



FEDERAL REGISTER

Vol. 82

Tuesday,

No. 53

March 21, 2017

Pages 14419–14600

OFFICE OF THE FEDERAL REGISTER



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

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

DEPARTMENT OF EDUCATION

2 CFR Part 3474

RIN 1894-AA07

[Docket ID ED-2015-OS-0105]

Open Licensing Requirement for Competitive Grant Programs

AGENCY: Office of the Secretary, Department of Education.

ACTION: Interim final rule; further delay of effective date; request for comments.

SUMMARY: In accordance with a directive from the memorandum entitled “Regulatory Freeze Pending Review,” published in the **Federal Register** on January 24, 2017 (Memorandum), the Secretary further delays until May 22, 2017, the effective date of the final regulations entitled Open Licensing Requirement for Competitive Grant Programs (Open Licensing), published in the **Federal Register** on January 19, 2017 (82 FR 7376). The current effective date is March 21, 2017. The additional delay will allow the Department the opportunity for further review of the final regulations.

DATES: As of March 17, 2017, the effective date of the final regulations published January 19, 2017 (82 FR 7376) delayed until March 21, 2017 on January 30, 2017 (82 FR 8669), are further delayed until May 22, 2017. We must receive your comments on or before April 20, 2017.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

• *Federal eRulemaking Portal:* Go to www.regulations.gov to submit your comments electronically. Information

on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under “Help.”

• *Postal Mail, Commercial Delivery, or Hand Delivery:* We strongly encourage commenters to submit their comments electronically. However, if you mail or deliver your comments about this interim final rule, address them to Sharon Leu, U.S. Department of Education, 400 Maryland Avenue SW., Room 6W252, Washington, DC 20202–5900.

Privacy Note: The Department’s policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Sharon Leu, Department of Education, 400 Maryland Avenue SW., Room 6W252, Washington, DC 20202. Telephone: (202) 453–5646 or by email: tech@ed.gov.

If you use a telecommunications device for the deaf or a text telephone, call the Federal Relay Service, toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Department published the final regulations in the **Federal Register** on January 19, 2017 (82 FR 7376). We published a document in the **Federal Register** on January 30, 2017 (82 FR 8669), delaying the effective date of the final regulations from March 20, 2017, to March 21, 2017, in accordance with a directive from the Memorandum to temporarily postpone for 60 days from the date of the Memorandum the effective dates of all regulations that had been published in the **Federal Register** but had not yet taken effect. The Memorandum also directed agencies to consider further delaying the effective dates beyond that 60-day period. Upon review, the Department has determined that it is appropriate to further delay the effective date of the final regulations to May 22, 2017, for the purpose of additional consideration.

Invitation to Comment: We invite you to submit comments regarding this interim final rule. We will consider comments on the delayed effective date

only. We will not consider comments on the final regulations. See **ADDRESSES** for instructions on how to submit comments.

During and after the comment period, you may inspect all public comments about this interim final rule by accessing *Regulations.gov*. You may also inspect the comments in person in Room 6W100, 400 Maryland Avenue SW., Washington, DC, between 8:30 a.m. and 4:00 p.m. Washington, DC time, Monday through Friday of each week, except Federal holidays. If you want to schedule time to inspect comments, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this interim final rule. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Waiver of Rulemaking and Delayed Effective Date: Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations and publishes rules not less than 30 days before their effective dates. However, the APA provides that an agency is not required to conduct notice-and-comment rulemaking or delay effective dates when the agency, for good cause, finds that the requirement is impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)(B) and (d)(3)). There is good cause to waive both of these requirements here as the President’s appointees and designees need to delay the effective date of these regulations to have adequate time to review these regulations, as well as all of the Department’s regulatory activity, and neither the notice and comment processes nor the delayed effective date could be implemented in time to allow for this review before the March 21 effective date.

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List of Subjects in 2 CFR Part 3474

Accounting, Administrative practice and procedure, Adult education, Aged, Agriculture, American Samoa, Bilingual education, Blind, Business and industry, Civil rights, Colleges and universities, Communications, Community development, Community facilities, Copyright, Credit, Cultural exchange programs, Educational facilities, Educational research, Education, Education of disadvantaged, Education of individuals with disabilities, Educational study programs, Electric power, Electric power rates, Electric utilities, Elementary and secondary education, Energy conservation, Equal educational opportunity, Federally affected areas, Government contracts, Grant programs, Grant programs-agriculture, Grant programs-business and industry, Grant programs-communications, Grant programs-education, Grant programs-energy, Grant programs-health, Grant programs-housing and community development, Grant programs-social programs, Grant administration, Guam, Home improvement, Homeless, Hospitals, Housing, Human research subjects, Indians, Indians-education, Infants and children, Insurance, Intergovernmental relations, International organizations, Inventions and patents, Loan programs, Loan programs-social programs, Loan programs-agriculture, Loan programs-business and industry, Loan programs-communications, Loan programs-energy, Loan programs-health, Loan

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Dated: March 17, 2017.

Betsy DeVos,

Secretary of Education.

[FR Doc. 2017-05723 Filed 3-17-17; 4:15 pm]

BILLING CODE 4000-01-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Document Number AMS-NOP-17-0001; NOP-16-04]

National Organic Program: USDA Organic Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notification of 2017 sunset review.

SUMMARY: This document addresses the 2017 sunset review submitted to the Secretary of Agriculture (Secretary) through the Agricultural Marketing Service's (AMS) National Organic Program (NOP) by the National Organic Standards Board (NOSB) following the NOSB's April 2015 and October 2015 meetings. The 2017 sunset review pertains to the NOSB's sunset review of 198 substances on the U.S. Department of Agriculture's (USDA) National List of Allowed and Prohibited Substances (National List). Consistent with the NOSB's sunset review, this publication provides notice on the renewal of 187 substances on the National List, and completes the 2017 National List sunset review for these renewed substances.

DATES: This document is effective March 15, 2017.

FOR FURTHER INFORMATION CONTACT: Requests for a copy of this document should be sent to Robert Pooler, Standards Division, National Organic

Program, USDA-AMS-NOP, 1400 Independence Ave. SW., Room 2642-S., Ag Stop 0268, Washington, DC 20250-0268. Telephone: (202) 720-3252.

SUPPLEMENTARY INFORMATION: The National Organic Program (NOP) is authorized by the Organic Foods Protection Act (OFPA) of 1990, as amended (7 U.S.C. 6501-6522). The USDA Agricultural Marketing Service (AMS) administers the NOP. Final regulations implementing the NOP, also referred to as the USDA organic regulations (7 CFR 205.1-205.690), were published December 21, 2000 (65 FR 80548), and became effective on October 21, 2002. Through these regulations, the AMS oversees national standards for the production, handling, and labeling of organically produced agricultural products. Since becoming effective, the USDA organic regulations have been frequently amended, mostly for changes to the National List in 7 CFR 205.601-205.606.

The National List identifies the synthetic substances that may be used and the nonsynthetic (natural) substances that may not be used in organic production. The National List also identifies synthetic, nonsynthetic nonagricultural, and nonorganic agricultural substances that may be used in organic handling. The OFPA and the USDA organic regulations, as indicated in § 205.105, specifically prohibit the use of any synthetic substance in organic production and handling unless the synthetic substance is on the National List. Section 205.105 also requires that any nonorganic agricultural substance and any nonsynthetic nonagricultural substance used in organic handling appear on the National List.

As stipulated by OFPA, recommendations to amend the National List are developed by the NOSB, operating in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2 *et seq.*), to assist in the evaluation of substances to be used or not used in organic production and handling, and to advise the Secretary on the USDA organic regulations. OFPA also requires a review of all substances included on the National List within 5 years of their addition to or renewal on the list. During this sunset review, the NOSB considers any new information pertaining to a substance's impact on human health and the environment, its necessity, and its compatibility with organic production and handling. If a listed substance is not reviewed by NOSB and renewed by USDA within the five year period, its allowance or

prohibition on the National List is no longer in effect.

AMS published a revision of the sunset review process in the **Federal Register** on September 16, 2013 (78 FR 56811). This revised process provides public notice on the renewal of National List substances. This renewal occurs after the NOSB review.

At its April 2015 and October 2015 public meetings, the NOSB considered 198 National List substances which have a 2017 Sunset date. AMS has reviewed and accepted the NOSB 2017 sunset review and recommendations. Table 1 lists the 187 synthetic and nonsynthetic substances on the National List that are renewed. These substances

continue to be included on the National List with a new sunset date of March 15, 2022. The NOSB also recommended removing eleven substances considered during the 2017 sunset review process from the National List; these recommendations will be addressed in a separate rulemaking.

TABLE 1—SUBSTANCES RENEWED IN 2017 SUNSET REVIEW

National list section	Substance listing
§ 205.601 Synthetic substances allowed for use in organic crop production.	
(a)	As algicide, disinfectants, and sanitizer, including irrigation cleaning systems.
(1)	Alcohols.
(i)	Ethanol.
(ii)	Isopropanol.
(2)	Chlorine materials—For pre-harvest use, residual chlorine levels in the water in direct crop contact or as water from cleaning irrigation systems applied to soil must not exceed the maximum residual disinfectant limit under the Safe Drinking Water Act, except that chlorine products may be used in edible sprout production according to EPA label directions.
(i)	Calcium hypochlorite.
(ii)	Chlorine dioxide.
(iii)	Sodium hypochlorite.
(4)	Hydrogen peroxide.
(7)	Soap-based algicide/demosers.
(b)	As herbicides, weed barriers, as applicable.
(1)	Herbicides, soap-based—for use in farmstead maintenance (roadways, ditches, right of ways, building perimeters) and ornamental crops.
(2)	Mulches.
(i)	Newspaper or other recycled paper, without glossy or colored inks.
(ii)	Plastic mulch or covers (petroleum-based other than polyvinyl chloride (PVC)).
(c)	As compost feedstocks—Newspapers or other recycled paper, without glossy or colored inks.
(d)	As animal repellents—Soaps, ammonium—for use as a large animal repellent only, no contact with soil or edible portion of crop.
(e)	As insecticides (including acaricides or mite control).
(1)	Ammonium carbonate—for use as bait in insect traps only, no direct contact with crop or soil.
(3)	Boric acid—structural pest control, no direct contact with organic food or crops.
(5)	Elemental sulfur.
(6)	Lime sulfur—including calcium polysulfide.
(7)	Oils, horticultural—narrow range oils as dormant, suffocating, and summer oils.
(8)	Soaps, insecticidal.
(9)	Sticky traps/barriers.
(10)	Sucrose octanoate esters (CAS #s—42922–74–7; 58064–47–4)—in accordance with approved labeling.
(f)	As insect management. Pheromones.
(g)	As rodenticides. Vitamin D ₃ .
(i)	As plant disease control.
(2)	Coppers, fixed—copper hydroxide, copper oxide, copper oxychloride, includes products exempted from EPA tolerance, <i>Provided</i> , That, copper-based materials must be used in a manner that minimizes accumulation in the soil and shall not be used as herbicides.
(3)	Copper sulfate—Substance must be used in a manner that minimizes accumulation of copper in the soil.
(4)	Hydrated lime.
(5)	Hydrogen peroxide.
(6)	Lime sulfur.
(7)	Oils, horticultural, narrow range oils as dormant, suffocating, and summer oils.
(9)	Potassium bicarbonate.
(10)	Elemental sulfur.
(j)	As plant or soil amendments.
(1)	Aquatic plant extracts (other than hydrolyzed)—Extraction process is limited to the use of potassium hydroxide or sodium hydroxide; solvent amount used is limited to that amount necessary for extraction.
(2)	Elemental sulfur.
(3)	Humic acids—naturally occurring deposits, water and alkali extracts only.
(4)	Lignin sulfonate—chelating agent, dust suppressant.
(5)	Magnesium sulfate—allowed with a documented soil deficiency.
(6)	Micronutrients—not to be used as a defoliant, herbicide, or desiccant. Those made from nitrates or chlorides are not allowed. Soil deficiency must be documented by testing.
(i)	Soluble boron products.
(ii)	Sulfates, carbonates, oxides, or silicates of zinc, copper, iron, manganese, molybdenum, selenium, and cobalt.
(7)	Liquid fish products—can be pH adjusted with sulfuric, citric or phosphoric acid. The amount of acid used shall not exceed the minimum needed to lower the pH to 3.5.
(8)	Vitamins B1, C, and E.
(k)	As plant growth regulators. Ethylene gas—for regulation of pineapple flowering.

