the time period prescribed. Examples of such events are acts of nature (*e.g.,* hurricanes, earthquakes, or floods), acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility (*e.g.,* large scale power outage). If you intend to assert a claim of force majeure, you must submit notification to the Administrator in writing as soon as possible following the date you first knew, or through due diligence should have known, that the event may cause or caused a delay in reporting. You must provide to the Administrator a written description of the force majeure event and a rationale for attributing the delay in reporting beyond the regulatory deadline to the force majeure event; describe the measures taken or to be taken to minimize the delay in reporting; and identify a date by which you propose to report, or if you have already met the reporting requirement at the time of the notification, the date you reported. In any circumstance, the reporting must occur as soon as possible after the force majeure event occurs. The decision to accept the claim of force majeure and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

■ 26. Section 63.1576 is amended by revising paragraph (a)(2)(i) to read as follows:

§ 63.1576 What records must I keep, in what form, and for how long?

(a) * * *

(2) * * *

(i) Record the date, time, and duration of each startup and/or shutdown period for which the facility elected to comply with the alternative standards in § 63.1564(a)(5)(ii) or § 63.1565(a)(5)(ii) or § 63.1568(a)(4)(ii) or (iii).

* * * * *

■ 27. Table 3 to Subpart UUU is amended by revising the table heading and entries for items 2.c, 6, 7, 8 and 9 to read as follows:

TABLE 3 TO SUBPART UUU OF PART 63—CONTINUOUS MONITORING SYSTEMS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS

* * * * * * *

For each new or existing catalytic cracking unit . . .	If you use this type of control device for your vent . . .	You shall install, operate, and maintain a . . .
* * * * * * *		
2. * * *		
	c. Wet scrubber	Continuous parameter monitoring system to measure and record the pressure drop across the scrubber,[2] the gas flow rate entering or exiting the control device,[1] and total liquid (or scrubbing liquor) flow rate to the control device.
* * * * * * *		
6. Option 1a: Elect NSPS subpart J, PM per coke burn-off limit, not subject to the NSPS for PM in 40 CFR 60.102 or 60.102a(b)(1).	Any	See item 1 of this table.
7. Option 1b: Elect NSPS subpart Ja, PM per coke burn-off limit, not subject to the NSPS for PM in 40 CFR 60.102 or 60.102a(b)(1).	Any	The applicable continuous monitoring systems in item 2 of this table.
8. Option 1c: Elect NSPS subpart Ja, PM concentration limit not subject to the NSPS for PM in 40 CFR 60.102 or 60.102a(b)(1).	Any	See item 3 of this table.
9. Option 2: PM per coke burn-off limit, not subject to the NSPS for PM in 40 CFR 60.102 or 60.102a(b)(1).	Any	The applicable continuous monitoring systems in item 2 of this table.
* * * * * * *		

[1] If applicable, you can use the alternative in § 63.1573(a)(1) instead of a continuous parameter monitoring system for gas flow rate.

[2] If you use a jet ejector type wet scrubber or other type of wet scrubber equipped with atomizing spray nozzles, you can use the alternative in § 63.1573(b) instead of a continuous parameter monitoring system for pressure drop across the scrubber.

■ 28. Table 4 to Subpart UUU of Part 63 is amended by revising the entries for items 9.c and 10.c to read as follows:

* * * * *

TABLE 4 TO SUBPART UUU OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS FOR METAL HAP EMISSIONS FROM CATALYTIC CRACKING UNITS

*	*	*	*	*	*	*
For each new or existing catalytic cracking unit catalyst regenerator vent . . .	You must . . .	Using . . .	According to these requirements . . .			
*	*	*	*	*	*	*
9. * * *						
	c. Determine the equilibrium catalyst Ni concentration.	XRF procedure in appendix A to this subpart 1; or EPA Method 6010B or 6020 or EPA Method 7520 or 7521 in SW–8462; or an alternative to the SW–846 method satisfactory to the Administrator.	You must obtain 1 sample for each of the 3 test runs; determine and record the equilibrium catalyst Ni concentration for each of the 3 samples; and you may adjust the laboratory results to the maximum value using Equation 1 of § 63.1571, if applicable.			
*	*	*	*	*	*	*
10. * * *						
	c. Determine the equilibrium catalyst Ni concentration.	See item 9.c. of this table	You must obtain 1 sample for each of the 3 test runs; determine and record the equilibrium catalyst Ni concentration for each of the 3 samples; and you may adjust the laboratory results to the maximum value using Equation 2 of § 63.1571, if applicable.			
*	*	*	*	*	*	*