TABLE 1—SUBSTANCES RENEWED IN 2017 SUNSET REVIEW—Continued

National list section	Substance listing
(l)	As floating agents in post-harvest handling.
(2)	Sodium silicate—for tree fruit and fiber processing.
(m)	As synthetic inert ingredients as classified by the Environmental Protection Agency (EPA), for use with nonsynthetic substances or synthetic substances listed in this section and used as an active pesticide ingredient in accordance with any limitations on the use of such substances.
(1)	EPA List 4—Inerts of Minimal Concern.
(o)	As production aids. Microcrystalline cheesewax (CAS #'s 64742-42-3, 8009-03-08, and 8002-74-2)—for use in log grown mushroom production. Must be made without either ethylene-propylene co-polymer or synthetic colors.
§ 205.602 Nonsynthetic substances prohibited for use in organic crop production.	
(a)	Ash from manure burning.
(b)	Arsenic.
(d)	Lead salts.
(e)	Potassium chloride—unless derived from a mined source and applied in a manner that minimizes chloride accumulation in the soil.
(f)	Sodium fluoaluminate (mined).
(h)	Strychnine.
(i)	Tobacco dust (nicotine sulfate).
§ 205.603 Synthetic substances allowed for use in organic livestock production.	
In accordance with restrictions specified in this section the following synthetic substances may be used in organic livestock production:	
(a)	As disinfectants, sanitizer, and medical treatments as applicable.
(1)	Alcohols.
(i)	Ethanol-disinfectant and sanitizer only, prohibited as a feed additive.
(ii)	Isopropanol-disinfectant only.
(2)	Aspirin—approved for health care use to reduce inflammation.
(3)	Atropine (CAS #—51-55-8)—federal law restricts this drug to use by or on the lawful written or oral order of a licensed veterinarian, in full compliance with the AMDUCA and 21 CFR part 530 of the Food and Drug Administration regulations. Also, for use under 7 CFR part 205, the NOP requires: (i) Use by or on the lawful written order of a licensed veterinarian; and (ii) A meat withdrawal period of at least 56 days after administering to livestock intended for slaughter; and a milk discard period of at least 12 days after administering to dairy animals.
(4)	Biologics—Vaccines.
(5)	Butorphanol (CAS #—42408-82-2)—federal law restricts this drug to use by or on the lawful written or oral order of a licensed veterinarian, in full compliance with the AMDUCA and 21 CFR part 530 of the Food and Drug Administration regulations. Also, for use under 7 CFR part 205, the NOP requires: (i) Use by or on the lawful written order of a licensed veterinarian; and (ii) A meat withdrawal period of at least 42 days after administering to livestock intended for slaughter; and a milk discard period of at least 8 days after administering to dairy animals.
(6)	Chlorhexidine—Allowed for surgical procedures conducted by a veterinarian. Allowed for use as a teat dip when alternative germicidal agents and/or physical barriers have lost their effectiveness.
(7)	Chlorine materials—disinfecting and sanitizing facilities and equipment. Residual chlorine levels in the water shall not exceed the maximum residual disinfectant limit under the Safe Drinking Water Act.
(i)	Calcium hypochlorite.
(ii)	Chlorine dioxide.
(iii)	Sodium hypochlorite.
(8)	Electrolytes—without antibiotics.
(9)	Flunixin (CAS #—38677-85-9)—in accordance with approved labeling; except that for use under 7 CFR part 205, the NOP requires a withdrawal period of at least two-times that required by the FDA.
(11)	Glucose.
(12)	Glycerin—Allowed as a livestock teat dip, must be produced through the hydrolysis of fats or oils.
(13)	Hydrogen peroxide.
(14)	Iodine.
(15)	Magnesium hydroxide (CAS #—1309-42-8)—federal law restricts this drug to use by or on the lawful written or oral order of a licensed veterinarian, in full compliance with the AMDUCA and 21 CFR part 530 of the Food and Drug Administration regulations. Also, for use under 7 CFR part 205, the NOP requires use by or on the lawful written order of a licensed veterinarian.
(16)	Magnesium sulfate.
(17)	Oxytocin—use in postparturition therapeutic applications.
(18)	Parasiticides—Prohibited in slaughter stock, allowed in emergency treatment for dairy and breeder stock when organic system plan-approved preventive management does not prevent infestation. Milk or milk products from a treated animal cannot be labeled as provided for in subpart D of this part for 90 days following treatment. In breeder stock, treatment cannot occur during the last third of gestation if the progeny will be sold as organic and must not be used during the lactation period for breeding stock.
(i)	Fenbendazole (CAS #—43210-67-9)—only for use by or on the lawful written order of a licensed veterinarian.
(ii)	Ivermectin (CAS #—70288-86-7).
(iii)	Moxidectin (CAS #—113507-06-5)—for control of internal parasites only.
(19)	Peroxyacetic/Peracetic acid (CAS #—79-21-0)—for sanitizing facility and processing equipment.
(20)	Phosphoric acid—allowed as an equipment cleaner, <i>Provided</i> , That, no direct contact with organically managed livestock or land occurs.

TABLE 1—SUBSTANCES RENEWED IN 2017 SUNSET REVIEW—Continued

National list section	Substance listing
(21)	Poloxalene (CAS #—9003–11–6)—for use under 7 CFR part 205, the NOP requires that poloxalene only be used for the emergency treatment of bloat.
(22)	Tolazoline (CAS #—59–98–3)—federal law restricts this drug to use by or on the lawful written or oral order of a licensed veterinarian, in full compliance with the AMDUCA and 21 CFR part 530 of the Food and Drug Administration regulations. Also, for use under 7 CFR part 205, the NOP requires: (i) Use by or on the lawful written order of a licensed veterinarian; (ii) Use only to reverse the effects of sedation and analgesia caused by Xylazine; and (iii) A meat withdrawal period of at least 8 days after administering to livestock intended for slaughter; and a milk discard period of at least 4 days after administering to dairy animals.
(23)	Xylazine (CAS #—7361–61–7)—federal law restricts this drug to use by or on the lawful written or oral order of a licensed veterinarian, in full compliance with the AMDUCA and 21 CFR part 530 of the Food and Drug Administration regulations. Also, for use under 7 CFR part 205, the NOP requires: (i) Use by or on the lawful written order of a licensed veterinarian; (ii) The existence of an emergency; and (iii) A meat withdrawal period of at least 8 days after administering to livestock intended for slaughter; and a milk discard period of at least 4 days after administering to dairy animals.
(b)	As topical treatment, external parasiticide or local anesthetic as applicable.
(1)	Copper sulfate.
(2)	Formic acid (CAS #—64–18–6)—for use as a pesticide solely within honeybee hives.
(3)	Iodine.
(4)	Lidocaine—as a local anesthetic. Use requires a withdrawal period of 90 days after administering to livestock intended for slaughter and 7 days after administering to dairy animals.
(5)	Lime, hydrated—as an external pest control, not permitted to cauterize physical alterations or deodorize animal wastes.
(6)	Mineral oil—for topical use and as a lubricant.
(7)	Procaine—as a local anesthetic, use requires a withdrawal period of 90 days after administering to livestock intended for slaughter and 7 days after administering to dairy animals.
(8)	Sucrose octanoate esters (CAS #s—42922–74–7; 58064–47–4)—in accordance with approved labeling.
(d)	As feed additives.
(1)	DL-Methionine, DL-Methionine-hydroxy analog, and DL-Methionine-hydroxy analog calcium (CAS #'s 59–51–8, 583–91–5, 4857–44–7, and 922–50–9)—for use only in organic poultry production at the following maximum levels of synthetic methionine per ton of feed: Laying and broiler chickens—2 pounds; turkeys and all other poultry—3 pounds.
(2)	Trace minerals, used for enrichment or fortification when FDA approved.
(3)	Vitamins, used for enrichment or fortification when FDA approved.
(e)	As synthetic inert ingredients as classified by the Environmental Protection Agency (EPA), for use with nonsynthetic substances or synthetic substances listed in this section and used as an active pesticide ingredient in accordance with any limitations on the use of such substances.
(1)	EPA List 4—Inerts of Minimal Concern.
(f)	Excipients, only for use in the manufacture of drugs used to treat organic livestock when the excipient is: Identified by the FDA as Generally Recognized As Safe; Approved by the FDA as a food additive; or Included in the FDA review and approval of a New Animal Drug Application or New Drug Application.

§ 205.604 Nonsynthetic substances prohibited for use in organic livestock production.

The following nonsynthetic substances may not be used in organic livestock production:

- (a) Strychnine.

§ 205.605 Nonagricultural (nonorganic) substances allowed as ingredients in or on processed products labeled as “organic” or “made with organic (specified ingredients or food group(s)).”