* * * * *

■ 29. Table 5 to Subpart UUU is amended by revising the entry for item 3 to read as follows:

TABLE 5 TO SUBPART UUU OF PART 63—INITIAL COMPLIANCE WITH METAL HAP EMISSION LIMITS FOR CATALYTIC CRACKING UNITS

*	*	*	*	*	*	*
For each new and existing catalytic cracking unit . . .	For the following emission limit . . .	You have demonstrated compliance if . . .				
*	*	*	*	*	*	*
3. Subject to NSPS for PM in 40 CFR 60.102a(b)(1)(ii), electing to meet the PM per coke burn-off limit.	PM emissions must not exceed 0.5 g/kg (0.5 lb PM/1,000 lb) of coke burn-off).	You have already conducted a performance test to demonstrate initial compliance with the NSPS and the measured PM emission rate is less than or equal to 0.5 g/kg (0.5 lb/1,000 lb) of coke burn-off in the catalyst regenerator. As part of the Notification of Compliance Status, you must certify that your vent meets the PM limit. You are not required to do another performance test to demonstrate initial compliance. As part of your Notification of Compliance Status, you certify that your BLD; CO_2, O_2, or CO monitor; or continuous opacity monitoring system meets the requirements in § 63.1572.				
*	*	*	*	*	*	*

■ 30. Table 6 to Subpart UUU is amended by revising the entries for items 1.a.ii and 7 to read as follows:

TABLE 6 TO SUBPART UUU OF PART 63—CONTINUOUS COMPLIANCE WITH METAL HAP EMISSION LIMITS FOR CATALYTIC CRACKING UNITS

For each new and existing catalytic cracking unit . . .	Subject to this emission limit for your catalyst regenerator vent . . .	You shall demonstrate continuous compliance by . . .
1. * * *	a. * * *.	ii. Conducting a performance test before August 1, 2017 or within 150 days of startup of a new unit and thereafter following the testing frequency in § 63.1571(a)(5) as applicable to your unit.
7. Option 1b: Elect NSPS subpart Ja requirements for PM per coke burn-off limit, not subject to the NSPS for PM in 40 CFR 60.102 or 60.102a(b)(1).	PM emissions must not exceed 1.0 g/kg (1.0 lb PM/1,000 lb) of coke burn-off.	See item 2 of this table.

■ 31. Table 10 to Subpart UUU is amended by revising the entry for item 3 to read as follows:

TABLE 10 TO SUBPART UUU OF PART 63—CONTINUOUS MONITORING SYSTEMS FOR ORGANIC HAP EMISSIONS FROM CATALYTIC CRACKING UNITS

For each new or existing catalytic cracking unit . . .	And you use this type of control device for your vent . . .	You shall install, operate, and maintain this type of continuous monitoring system . . .
3. During periods of startup, shutdown or hot standby electing to comply with the operating limit in § 63.1565(a)(5)(ii).	Any	Continuous parameter monitoring system to measure and record the concentration by volume (wet or dry basis) of oxygen from each catalyst regenerator vent. If measurement is made on a wet basis, you must comply with the limit as measured (no moisture correction).

■ 32. Table 43 to Subpart UUU is amended by revising the entry for item 2 to read as follows:

TABLE 43 TO SUBPART UUU OF PART 63—REQUIREMENTS FOR REPORTS

You must submit . . .	The report must contain . . .	You shall submit the report . . .
2. Performance test and CEMS performance evaluation data.	On and after February 1, 2016, the information specified in § 63.1575(k)(1).	Semiannually according to the requirements in § 63.1575(b) and (f).