- (a) Nonsynthetics allowed:
- Acids (Alginate; Citric—produced by microbial fermentation of carbohydrate substances; and Lactic).
 - Attapulgate—as a processing aid in the handling of plant and animal oils.
 - Bentonite.
 - Calcium carbonate.
 - Calcium chloride.
 - Dairy cultures.
 - Diatomaceous earth—food filtering aid only.
 - Enzymes—must be derived from edible, nontoxic plants, nonpathogenic fungi, or nonpathogenic bacteria.
 - Flavors, nonsynthetic sources only and must not be produced using synthetic solvents and carrier systems or any artificial preservative.
 - Kaolin.
 - Magnesium sulfate, nonsynthetic sources only.
 - Nitrogen—oil-free grades.
 - Oxygen—oil-free grades.
 - Perlite—for use only as a filter aid in food processing.
 - Potassium chloride.
 - Potassium iodide.
 - Sodium bicarbonate.
 - Sodium carbonate.
 - Waxes—nonsynthetic (Carnauba wax; and Wood resin).

TABLE 1—SUBSTANCES RENEWED IN 2017 SUNSET REVIEW—Continued

National list section	Substance listing
(b)	Yeast—When used as food or a fermentation agent in products labeled as “organic,” yeast must be organic if its end use is for human consumption; nonorganic yeast may be used when organic yeast is not commercially available. Growth on petrochemical substrate and sulfite waste liquor is prohibited. For smoked yeast, nonsynthetic smoke flavoring process must be documented. Synthetics allowed: Acidified sodium chlorite—Secondary direct antimicrobial food treatment and indirect food contact surface sanitizing. Acidified with citric acid only. Alginates. Ammonium bicarbonate—for use only as a leavening agent. Ammonium carbonate—for use only as a leavening agent. Ascorbic acid. Calcium citrate. Calcium hydroxide. Calcium phosphates (monobasic, dibasic, and tribasic). Carbon dioxide. Chlorine materials—disinfecting and sanitizing food contact surfaces, <i>Except</i>, That, residual chlorine levels in the water shall not exceed the maximum residual disinfectant limit under the Safe Drinking Water Act (Calcium hypochlorite; Chlorine dioxide; and Sodium hypochlorite). Ethylene—allowed for postharvest ripening of tropical fruit and degreening of citrus. Ferrous sulfate—for iron enrichment or fortification of foods when required by regulation or recommended (independent organization). Glycerides (mono and di)—for use only in drum drying of food. Glycerin—produced by hydrolysis of fats and oils. Hydrogen peroxide. Magnesium chloride—derived from sea water. Magnesium stearate—for use only in agricultural products labeled “made with organic (specified ingredients or food group(s)),” prohibited in agricultural products labeled “organic”. Nutrient vitamins and minerals, in accordance with 21 CFR 104.20, Nutritional Quality Guidelines For Foods. Ozone. Phosphoric acid—cleaning of food-contact surfaces and equipment only. Potassium acid tartrate. Potassium carbonate. Potassium citrate. Potassium phosphate—for use only in agricultural products labeled “made with organic (specific ingredients or food group(s)),” prohibited in agricultural products labeled “organic”. Sodium citrate. Sodium hydroxide—prohibited for use in lye peeling of fruits and vegetables. Sodium phosphates—for use only in dairy foods. Sulfur dioxide—for use only in wine labeled “made with organic grapes,” Provided, That, total sulfite concentration does not exceed 100 ppm. Tocopherols—derived from vegetable oil when rosemary extracts are not a suitable alternative. Xanthan gum.

§ 205.606 Nonorganically produced agricultural products allowed as ingredients in or on processed products labeled as “organic.”

Only the following nonorganically produced agricultural products may be used as ingredients in or on processed products labeled as “organic,” only in accordance with any restrictions specified in this section, and only when the product is not commercially available in organic form.

(a)	Casings, from processed intestines.
(b)	Celery powder.
(d)	Colors derived from agricultural products—Must not be produced using synthetic solvents and carrier systems or any artificial preservative.
(1)	Beet juice extract color (pigment CAS #7659-95-2).
(3)	Black currant juice color (pigment CAS #'s: 528-58-5, 528-53-0, 643-84-5, 134-01-0, 1429-30-7, and 134-04-3).
(4)	Black/Purple carrot juice color (pigment CAS #'s: 528-58-5, 528-53-0, 643-84-5, 134-01-0, 1429-30-7, and 134-04-3).
(5)	Blueberry juice color (pigment CAS #'s: 528-58-5, 528-53-0, 643-84-5, 134-01-0, 1429-30-7, and 134-04-3).
(6)	Carrot juice color (pigment CAS #1393-63-1).
(7)	Cherry juice color (pigment CAS #'s: 528-58-5, 528-53-0, 643-84-5, 134-01-0, 1429-30-7, and 134-04-3).
(8)	Chokeberry—Aronia juice color (pigment CAS #'s: 528-58-5, 528-53-0, 643-84-5, 134-01-0, 1429-30-7, and 134-04-3).
(9)	Elderberry juice color (pigment CAS #'s: 528-58-5, 528-53-0, 643-84-5, 134-01-0, 1429-30-7, and 134-04-3).
(10)	Grape juice color (pigment CAS #'s: 528-58-5, 528-53-0, 643-84-5, 134-01-0, 1429-30-7, and 134-04-3).
(11)	Grape skin extract color (pigment CAS #'s: 528-58-5, 528-53-0, 643-84-5, 134-01-0, 1429-30-7, and 134-04-3).
(12)	Paprika color (CAS #68917-78-2)—dried, and oil extracted.
(13)	Pumpkin juice color (pigment CAS #127-40-2).
(14)	Purple potato juice (pigment CAS #'s: 528-58-5, 528-53-0, 643-84-5, 134-01-0, 1429-30-7, and 134-04-3).
(15)	Red cabbage extract color (pigment CAS #'s: 528-58-5, 528-53-0, 643-84-5, 134-01-0, 1429-30-7, and 134-04-3).
(16)	Red radish extract color (pigment CAS #'s: 528-58-5, 528-53-0, 643-84-5, 134-01-0, 1429-30-7, and 134-04-3).
(17)	Saffron extract color (pigment CAS #1393-63-1).
(18)	Turmeric extract color (CAS #458-37-7).
(f)	Fish oil (Fatty acid CAS #'s: 10417-94-4, and 25167-62-8)—stabilized with organic ingredients or only with ingredients on the National List, §§ 205.605 and 205.606.

TABLE 1—SUBSTANCES RENEWED IN 2017 SUNSET REVIEW—Continued

National list section	Substance listing
(g)	Fructooligosaccharides (CAS # 308066–66–2).
(i)	Gelatin (CAS # 9000–70–8).
(j)	Gums—water extracted only (Arabic; Guar; Locust bean; and Carob bean).
(l)	Kelp—for use only as a thickener and dietary supplement.
(m)	Konjac flour (CAS # 37220–17–0).
(n)	Lecithin—de-oiled.
(p)	Orange pulp, dried.
(q)	Orange shellac-bleached (CAS # 9000–59–3).
(r)	Pectin (non-amidated forms only).
(t)	Seaweed, Pacific kombu.
(u)	Starches.
(1)	Cornstarch (native).
(2)	Sweet potato starch—for bean thread production only.
(x)	Wakame seaweed (<i>Undaria pinnatifida</i>).

Authority: 7 U.S.C. 6501–6522.

Dated: March 15, 2017.

Bruce Summers,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2017–05480 Filed 3–20–17; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[Docket No. EERE–2016–BT–TP–0029]

RIN 1904–AD71

Energy Conservation Program: Test Procedures for Central Air Conditioners and Heat Pumps

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule; further delay of effective date.

SUMMARY: This document further temporarily postpones the effective date of a recently published final rule establishing test procedures for certain varieties of central air conditioners and heat pumps.

DATES: As of March 21, 2017, the effective date of the rule amending 10 CFR parts 429 and 430 published in the **Federal Register** at 82 FR 1426 on January 5, 2017, delayed until March 21, 2017 at 82 FR 8985 on February 2, 2017, is further delayed until July 3, 2017. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of July 3, 2017.

FOR FURTHER INFORMATION CONTACT: Ms. Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–2J, 1000 Independence Avenue SW.,

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Ms. Johanna Jochum, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Ave. SW., Washington, DC 20585–0121. Phone: (202) 287–6307. Email:

Johanna.Jochum@hq.doe.gov.

SUPPLEMENTARY INFORMATION: On February 2, 2017, the United States Department of Energy (“DOE”) temporarily postponed the effective date of its final rule amending the test procedures for central air conditioners and heat pumps published in the **Federal Register** on January 4, 2017. See 82 FR 8985. The February 2 rule temporarily postponed the effective date of the final rule by 60 days, starting from January 20, 2017. The temporary 60-day delay in effective date was necessary to give the newly appointed Secretary of Energy (Secretary) the opportunity for further review and consideration of new regulations. However, the Secretary was not confirmed and did not begin work in his position until March 3, 2017. As a result, the Secretary was unable to accomplish the review and consideration during the original postponement of the effective date of the regulation establishing test procedures for central air conditioners and heat pumps. Therefore, DOE hereby further temporarily postpones the effective date of that test procedure regulation to allow the Secretary the opportunity to accomplish this task. The effective date of this test procedure is postponed until July 3, 2017, the date on which the statute requires compliance.

To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b)(A). Alternatively, DOE’s

implementation of this action without opportunity for public comment, effective immediately upon publication in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. 553(b)(B) and 553(d)(3). Pursuant to 5 U.S.C. 553(b)(B), DOE has determined that good cause exists to forego the requirement to provide prior notice and an opportunity for public comment thereon for this rule as such procedures would be impracticable, unnecessary and contrary to the public interest. DOE is temporarily postponing the effective date of this regulation pursuant to the previously-noted need for review by the Secretary and the statutory compliance date is unaffected by this action. As a result, seeking public comment on this delay is unnecessary and contrary to the public interest. It is also impracticable given the timing of the Secretary’s confirmation and the March 21 effective date established by the prior temporary postponement. For these same reasons DOE finds good cause to waive the 30-day delay in effective date provided for in 5 U.S.C. 553(d).

Issued in Washington, DC, on March 15, 2017.

John T. Lucas,

Acting General Counsel.

[FR Doc. 2017–05481 Filed 3–20–17; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY**10 CFR Parts 429 and 431**

[Docket No. EERE-2014-BT-TP-0054]

RIN 1904-AD72

Energy Conservation Program: Test Procedure for Walk-in Coolers and Walk-in Freezers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule; further delay of effective date.

SUMMARY: This document further temporarily postpones the effective date of a recently published final rule establishing test procedures for certain walk-in cooler and freezer components.

DATES: As of March 21, 2017, the effective date of the rule amending 10 CFR parts 429 and 431 published in the **Federal Register** at 81 FR 95758 on December 28, 2016, delayed until March 21, 2017 at 82 FR 8805 on January 31, 2017, is further delayed until June 26, 2017. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of June 26, 2017.

FOR FURTHER INFORMATION CONTACT: Ms. Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE-2J, 1000 Independence Avenue SW., Washington, DC 20585-0121. Telephone: (202) 586-6590. Email: Ashley.Armstrong@ee.doe.gov.

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, 1000 Independence Ave. SW., Washington, DC 20585-0121. Phone: (202) 586-8145. Email: Michael.Kido@hq.doe.gov.

SUPPLEMENTARY INFORMATION: On January 31, 2017, the United States Department of Energy ("DOE") temporarily postponed the effective date of its final rule amending the test procedure for certain walk-in cooler and walk-in freezer (collectively, "walk-in" or "WICF") components published in the **Federal Register** on December 28, 2016. See 82 FR 8805. The January 31 rule temporarily postponed the effective date of the final rule by 60 days, starting from January 20, 2017. The temporary 60-day delay in effective date was necessary to give the newly appointed Secretary of Energy ("Secretary") the opportunity for further review and consideration of new regulations. However, the Secretary was not confirmed and did not begin work in his

position until March 3, 2017. As a result, the Secretary was unable to accomplish the review and consideration during the original postponement of the effective date of the regulation amending the test procedure for certain walk-in components. Therefore, DOE hereby further temporarily postpones the effective date of that test procedure regulation to allow the Secretary the opportunity to accomplish this task. The effective date of this test procedure is postponed until June 26, 2017, the date on which the statute requires compliance with that procedure. See 42 U.S.C. 6314(d) (requiring use of applicable test procedure starting 180 days after being prescribed) and 81 FR 95758 (requiring use of the prescribed procedure starting on June 26, 2017).

To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b)(A). Alternatively, DOE's implementation of this action without opportunity for public comment, effective immediately upon publication in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. 553(b)(B) and 553(d)(3). Pursuant to 5 U.S.C. 553(b)(B), DOE has determined that good cause exists to forego the requirement to provide prior notice and an opportunity for public comment thereon for this rule as such procedures would be impracticable, unnecessary and contrary to the public interest. DOE is temporarily postponing the effective date of this regulation pursuant to the previously-noted need for review by the Secretary and the statutory compliance date is unaffected by this action. As a result, seeking public comment on this delay is unnecessary and contrary to the public interest. It is also impracticable given the timing of the Secretary's confirmation and the March 21 effective date established by the prior temporary postponement. For these same reasons DOE finds good cause to waive the 30-day delay in effective date provided for in 5 U.S.C. 553(d).

Issued in Washington, DC, on March 15, 2017.

John T. Lucas,

Acting General Counsel.

[FR Doc. 2017-05483 Filed 3-20-17; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY**10 CFR Parts 429 and 431**

[Docket No. EERE-2014-BT-TP-0054]

RIN 1904-AD43

Energy Conservation Program: Test Procedures for Compressors

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule; further delay of effective date.

SUMMARY: This document further temporarily postpones the effective date of a recently published final rule establishing test procedures for certain varieties of compressors.

DATES: As of March 21, 2017, the effective date of the rule amending 10 CFR parts 429 and 431 published in the **Federal Register** at 82 FR 1052 on January 4, 2017, delayed until March 21, 2017 at 82 FR 8985 on February 2, 2017, is further delayed until July 3, 2017. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of July 3, 2017.

FOR FURTHER INFORMATION CONTACT: Ms. Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE-2J, 1000 Independence Avenue SW., Washington, DC 20585-0121. Telephone: (202) 586-6590. Email: Ashley.Armstrong@ee.doe.gov.

Ms. Mary Greene, U.S. Department of Energy, Office of the General Counsel, GC-33, 1000 Independence Ave. SW., Washington, DC 20585-0121. Phone: (202) 586-1817. Email: Mary.Greene@hq.doe.gov.

SUPPLEMENTARY INFORMATION: On February 1, 2017, the United States Department of Energy ("DOE") temporarily postponed the effective date of its final rule amending the test procedures for compressors published in the **Federal Register** on January 4, 2017. See 82 FR 8985 (February 2, 2017). The February 1 rule temporarily postponed the effective date of the final rule by 60 days, starting from January 20, 2017. The temporary 60-day delay in effective date was necessary to give the newly appointed Secretary of Energy (Secretary) the opportunity for further review and consideration of new regulations. However, the Secretary was not confirmed and did not begin work in his position until March 3, 2017. As a result, the Secretary was unable to accomplish the review and

consideration during the original postponement of the effective date of the regulation establishing test procedures for compressors. Therefore, DOE hereby further temporarily postpones the effective date of that test procedure regulation to allow the Secretary the opportunity to accomplish this task. The effective date of this test procedure is postponed until July 3, 2017, the date on which the statute requires compliance.

To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b)(A). Alternatively, DOE's implementation of this action without opportunity for public comment, effective immediately upon publication in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. 553(b)(B) and 553(d)(3). Pursuant to 5 U.S.C. 553(b)(B), DOE has determined that good cause exists to forego the requirement to provide prior notice and an opportunity for public comment thereon for this rule as such procedures would be impracticable, unnecessary and contrary to the public interest. DOE is temporarily postponing the effective date of this regulation pursuant to the previously-noted need for review by the Secretary and the statutory compliance date is unaffected by this action. As a result, seeking public comment on this delay is unnecessary and contrary to the public interest. It is also impracticable given the timing of the Secretary's confirmation and the March 21 effective date established by the prior temporary postponement. For these same reasons DOE finds good cause to waive the 30-day delay in effective date provided for in 5 U.S.C. 553(d).

Issued in Washington, DC, on March 15, 2017.

John T. Lucas,

Acting General Counsel.

[FR Doc. 2017-05479 Filed 3-20-17; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE-2012-BT-STD-0045]

RIN 1904-AD28

Energy Conservation Program: Energy Conservation Standards for Ceiling Fans

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule; further delay of effective date.

SUMMARY: This document further delays the effective date of a recently published final rule amending the energy conservation standards for ceiling fans.

DATES: As of March 21, 2017, the effective date of the rule amending 10 CFR part 430 published in the **Federal Register** at 82 FR 6826 on January 19, 2017, delayed until March 21, 2017 at 82 FR 8806 on January 19, 2017, is further delayed until September 30, 2017.

FOR FURTHER INFORMATION CONTACT: Ms. Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE-2J, 1000 Independence Avenue SW., Washington, DC, 20585-0121. Telephone: (202) 586-6590. Email: Ashley.Armstrong@ee.doe.gov.

Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC-33, 1000 Independence Ave. SW., Washington, DC 20585-0121. Phone: (202) 586-7796. Email: Elizabeth.Kohl@hq.doe.gov.

SUPPLEMENTARY INFORMATION: On January 31, 2017, the United States Department of Energy ("DOE") temporarily postponed the effective date of its final rule amending the energy conservation standards for ceiling fans published in the **Federal Register** on January 19, 2017. See 82 FR 8806. The January 31 rule temporarily postponed the effective date of the final rule by 60 days, starting from January 20, 2017. The temporary 60-day delay in effective date was necessary to give the newly appointed Secretary of Energy (Secretary) the opportunity for further review and consideration of new regulations. However, the Secretary was not confirmed and did not begin work in his position until March 3, 2017. As a result, the Secretary was unable to accomplish the review and consideration during the original postponement of the effective date of the regulation establishing energy conservation standards for ceiling fans. Therefore, DOE hereby further temporarily postpones the effective date of that energy conservation standards regulation to allow the Secretary the opportunity to accomplish this task. The effective date of this test procedure is postponed until September 30, 2017.

To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b)(A). Alternatively, DOE's implementation of this action without

opportunity for public comment, effective immediately upon publication in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. 553(b)(B) and 553(d)(3). Pursuant to 5 U.S.C. 553(b)(B), DOE has determined that good cause exists to forego the requirement to provide prior notice and an opportunity for public comment thereon for this rule as such procedures would be impracticable, unnecessary and contrary to the public interest. DOE is temporarily postponing the effective date of this regulation pursuant to the previously-noted need for review by the Secretary. The January 21, 2020, compliance date is unaffected by this action. As a result, seeking public comment on this delay is unnecessary and contrary to the public interest. It is also impracticable given the timing of the Secretary's confirmation and the March 21 effective date established by the prior temporary postponement. For these same reasons DOE finds good cause to waive the 30-day delay in effective date provided for in 5 U.S.C. 553(d).

Issued in Washington, DC, on March 15, 2017.

John T. Lucas,

Acting General Counsel.

[FR Doc. 2017-05477 Filed 3-20-17; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

10 CFR Part 435

[Docket No. EERE-2016-BT-STD-0003]

RIN 1904-AD56

Energy Efficiency Standards for the Design and Construction of New Federal Low-Rise Residential Buildings' Baseline Standards Update

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule; further delay of effective date.

SUMMARY: This document further temporarily postpones the effective date of a recently published final rule amending the baseline Federal building standards.

DATES: As of March 21, 2017, the effective date of the rule amending 10 CFR part 435 published in the **Federal Register** at 82 FR 2857 on January 10, 2017, delayed until March 21, 2017 at 82 FR 9343 on February 6, 2017, is further delayed until September 30, 2017. The incorporation by reference of the publication listed in this rule is

approved by the Director of the Federal Register as of September 30, 2017.

FOR FURTHER INFORMATION CONTACT:

Nicolas Baker, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Federal Energy Management Program, Mailstop EE-5F, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-8215, email: nicolas.baker@ee.doe.gov.

Kavita Vaidyanathan, U.S. Department of Energy, Office of the General Counsel, Forrestal Building, GC-33, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-0669, email: kavita.vaidyanathan@hq.doe.gov.

SUPPLEMENTARY INFORMATION: On February 6, 2017, the United States Department of Energy (“DOE”) temporarily postponed the effective date of its final rule amending the baseline Federal building standards published in the **Federal Register** on January 10, 2017. See 82 FR 9343. The January 31st rule temporarily postponed the effective date of the final rule by 60 days, starting from January 20, 2017. The temporary 60-day delay in effective date was necessary to give the newly appointed Secretary of Energy (Secretary) the opportunity for further review and consideration of new regulations. However, the Secretary was not confirmed and did not begin work in his position until March 3, 2017. As a result, the Secretary was unable to accomplish the review and consideration during the original postponement of the effective date of the regulation establishing the baseline Federal building standards. Therefore, DOE hereby further temporarily postpones the effective date of that baseline Federal building standards regulation to allow the Secretary the opportunity to accomplish this task. The effective date of this regulation is postponed until September 30, 2017. This will not change the statutory compliance date, which will remain on January 10, 2018.