■ 33. Table 44 to Subpart UUU is amended by revising the entries ''63.6(f)(3)'', ''63.6(h)(7)(i)'', ''63.6(h)(8)'', ''63.7(a)(2)'', ''63.7(g)'', ''63.8(e)'', ''63.10(d)(2)'', ''63.10(e)(1)–(2)'', and ''63.10(e)(4)'' to read as follows:

TABLE 44 TO SUBPART UUU OF PART 63—APPLICABILITY OF NESHAP GENERAL PROVISIONS TO SUBPART UUU

* * * * * * *

Citation	Subject	Applies to subpart UUU	Explanation
*	*	*	* * * *
§ 63.6(f)(3)		Yes	Except the cross-references to § 63.6(f)(1) and (e)(1)(i) are changed to § 63.1570(c) and this subpart specifies how and when the performance test results are reported.
*	*	*	* * * *
§ 63.6(h)(7)(i)	Report COM Monitoring Data from Performance Test.	Yes	Except this subpart specifies how and when the performance test results are reported.
*	*	*	* * * *
§ 63.6(h)(8)	Determining Compliance with Opacity/VE Standards.	Yes	Except this subpart specifies how and when the performance test results are reported.
*	*	*	* * * *
§ 63.7(a)(2)	Performance Test Dates	Yes	Except this subpart specifies that the results of initial performance tests must be submitted within 150 days after the compliance date.
*	*	*	* * * *
§ 63.7(g)	Data Analysis, Recordkeeping, Reporting.	Yes	Except this subpart specifies how and when the performance test or performance evaluation results are reported and § 63.7(g)(2) is reserved and does not apply.
*	*	*	* * * *
§ 63.8(e)	CMS Performance Evaluation	Yes	Except this subpart specifies how and when the performance evaluation results are reported.
*	*	*	* * * *
§ 63.10(d)(2)	Performance Test Results	No	This subpart specifies how and when the performance test results are reported.
*	*	*	* * * *
§ 63.10(e)(1)–(2)	Additional CMS Reports	Yes	Except this subpart specifies how and when the performance evaluation results are reported.
*	*	*	* * * *
§ 63.10(e)(4)	COMS Data Reports	Yes	Except this subpart specifies how and when the performance test results are reported.
*	*	*	* * * *

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Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6050**

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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
58721–59268 21
59269–60332 23
60333–60728 26

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
9826 60331
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
1970 59269
Proposed Rules:
205 60373
932 57691
981 56742
987 55111
1970 59318

8 CFR

208 55934
1003 55934
1208 55934

10 CFR

26 58463
30 58463
37 58721
40 ..... 58463, 58721
50 58463
70 ..... 58463, 58721
71 58721
72 ..... 55601, 58721
73 ..... 58463, 58721
76 58721
95 58721
110 58463
Proposed Rules:
50 ..... 56156, 58509
72 55643
170 55113
171 55113
430 ..... 54883, 56746
431 54883

12 CFR

34 59272
209 58466
211 58724
213 59274
226 ..... 59272, 59276
238 58724
303 60333
333 60333
390 60333
652 55093
700 55467
701 55467
702 55467
703 55467
713 55467
723 55467
747 55467
1013 59274
1026 ..... 59272, 59276
Proposed Rules:
Ch. II 57351
52 58432
208 58432
268 57343
304 58432
701 56640
704 59318
713 59318
1281 55114

13 CFR

120 55478
Proposed Rules:
103 57693
120 57693
121 57693

14 CFR

25 ..... 55247, 58739, 58740

39 .....55249, 55252, 55255, 55258, 55606, 55610, 55614, 55617, 55619, 55813, 55816, 55953, 56699, 56702, 56704, 56709, 57675, 58184, 59278, 59285, 59288, 59290, 60337
71 .....54864, 55479, 56711, 58467, 58468, 58471, 58492, 58742, 58743, 60339, 60340
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, 59326, 59328, 60374, 60376
71 .....55306, 55308, 55310, 60378, 60380
73.....60382
93.....55133, 55134

15 CFR

740.....55099
742.....55099
744.....55099
772.....55099
774.....55099
922.....55956

Proposed Rules:
744.....58201

16 CFR

Proposed Rules:
609.....57693

17 CFR

1.....56666
23.....60341
232.....55264, 57677
240.....55486, 58338
242.....58338
249.....56257

18 CFR

35.....59295, 60347
40.....60347
101.....59295
154.....59295
201.....59295
352.....59295