To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b)(A). Alternatively, DOE’s implementation of this action without opportunity for public comment, effective immediately upon publication in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. 553(b)(B) and 553(d)(3). Pursuant to 5 U.S.C. 553(b)(B), DOE has determined that good cause exists to forego the requirement to provide prior notice and an opportunity for public comment thereon for this rule as such procedures

would be impracticable, unnecessary and contrary to the public interest. DOE is temporarily postponing the effective date of this regulation pursuant to the previously-noted need for review by the Secretary. The January 10, 2018, compliance date is unaffected by this action. As a result, seeking public comment on this delay is unnecessary and contrary to the public interest. It is also impracticable given the timing of the Secretary’s confirmation and the March 21 effective date established by the prior temporary postponement. For these same reasons DOE finds good cause to waive the 30-day delay in effective date provided for in 5 U.S.C. 553(d).

Issued in Washington, DC, on March 15, 2017.

John T. Lucas,

Acting General Counsel.

[FR Doc. 2017-05485 Filed 3-20-17; 8:45 am]

BILLING CODE 6450-01-P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

RIN 3245-AG67

Small Business Investment Companies: Passive Business Expansion and Technical Clarifications

AGENCY: U.S. Small Business Administration.

ACTION: Final rule; delay of effective date.

SUMMARY: On December 28, 2016, the Small Business Administration (SBA) published a final rule to expand permitted investments in passive businesses and provide further clarification with regard to investments in such businesses for the Small Business Investment Company (SBIC) Program, with an effective date of January 27, 2017. On January 26, 2017, SBA published a delay of effective date until March 21, 2017 and re-opened the rule for additional public comment in response to the memorandum dated January 20, 2017 from the Assistant to the President and Chief of Staff, entitled “Regulatory Freeze Pending Review.” SBA requires additional time to consider this final rule and determine whether any further changes are required; therefore, the effective date for this final rule is delayed until May 20, 2017. Any changes to the final rule based on this redetermination will be published in the **Federal Register**.

DATES: As of March 21, 2017, the effective date of the SBA final rule published December 28, 2016 (81 FR

95419), and delayed January 26, 2017 (82 FR 8499), is further delayed until May 20, 2017.

FOR FURTHER INFORMATION CONTACT:

Theresa Jamerson, Office of Investment and Innovation, (202) 205-7563 or sbic@sba.gov.

SUPPLEMENTARY INFORMATION: The U.S. Small Business Administration (SBA) Final Rule: Small Business Investment Companies: Passive Business Expansion and Technical Clarifications, 81 FR 95419 (December 28, 2016), had an effective date of January 27, 2017. The January effective date was delayed to March 21, 2017, and the comment period was reopened until February 19, 2017. 82 FR 8499 (Jan. 26, 2017). This new delay of effective date will provide 60 additional days for SBA to further analyze questions of fact, law, and policy related to this rulemaking, in accordance with OMB Memorandum #M-17-16, Implementation of Regulatory Freeze (Jan. 24, 2017). SBA will use the supplemental time to assess the additional comments it received through February 19, 2017, and will further consider the rule’s impact on the SBIC program and program participants. SBA will also use the supplemental time to make necessary determinations regarding the effects of the final rule on the examining and liquidation functions of the SBA’s Office of Investment and Innovation.

SBA is considering revising the regulations for the Small Business Investment Company (SBIC) program to expand permitted investments in passive businesses and provide further clarification with regard to investments in such businesses. SBICs are generally prohibited from investing in passive businesses under the Small Business Investment Act of 1958, as amended (Act). SBIC program regulations provide for two exceptions that allow an SBIC to structure an investment utilizing a passive small business as a pass-through. The first exception provides conditions under which an SBIC may structure an investment through up to two levels of passive entities to make an investment in a non-passive business that is a subsidiary of the passive business directly financed by the SBIC. The second exception, prior to this final rule, enabled a partnership SBIC, with SBA’s prior approval, to provide financing to a small business through a passive, wholly-owned C corporation (commonly known as a blocker corporation), but only if a direct financing would cause the SBIC’s investors to incur Unrelated Business Taxable Income (UBTI). This final rule clarifies several aspects of the first

exception and in the second exception eliminates the prior approval requirement and expands the purposes for which a blocker corporation may be formed. The final rule also adds new reporting and other requirements for passive investments to help protect SBA's financial interests and ensure adequate oversight and makes minor technical amendments. Finally, this rule makes a conforming change to the regulations regarding the amount of leverage available to SBICs under common control. This change is necessary for consistency with the Consolidated Appropriations Act, 2016, which increased the maximum amount of such leverage to \$350 million from \$225 million.

Dated: March 10, 2017.

A. Joseph Shepard,

Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2017-05533 Filed 3-20-17; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 17

[Docket No. FAA-2017-0075]

Office Relocation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: On November 1, 2016, the FAA Office of Dispute Resolution for Acquisition (ODRA), which is now part of the FAA Office of Adjudication, relocated to a new address different from the one listed in its Procedural Regulations. This rule updates the address for ODRA filings by hand delivery, courier or other form of in-person delivery and the address for ODRA filings by U.S. Mail. The telephone and facsimile numbers are unchanged.

DATES: This rule is effective March 21, 2017.

FOR FURTHER INFORMATION CONTACT: Marie A. Collins, Administrative Judge and Dispute Resolution Officer, FAA Office of Dispute Resolution for Acquisition, AGC-70, 600 Independence Avenue SW., Room 2W100, Washington, DC 20591, telephone number (202) 267-3290, facsimile (202) 267-3720.

SUPPLEMENTARY INFORMATION: The new address for ODRA filings by hand delivery, courier or other form of in-

person delivery is: 600 Independence Avenue SW., Room 2W100, Washington, DC 20591. The new address for ODRA filings by U.S. Mail is: 800 Independence Avenue SW., Washington, DC 20591 [Attention: AGC-70, Wilbur Wright Bldg., Room 2W100].

List of Subjects in 14 CFR Part 17

Administrative practice and procedure, Authority delegations (Government agencies), Government contracts.

The Amendment

For the reasons discussed in the preamble, 14 CFR part 17 is amended as follows:

PART 17—PROCEDURES FOR PROTESTS AND CONTRACT DISPUTES

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 5 U.S.C. 570–581, 49 U.S.C. 106(f)(2), 40110, 40111, 40112, 46102, 46014, 46105, 46109, and 46110.

■ 2. In § 17.15, revise paragraph (b) to read as follows:

§ 17.15 Filing a protest.

* * * * *

(b) Protests shall be filed with the ODRA, AGC-70, Federal Aviation Administration, telephone (202) 267-3290 as follows:

(1) 600 Independence Avenue SW., Room 2W100, Washington, DC 20591 for filing by hand delivery, courier or other form of in-person delivery;

(2) 800 Independence Avenue SW., Washington, DC 20591 [Attention: AGC-70, Wilbur Wright Bldg., Room 2W100] for filing by U.S. Mail; or

(3) Numbers (202) 267-3720 or alternate (202) 267-1293 for filing by facsimile.

* * * * *

■ 3. In § 17.27, revise paragraph (b) to read as follows:

§ 17.27 Filing a contract dispute.

* * * * *

(b) Contract Disputes shall be filed with the ODRA, AGC-70, Federal Aviation Administration, telephone (202) 267-3290 as follows:

(1) 600 Independence Avenue SW., Room 2W100, Washington, DC 20591 for filing by hand delivery, courier or other form of in-person delivery;

(2) 800 Independence Avenue SW., Washington, DC 20591 [Attention: AGC-70, Wilbur Wright Bldg., Room 2W100] for filing by U.S. Mail; or

(3) Numbers (202) 267-3720 or alternate (202) 267-1293 for filing by facsimile.

* * * * *

■ 4. In § 17.59, revise paragraph (b) to read as follows:

§ 17.59 Filing a Pre-dispute.

* * * * *

(b) Pre-disputes shall be filed with the ODRA, AGC-70, Federal Aviation Administration, telephone (202) 267-3290 as follows:

(1) 600 Independence Avenue SW., Room 2W100, Washington, DC 20591 for filing by hand delivery, courier or other form of in-person delivery;

(2) 800 Independence Avenue SW., Washington, DC 20591 [Attention: AGC-70, Wilbur Wright Bldg., Room 2W100] for filing by U.S. Mail; or

(3) Numbers (202) 267-3720 or alternate (202) 267-1293 for filing by facsimile.

* * * * *

Issued in Washington, DC, on March 13, 2017.

Anthony N. Palladino,

Director and Administrative Judge, Office of Dispute Resolution for Acquisition.

[FR Doc. 2017-05517 Filed 3-20-17; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2017-0129; Directorate Identifier 2017-NM-020-AD; Amendment 39-18825; AD 2017-06-01]

RIN 2120-AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are superseding Airworthiness Directive (AD) 2017-03-04, which applied to all The Boeing Company Model 737-500 series airplanes. AD 2017-03-04 required inspections to detect cracks in the fuselage skin panels, permanent repairs of time-limited repairs, skin panel replacement, and related investigative and corrective actions if necessary. This AD reduces the applicability of AD 2017-03-04. This AD was prompted by a determination that airplanes were inadvertently included in the applicability of AD 2017-03-04. We are

issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 5, 2017.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 28, 2017 (82 FR 11140, February 21, 2017).

We must receive comments on this AD by May 5, 2017.

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 final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110-SK57, Seal Beach, CA 90740-5600; telephone 562-797-1717; Internet <https://www.myboeingfleet.com>. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221. It is also available on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2017-0129.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2017-0129; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Jennifer Tsakoumakis, Aerospace Engineer, Airframe Branch, ANM-120L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount

Boulevard, Lakewood, CA 90712-4137; phone: 562-627-5264; fax: 562-627-5210; email: jennifer.tsakoumakis@faa.gov.

SUPPLEMENTARY INFORMATION:

Discussion

On January 31, 2017, we issued AD 2017-03-04, Amendment 39-18795 (82 FR 11140, February 21, 2017) (“AD 2017-03-04”), for all The Boeing Company Model 737-500 series airplanes. AD 2017-03-04 required inspections to detect cracks in the fuselage skin panels, permanent repairs of time-limited repairs, skin panel replacement, and related investigative and corrective actions if necessary. AD 2017-03-04 resulted from an evaluation by the design approval holder (DAH) that indicates the fuselage skin is subject to widespread fatigue damage (WFD), and reports of cracks at the chem-milled steps in the fuselage skin. We issued AD 2017-03-04 to detect and correct cracking on the aft lower lobe fuselage skins, which could result in rapid decompression of the airplane.

Actions Since AD 2017-03-04 Was Issued

Since we issued AD 2017-03-04, we determined that airplanes were inadvertently included in the applicability of AD 2017-03-04. AD 2017-03-04 superseded AD 2012-16-07, Amendment 39-17154 (77 FR 48423, August 14, 2012) (“AD 2012-16-07”), which applied to certain The Boeing Company Model 737-500 series airplanes. The identified unsafe condition only applies to the airplanes identified in AD 2012-16-07 and, therefore, the applicability of AD 2017-03-04 should not have included additional airplanes.

The affected airplanes are identified in Boeing Special Attention Service Bulletin 737-53-1315, Revision 1, dated June 30, 2015 (which is referred to as the appropriate source of service information for accomplishing the actions required by AD 2017-03-04). In order to correct the applicability, we have referred to Boeing Special Attention Service Bulletin 737-53-1315, Revision 1, dated June 30, 2015, in paragraph (c)(1) of this AD. We are issuing this AD to address the unsafe condition on these products.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Special Attention Service Bulletin 737-53-1315, Revision 1, dated June 30, 2015. The service information describes procedures for inspections to detect cracks in the fuselage skin panels,

permanent repairs of time-limited repairs, skin panel replacement, and related investigative and corrective actions. 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

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

AD Requirements

This AD requires accomplishing the actions specified in the service information described previously, except as discussed under “Differences Between this AD and the Service Information.” This AD also reduces the applicability of AD 2017-03-04. For information on the procedures and compliance times, see this service information at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2017-0129.

The phrase “related investigative actions” is used in this AD. Related investigative actions are follow-on actions that (1) are related to the primary action, and (2) further investigate the nature of any condition found. Related investigative actions in an AD could include, for example, inspections.

The phrase “corrective actions” is used in this AD. Corrective actions correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

Differences Between This AD and the Service Information

Boeing Special Attention Service Bulletin 737-53-1315, Revision 1, dated June 30, 2015, specifies to contact the manufacturer for instructions on how to repair certain conditions and also to obtain certain work instructions, but this AD requires repairing those conditions and also to obtain those work instructions in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

FAA's Justification and Determination of the Effective Date

We determined that airplanes were inadvertently included in the applicability of AD 2017–03–04, which applies to all Model 737–500 series airplanes. However, only airplanes identified in Boeing Special Attention Service Bulletin 737–53–1315, Revision 1, dated June 30, 2015, are affected by the identified unsafe condition. The actions required by this AD are not required to be done on airplanes that are not identified in Boeing Special Attention Service Bulletin 737–53–1315, Revision 1, dated June 30, 2015. Therefore, we are superseding AD 2017–03–04 to correct the applicability. We find that notice and opportunity for

prior public comment are unnecessary and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2017–0129 and Directorate Identifier 2017–NM–020–AD at the beginning of your comments. We specifically invite comments on the

overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD 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 AD.

Costs of Compliance

We estimate that this AD affects 33 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections (actions retained from AD 2017–03–04).	Up to 1,538 work-hours × \$85 per hour = \$130,730 per inspection cycle.	\$0	Up to \$130,730 per inspection cycle.	Up to \$4,314,090 per inspection cycle.
Skin panel replacement (action retained from AD 2017–03–04).	688 work-hours × \$85 per hour = \$58,480.	96,000	\$154,480	\$5,097,840.

We estimate the following costs to do any necessary repairs that would be

required based on the results of the inspection. We have no way of

determining the number of aircraft that might need these repairs:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Time-limited repair	24 work-hours × \$85 per hour = \$2,040	(1)	\$2,040.
Permanent repair	31 work-hours × \$85 per hour = \$2,635	(1)	\$2,635.
Permanent repair inspection	4 work-hours × \$85 per hour = \$340 per inspection cycle	(1)	\$340 per inspection cycle.

¹ We have received no definitive data that would enable us to provide parts cost estimates for the on-condition actions specified in this AD.

Authority for This Rulemaking

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

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

products identified in this rulemaking action.

Regulatory Findings

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

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

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),
- (3) Will not affect intrastate aviation in Alaska, and
- (4) Will not have a significant economic impact, positive or negative,

on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2017–03–04, Amendment 39–18795 (82 FR 11140, February 21, 2017), and adding the following new AD:

2017–06–01 The Boeing Company:
Amendment 39–18825; Docket No. FAA–2017–0129; Directorate Identifier 2017–NM–020–AD.

(a) Effective Date

This AD is effective April 5, 2017.

(b) Affected ADs

This AD replaces AD 2017–03–04, Amendment 39–18795 (82 FR 11140, February 21, 2017) (“AD 2017–03–04”).

(c) Applicability

(1) This AD applies to The Boeing Company Model 737–500 series airplanes, certificated in any category; as identified in Boeing Special Attention Service Bulletin 737–53–1315, Revision 1, dated June 30, 2015 (“SASB 737–53–1315 R1”).

(2) Installation of Supplemental Type Certificate (STC) ST01219SE ([http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/ebd1cec7b301293e86257cb30045557a/\\$FILE/ST01219SE.pdf](http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/ebd1cec7b301293e86257cb30045557a/$FILE/ST01219SE.pdf)) does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01219SE is installed, a “change in product” alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by an evaluation by the design approval holder (DAH) that indicates the fuselage skin is subject to widespread fatigue damage (WFD), and reports of cracks at the chem-milled steps in the fuselage skin. We are issuing this AD to detect and correct cracking on the aft lower lobe fuselage skins, which could result in rapid decompression of the airplane.

(f) Compliance

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

(g) Retained Inspections, Related Investigative and Corrective Actions, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2017–03–04, with no changes. At the applicable times specified in table 1 of paragraph 1.E., “Compliance,” of SASB 737–53–1315 R1, except as required by paragraphs (h)(1) and (h)(2) of this AD: Do the applicable inspections to detect cracks in the fuselage skin panels; and do all applicable related investigative and corrective actions; in accordance with the Accomplishment Instructions of SASB 737–53–1315 R1, except as required by paragraphs (h)(3) and (h)(4) of this AD. Do all

applicable related investigative and corrective actions before further flight. Repeat the applicable inspections thereafter at the applicable intervals specified in SASB 737–53–1315 R1. Accomplishment of a repair in accordance with “Part 3: Repair” of the Accomplishment Instructions of SASB 737–53–1315 R1, except as required by paragraph (h)(3) of this AD, is terminating action for the repetitive inspections required by this paragraph at the repaired locations only.

(h) Retained Exceptions to SASB 737–53–1315 R1, With No Changes

This paragraph restates the service information exceptions specified in paragraph (h) of AD 2017–03–04, with no changes.

(1) Where SASB 737–53–1315 R1, specifies compliance times “after the Revision 1 date of this service bulletin,” this AD requires compliance within the specified compliance times “after March 28, 2017 (the effective date of AD 2017–03–04).”

(2) The Condition column of table 1 of Paragraph 1.E., “Compliance,” of SASB 737–53–1315 R1, refers to airplanes in certain configurations “as of the issue date of Revision 1 of this service bulletin.” However, this AD applies to airplanes in the specified configurations “as of March 28, 2017 (the effective date of AD 2017–03–04).”

(3) Where SASB 737–53–1315 R1, specifies contacting Boeing for repair instructions or work instructions, before further flight, repair or perform the work instructions using a method approved in accordance with the procedures specified in paragraph (m) of this AD, except as required by paragraph (h)(4) of this AD.

(4) For airplanes on which an operator has a record that a skin panel was replaced with a production skin panel before 53,000 total flight cycles: At the applicable time for the next inspection, as specified in table 1 of paragraph 1.E., “Compliance,” of SASB 737–53–1315 R1, except as provided by paragraphs (h)(1) and (h)(2) of this AD: Perform inspections and applicable corrective actions using a method approved in accordance with the procedures specified in paragraph (m) of this AD.

(5) The Condition column of table 2 of Paragraph 1.E., “Compliance,” of SASB 737–53–1315 R1 refers to airplanes in certain configurations as of the “issue date of Revision 1 of this service bulletin.” However, this AD applies to airplanes in the specified configurations regardless of when the time-limited repair is installed.

(i) Retained Actions for Airplanes With a Time-Limited Repair Installed, With No Changes

This paragraph restates the requirements of paragraph (i) of AD 2017–03–04, with no changes. For airplanes with a time-limited repair installed as specified in Boeing Special Attention Service Bulletin 737–53–1315, dated July 29, 2011; or SASB 737–53–1315 R1: At the applicable times specified in table 2 of paragraph 1.E., “Compliance,” of SASB 737–53–1315 R1, except as provided by paragraphs (h)(1) and (h)(5) of this AD, do the actions specified in paragraphs (i)(1) and (i)(2) of this AD.

(1) Do the applicable inspections to detect missing or loose fasteners and any disbonding or cracking of bonded doublers; and do all applicable related investigative and corrective actions; in accordance with the Accomplishment Instructions of SASB 737–53–1315 R1, except as required by paragraph (h)(3) of this AD. Do all applicable related investigative and corrective actions before further flight. Repeat the applicable inspections thereafter at the applicable intervals specified in SASB 737–53–1315 R1.

(2) Make the time-limited repair permanent and do all applicable related investigative and corrective actions in accordance with the Accomplishment Instructions of SASB 737–53–1315 R1, except as required by paragraph (h)(3) of this AD. Do all applicable related investigative and corrective actions before further flight. Accomplishing the permanent repair required by this paragraph terminates the inspections required by paragraph (i)(1) of this AD for the permanently repaired area only.

(j) Retained AD Provisions for Part 26 Supplemental Inspections, With No Changes

This paragraph restates the provisions specified in paragraph (j) of AD 2017–03–04, with no changes. Table 3 of paragraph 1.E., “Compliance,” of SASB 737–53–1315 R1, specifies post-modification airworthiness limitation inspections in compliance with 14 CFR 25.571(a)(3) at the modified locations, which support compliance with 14 CFR 121.1109(c)(2) or 129.109(b)(2). As airworthiness limitations, these inspections are required by maintenance and operational rules. It is therefore unnecessary to mandate them in this AD. Deviations from these inspections require FAA approval, but do not require an alternative method of compliance.

(k) Retained Skin Panel Replacement, With No Changes

This paragraph restates the requirements of paragraph (k) of AD 2017–03–04, with no changes. At the later of the times specified in paragraphs (k)(1) and (k)(2) of this AD: Replace the applicable skin panels, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of SASB 737–53–1315 R1. Do all applicable related investigative and corrective actions before further flight. Doing the skin panel replacement required by this paragraph terminates the inspection requirements of paragraph (g) of this AD for that skin panel only, provided the skin panel replacement was done with a production skin panel at or after 53,000 total flight cycles.

(1) Before 60,000 total flight cycles, but not before 53,000 total flight cycles.

(2) Within 6,000 flight cycles after March 28, 2017 (the effective date of AD 2017–03–04), but not before 53,000 total flight cycles.