Proposed Rules:
35.....59331

20 CFR

418.....55626

Proposed Rules:
620.....55311
655.....55977, 55985
401.....57366
404.....57368
416.....57368

21 CFR

73.....54869, 56258
101.....55266
862 (2 documents) 54873, 54875

Proposed Rules:
15.....55318
50.....57378
101.....55323
112.....54888
175.....56750
176.....56750
177.....56750
178.....56750
179.....54891
312.....57378
807.....54891
812.....57378
1002.....54891
1010.....54891
1040.....54891

23 CFR

625.....54876

Proposed Rules:
630.....56758
635.....56758

24 CFR

3282.....57677

25 CFR

23.....55267

26 CFR

1.....55632, 58476
54.....57336, 57592

Proposed Rules:
1 .....55324, 55646, 56763
20.....59343
53.....55653
300.....58202

27 CFR

Proposed Rules:
4.....60562
5.....60562
7.....60562
14.....60562
19.....60562

28 CFR

2.....58499, 58500

29 CFR

1926.....56198
2590.....57336, 57592
4022.....57307

Proposed Rules:
Ch. I.....55329
570.....57386

31 CFR

App. A to Ch.V 55269
547.....57308
560.....55269

32 CFR

221.....59303

Proposed Rules:
111.....55329

33 CFR

100.....55271, 55967
117 .....55099, 55100, 55967, 55969, 57689, 58185, 58745, 59307, 59312
147.....55967
164.....55272
165 .....55101, 55282, 55284, 55488, 55967, 55969, 56258, 57318, 57319, 57321, 57322, 58186, 58501, 58504, 58745, 59312, 59314, 60360

Proposed Rules:
165.....55332, 56768

37 CFR

1.....55102
384.....60362

Proposed Rules:
201.....57386
Ch. III.....55334, 60384

38 CFR

4.....54881

39 CFR

Proposed Rules:
3010.....60385

40 CFR

9.....57689
51 .....56713, 57324, 58506
52 .....56734, 56736, 57324, 58188, 59315, 60363
55.....56259
60 .....56713, 58506, 60696
63 .....56713, 58506, 60696
180 .....55491, 55970, 56262, 57333, 58506, 60366
282.....55286
721.....57689

Proposed Rules:
49.....55994
52 .....55335, 55338, 55656, 55994, 56002, 56770, 56773, 56775, 56777, 56781, 57701, 57704, 58206, 59348, 60386
60.....56015, 57387
81.....56781, 59350
86.....55837
158.....60389
282.....55340
355.....56791
721.....57634
770.....54892

42 CFR

405.....59452
409.....56406
410.....59452
411.....59452
413.....56922
414.....56922, 59452
415.....59452
416.....58818
419.....58818
424.....56406
425.....59452
484.....56406
486.....56406
488.....56406
495.....59452

Proposed Rules:
10.....55135
422.....54982
423.....54982
438.....54982, 57264
457.....57264
482.....55105
484.....55105
485.....55105
498.....54982

44 CFR

64.....56269

45 CFR

147.....57336, 57592

Proposed Rules:
155.....56015
156.....56015
1148.....55504

46 CFR

35.....55272, 56271

Proposed Rules:
10.....56272

47 CFR

20.....55106

Proposed Rules:
1.....56031
61.....58510
73 .....56031, 56038, 58513

48 CFR

509.....56739

Proposed Rules:
16.....54901
52.....54901
501.....55838
536.....55838
552.....55838

49 CFR

171.....55792
172.....55792
173.....55792
176.....55792
178.....55792
180.....55792
192.....58694
229.....59182
231.....59182
236.....59182
238.....59182

Proposed Rules:
192.....57388
555.....59353
571.....59353
591.....59353

50 CFR

17.....58747
218.....57076
300.....55636
622 .....55107, 55292, 55293, 55975, 57339
635 .....55108, 55638, 57340
648.....55640, 60372
665.....55641
679 .....54881, 55109, 55641, 55823, 56740, 57341, 58754

Proposed Rules:
17.....55341, 59232
253.....55137
600.....56039, 57705
622 .....55850, 56039, 58522
648 .....54903, 55665, 57389, 57395, 58219
697.....56039

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List November 20, 2018

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