(l) Retained Credit for Previous Actions, With No Changes

This paragraph restates the credit specified in paragraph (l) of AD 2017–03–04, with no changes. This paragraph provides credit for the zone 1 actions required by paragraph (g) of this AD, as described in SASB 737–53–1315 R1, if the zone 1, 2, and 3 actions, as described in Boeing Special Attention

Service Bulletin 737–53–1315, dated July 29, 2011, were performed before March 28, 2017 (the effective date of AD 2017–03–04) using Boeing Special Attention Service Bulletin 737–53–1315, dated July 29, 2011, except as required by paragraph (h)(4) of this AD. Boeing Special Attention Bulletin 737–53–1315, dated July 29, 2011, was incorporated by reference in AD 2012–16–07.

(m) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (n) of this AD. Information may be emailed to: 9-ANM-LAACO-AMOC-Requests@faa.gov.

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved previously for AD 2012–16–07 are approved as AMOCs for the corresponding provisions of paragraph (g) of this AD.

(n) Related Information

For more information about this AD, contact Jennifer Tsakoumakis, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5264; fax: 562–627–5210; email: jennifer.tsakoumakis@faa.gov.

(o) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on March 28, 2017 (82 FR 11140, February 21, 2017).

(i) Boeing Special Attention Service Bulletin 737–53–1315, Revision 1, dated June 30, 2015.

(ii) Reserved.

(4) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd.,

MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; Internet <https://www.myboeingfleet.com>.

(5) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on March 7, 2017.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017–05162 Filed 3–20–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No.: FAA–2011–0246; Amdt. No. 91–321C]

RIN 2120–AK99

Extension of the Prohibition Against Certain Flights in the Tripoli (HLLL) Flight Information Region (FIR)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action extends the prohibition of flight operations in the Tripoli (HLLL) Flight Information Region (FIR) by all U.S. air carriers; U.S. commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating a U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except operators of such aircraft that are foreign air carriers. The extension of the expiration date is necessary due to continued hazards to persons and aircraft engaged in such flight operations. This Special Federal Aviation Regulation (SFAR) will now remain in effect until March 20, 2019.

DATES: This final rule is effective on March 16, 2017.

FOR FURTHER INFORMATION CONTACT: Michael Filippell, Air Transportation Division, AFS–220, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone 202–267–8166; email michael.e.filippell@faa.gov.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

This action extends the prohibition of flight operations in the Tripoli (HLLL) FIR by all U.S. air carriers; U.S. commercial operators; persons exercising the privileges of a U.S. airman certificate, except when such persons are operating a U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when such operators are foreign air carriers. The FAA finds this action necessary due to continued hazards to persons and aircraft engaged in such flight operations. The prohibition, which is scheduled to remain in effect until March 20, 2017, will now remain in effect until March 20, 2019.

II. Legal Authority and Good Cause

A. Legal Authority

The FAA is responsible for the safety of flight in the United States (U.S.) and for the safety of U.S. civil operators, U.S.-registered civil aircraft, and U.S.-certificated airmen throughout the world. The FAA's authority to issue rules on aviation safety is found in title 49, U.S. Code. Subtitle I, sections 106(f) and (g) describe the authority of the FAA Administrator. Subtitle VII of title 49, Aviation Programs, describes in more detail the scope of the agency's authority. Section 40101(d)(1) provides that the Administrator shall consider in the public interest, among other matters, assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce. Section 40105(b)(1)(A) requires the Administrator to exercise his authority consistently with the obligations of the U.S. Government under international agreements.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, subpart III, section 44701, General requirements. Under that section, the FAA is charged broadly with promoting safe flight of civil aircraft in air commerce by prescribing, among other things, regulations and minimum standards for practices, methods, and procedures that the Administrator finds necessary for safety in air commerce and national security.

This regulation is within the scope of FAA's authority under the statutes cited previously, because it continues to prohibit the persons subject to paragraph (a) of 14 CFR 91.1603, (SFAR No. 112), from conducting flight operations in the Tripoli (HLLL) FIR due to the continued hazards to the safety of such persons' flight operations,

as described in the Background section of this document.

B. Good Cause for Immediate Adoption

Section 553(b)(3)(B) of title 5, U.S. Code, authorizes agencies to dispense with notice and comment procedures for rules when the agency for “good cause” finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Section 553(d) also authorizes agencies to forgo the delay in effective date for good cause found and published with the rule. In this instance, the FAA finds an immediate need to address the continued hazard to U.S. civil aviation due to threats from political instability and associated militant/terrorist activity that exists in the Tripoli (HLL) FIR. This hazard is further described in the Background section of this rule.

Because the circumstances described herein warrant a continuation of the flight restrictions imposed by SFAR No. 112, 14 CFR 91.1603, the FAA finds that notice and public comment under 5 U.S.C. 553(b)(3)(B), and a delay in the effective date described in 5 U.S.C. 553(d), are impracticable and contrary to the public interest. The FAA also finds that this action is fully consistent with the obligations under 49 U.S.C. 40105 to ensure that the FAA exercises its duties consistently with the obligations of the United States under international agreements.

III. Background

The significant threat, identified when the FAA published its most recent extension of the expiration date of SFAR No. 112, 14 CFR 91.1603,¹ to U.S. civil aviation operating in the Tripoli (HLLL) FIR continues, due to threats from political instability and associated militant/terrorist activity. Libya continues to experience a fluid conflict environment involving heavily-armed elements that are equipped with a variety of anti-aircraft-capable weapons and that have demonstrated the capability and intent to target aviation interests.

As a result of safety and national security concerns regarding flight operations in the Tripoli (HLLL) FIR, the FAA issued SFAR No. 112, 14 CFR 91.1603, in March 2011,² prohibiting all U.S. air carriers; U.S. commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating a U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except

operators of such aircraft that are foreign air carriers, from conducting flight operations in the Tripoli (HLLL) FIR, except as provided in paragraphs (c) and (d) of the regulation.

When SFAR No. 112, 14 CFR 91.1603, was issued, an armed conflict was ongoing in Libya and presented a hazard to U.S. civil aviation. The FAA was concerned that runways at Libya’s international airports, including the main international airports serving Benghazi (HLLB) and Tripoli (HLLT), might be damaged or degraded. There was also concern that air navigation services in the Tripoli (HLLL) FIR might be unavailable or degraded. In addition, the proliferation of air defense weapons, including Man-Portable Air-Defense Systems (MANPADS), and the presence of military operations, including Libyan aerial bombardments and unplanned military flights entering and departing the Tripoli (HLLL) FIR, posed a hazard to U.S. operators, U.S.-registered civil aircraft, and FAA-certificated airmen that might operate in the Tripoli (HLLL) FIR. Additionally, the United Nations Security Council adopted Resolution 1973 on March 18, 2011, which mandated a ban on all flights in the airspace of Libya, with certain exceptions.

By March 2014, although former Libyan leader Muammar Gadhafi’s regime had been overthrown and the UN-mandated ban on flights in Libyan airspace had been lifted, the FAA continued to have significant security concerns for Libya and for the safety of U.S. civil aviation operations in that country. On March 20, 2014, the FAA extended the expiration date of SFAR No. 112, 14 CFR 91.1603, to March 20, 2015.³ The FAA considered that, on December 12, 2013, the Department of State had issued a Travel Warning strongly advising against all non-essential travel to Libya. Various groups had called for attacks against U.S. citizens and U.S. interests in Libya. As a consequence of the unpredictable security environment, a hazard to U.S.-registered civil aircraft, U.S. operators, and FAA-certificated airmen still existed. Additionally, many military-grade weapons remained in the hands of private individuals and groups, among them anti-aircraft weapons that could be used against civil aviation, including MANPADS. The Travel Warning also warned that closures or threats of closures of the international airports occurred regularly for maintenance, labor, or security-related reasons.

By March 2015, the FAA continued to have significant concerns regarding the safety of U.S. civil aviation operations in the Tripoli (HLLL) FIR at all altitudes due to the hazardous situation created by the ongoing fighting involving various militant groups and Libyan military forces in various areas of Libya, including some near Tripoli and Benghazi. Islamist militant groups held and controlled significant portions of Western Libya, including Tripoli International Airport (HLLT). Militant groups, such as Libyan Dawn, possessed a variety of anti-aircraft weapons, which gave them the capability to target aircraft upon landing and departure and at higher altitudes. Civil aviation infrastructure continued to be at risk from indirect fire from mortars and rockets targeting Libyan airports during the ongoing fighting. Civil aviation in the Tripoli (HLLL) FIR was also at risk from aerial combat operations and other military activity conducted by Libyan forces. Further, the security situation in the Tripoli (HLLL) FIR continued to be unpredictable and unstable. For these reasons, the FAA extended the expiration date of SFAR No. 112, 14 CFR 91.1603, from March 20, 2015, to March 20, 2017.⁴

The FAA continues to assess the situation in the Tripoli (HLLL) FIR as being hazardous for U.S. civil aviation. The newly-established interim government does not control vast amounts of Libyan territory, security conditions remain unstable throughout the country, and fighting could flare with little or no warning as various elements vie for political influence and territorial control. Anti-aircraft-capable weapons remain a continuing threat, as demonstrated by the July 2016 shoot down of a military helicopter near Benghazi.

Therefore, since there is a significant continuing risk to the safety of U.S. civil aviation in the Tripoli (HLLL) FIR, the FAA extends the expiration date of SFAR No. 112, 14 CFR 91.1603, from March 20, 2017, to March 20, 2019, to maintain the prohibition on flight operations in the Tripoli (HLLL) FIR by all U.S. air carriers; U.S. commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating a U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when such operators are foreign air carriers.

The FAA will continue to actively monitor the situation and, based on evaluations, determine the extent to

¹ 80 FR 15503, March 24, 2015.

² 76 FR 16238, March 23, 2011.

³ 79 FR 15679, March 20, 2014, corrected at 79 FR 19288, April 8, 2014.

⁴ 80 FR 15503, March 24, 2015.

which U.S. civil operators may be able to safely operate in the Tripoli (HLLL) FIR in the future. Amendments to SFAR No. 112, 14 CFR 91.1603, may be appropriate if the risk to aviation safety and security changes. The FAA may amend or rescind SFAR No. 112, 14 CFR 91.1603, as necessary, prior to its expiration date.

IV. Regulatory Notices and Analyses

Changes to Federal regulations must undergo several economic analyses. First, Executive Orders 12866 and 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), as codified in 5 U.S.C. 603 *et seq.*, requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act of 1979 (Pub. L. 96–39, 19 U.S.C. Chapter 13) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as codified in 2 U.S.C. 1532, requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with a base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

In conducting these analyses, FAA has determined this final rule is a “significant regulatory action,” as defined in section 3(f) of Executive Order 12866, as it raises novel policy issues contemplated under that Executive Order. The rule is also “significant” as defined in DOT's Regulatory Policies and Procedures. The final rule will not have a significant economic impact on a substantial number of small entities, will not create unnecessary obstacles to international trade, and will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

A. Regulatory Evaluation

Department of Transportation (DOT) Order 2100.5 prescribes policies and procedures for simplification, analysis,

and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the costs and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows.

This rule extends, by an additional two years, SFAR No. 112, 14 CFR 91.1603. Due to the conditions in Libya at the time that SFAR No. 112, 14 CFR 91.1603, was issued, the FAA believed the rule would impose only minimal cost because few, if any, operators subject to the rule were operating in the Tripoli (HLLL) FIR. The FAA has again determined that the costs of continuing to prohibit U.S. civil flights in the Tripoli (HLLL) FIR are minimal. The FAA finds that the costs to the few operators who might wish to operate in the Tripoli FIR are exceeded by the benefits of avoiding the loss of life, injuries, and property damage that could be caused by the significant hazards to U.S. civil aviation detailed in the Background section of this rule.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (“RFA”) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.” The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the

factual basis for this determination, and the reasoning should be clear.

The FAA estimates the costs of extending this rule will continue to be minimal, as discussed previously. Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39) prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to this Act, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the effect of this final rule and determined that its purpose is to protect the safety of U.S. civil aviation from hazards outside the U.S. Therefore, the rule is in compliance with the Trade Agreements Act.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a “significant regulatory action.” The FAA currently uses an inflation-adjusted value of \$155 million in lieu of \$100 million.

This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this final rule.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to this regulation.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act (NEPA) in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5–6.6f of this order and involves no extraordinary circumstances.

The FAA has reviewed the implementation of the SFAR and determined it is categorically excluded from further environmental review according to FAA Order 1050.1F, “Environmental Impacts: Policies and Procedures,” paragraph 5–6.6f. The FAA has examined possible extraordinary circumstances and determined that no such circumstances exist. After careful and thorough consideration of the action, the FAA finds that this Federal action does not require preparation of an Environmental Assessment or Environmental Impact Statement in accordance with the requirements of NEPA, Council on Environmental Quality (CEQ) regulations, and FAA Order 1050.1F.

V. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action would not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have Federalism implications.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations That

Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it would not be a “significant energy action” under the executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, (77 FR 26413, May 4, 2012) promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

VI. Additional Information

A. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the Internet by—

- Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
- Visiting the FAA’s Regulations and Policies Web page at http://www.faa.gov/regulations_policies; or
- Accessing the Government Publishing Office’s Web page at <http://www.gpo.gov>.

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9677. Please identify the docket or amendment number of this rulemaking in your request.

Except for classified material, all documents the FAA considered in developing this rule, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced above.

B. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local

FAA official, or the persons listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the Internet, visit http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Libya.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

- 1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 1155, 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

- 2. Revise § 91.1603 to read as follows:

§ 91.1603 Special Federal Aviation Regulation No. 112—Prohibition Against Certain Flights in the Tripoli (HLLL) Flight Information Region (FIR).

(a) *Applicability.* This section applies to the following persons:

- (1) All U.S. air carriers and U.S. commercial operators;
- (2) All persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating a U.S.-registered aircraft for a foreign air carrier; and
- (3) All operators of U.S.-registered civil aircraft, except operators of such aircraft that are foreign air carriers.

(b) *Flight prohibition.* Except as provided in paragraphs (c) and (d) of this section, no person described in paragraph (a) of this section may conduct flight operations in the Tripoli (HLLL) FIR.

(c) *Permitted operations.* This section does not prohibit persons described in paragraph (a) of this section from conducting flight operations in the Tripoli (HLLL) FIR under the following conditions:

- (1) Flight operations are conducted under a contract, grant, or cooperative agreement with a department, agency, or instrumentality of the U.S. government (or under a subcontract between the prime contractor of the department, agency, or instrumentality, and the person described in paragraph (a) of this section), with the approval of the FAA,

or under an exemption issued by the FAA. The FAA will process requests for approval or exemption in a timely manner, with the order of preference being: First, for those operations in support of U.S. government-sponsored activities; second, for those operations in support of government-sponsored activities of a foreign country with the support of a U.S. government department, agency, or instrumentality; and third, for all other operations.

(2) [Reserved]

(d) *Emergency situations.* In an emergency that requires immediate decision and action for the safety of the flight, the pilot in command of an aircraft may deviate from this section to the extent required by that emergency. Except for U.S. air carriers and commercial operators that are subject to the requirements of 14 CFR part 119, 121, 125, or 135, each person who deviates from this section must, within 10 days of the deviation, excluding Saturdays, Sundays, and Federal holidays, submit to the nearest FAA Flight Standards District Office a complete report of the operations of the aircraft involved in the deviation, including a description of the deviation and the reasons for it.

(e) *Expiration.* This Special Federal Aviation Regulation will remain in effect until March 20, 2019. The FAA may amend, rescind, or extend this Special Federal Aviation Regulation as necessary.

Issued in Washington, DC, under the authority of 49 U.S.C. 106(f), 40101(d)(1), 40105(b)(1)(A), and 44701(a)(5), on March 15, 2017.

Victoria B. Wassmer,
Acting Deputy Administrator.

[FR Doc. 2017-05515 Filed 3-16-17; 4:15 pm]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 234

[Docket No. DOT-RITA-2011-0001]

RIN 2105-AE65

Reporting of Data for Mishandled Baggage and Wheelchairs and Scooters Transported in Aircraft Cargo Compartments; Extension of Compliance Date

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The Department of Transportation is amending its

regulations by extending the compliance date of its final rule on reporting of data for mishandled baggage and wheelchairs in aircraft cargo compartments from January 1, 2018 to January 1, 2019. Under that final rule, the mishandled-baggage data that air carriers are required to report changed, from the number of Mishandled Baggage Reports and the number of domestic passenger enplanements to the number of mishandled bags and the number of enplaned bags. The rule also requires separate statistics for mishandled wheelchairs and scooters used by passengers with disabilities and transported in aircraft cargo compartments. This extension is in response to a request by Airlines for America (A4A) and Delta.

DATES: This final rule is effective March 21, 2017.

FOR FURTHER INFORMATION CONTACT: Blane A. Workie, Office of Aviation Enforcement and Proceedings, U.S. Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590, 202-366-9342, 202-366-7152 (fax), blane.workie@dot.gov (email).

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

A copy of all materials related to the original rulemaking proceeding (2105-AE41) may be viewed online at <http://www.regulations.gov> using the docket numbers listed above. A copy of this notice will also be placed on the docket. Electronic retrieval help and guidelines are available on the Web site. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's Web site at <http://www.ofr.gov> and the Government Publishing Office's Web site at <http://www.gpo.gov>.

Background

On November 2, 2016, the Department of Transportation published a final rule in the **Federal Register** (81 FR 76300) (RIN 2105-AE41), titled "Reporting of Data for Mishandled Baggage and Wheelchairs and Scooters Transported in Aircraft Cargo Compartments." This rule changes the methodology for the mishandled-baggage data that U.S. air carriers are required to report to the Department and requires U.S. air carriers to report separate statistics in their mishandled baggage reporting for mishandled wheelchairs and scooters used by disabled passengers and transported in aircraft cargo compartments.

On January 20, 2017, the White House Chief of Staff issued a memorandum

entitled, "Regulatory Freeze Pending Review" ("Memo"). The Memo directed heads of executive departments and agencies to take certain steps to ensure that the President's appointees and designees have the opportunity to review new and pending regulations. It instructed agencies to temporarily postpone the effective dates of regulations that had been published in the **Federal Register**, but were not yet effective, until 60 days after the date of the memorandum.

On January 27, 2017, the Department received a request from Airlines for America (A4A) to extend the compliance date of the final rule on reporting data for mishandled baggage and wheelchairs. In that request, the A4A cites the Memo as a reason to extend the compliance date. On February 10, 2017, Delta Air Lines also submitted a request to the Department expressing support for extending the compliance date which also referenced the Memo. On March 2, 2017, A4A sent a follow-up to its original request specifying that if the rulemaking remains that they are requesting that the implementation period of the final rule on mishandled baggage and wheelchairs be delayed one year until January 2019 in the spirit of the Memo. A4A states that industry is facing challenges with parts of this regulation and needs more time to implement it.

After carefully considering the requests, we have decided to grant an extension of the compliance date for the final rule on reporting of mishandled baggage and wheelchairs until January 1, 2019. As such, we also intend to extend the compliance date for the baggage handling statistics provision (14 CFR 234.6) in the final rule titled "Enhancing Airline Passenger Protections III," which was published contemporaneously with the final rule on reporting of data for mishandled baggage and wheelchairs, to January 1, 2019.

Issued this 2nd day of March 2017 in Washington, DC, under authority delegated in 49 CFR 1.27(n).

Judith S. Kaleta,
Deputy General Counsel.

List of Subjects in 14 CFR Part 234

Air carriers, Mishandled baggage, On-time statistics, Reporting, Uniform system of accounts.

Accordingly, the Department of Transportation amends 14 CFR part 234 as follows:

PART 234—AIRLINE SERVICE QUALITY PERFORMANCE REPORTS

■ 1. The authority citation for part 234 continues to read as follows:

Authority: 49 U.S.C. 329, 41101, and 41701.

§ 234.6 [Amended]

■ 2. In § 234.6, in paragraphs (a) and (b) introductory text, remove the date “January 1, 2018” and add in its place “January 1, 2019”.

[FR Doc. 2017–04582 Filed 3–20–17; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 490

[Docket No. FHWA–2013–0053; FHWA–2013–0054]

RIN 2125–AF53; 2125–AF54

National Performance Management Measures; Assessing Pavement Condition for the National Highway Performance Program and Bridge Condition for the National Highway Performance Program; National Performance Management Measures; Assessing Performance of the National Highway System, Freight Movement on the Interstate System, and Congestion Mitigation and Air Quality Improvement Program

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Final regulations; delay of effective dates.

SUMMARY: This document announces the further extension of the effective date of the following regulations until May 20, 2017: National Performance Management Measures; Assessing Pavement Condition for the National Highway Performance program and Bridge Condition for the National Highway Performance Program, RIN 2125–AF53; and National Performance Management measures; Assessing Performance of the National Highway System, Freight Movement on the Interstate System, and Congestion Mitigation and Air Quality Improvement Program, RIN 2125–AF54.

DATES: As of March 21, 2017, the effective date of the final rules published on January 18, 2017, at 82 FR 5886 and January 18, 2017, at 82 FR 5970, respectively, delayed until March 21, 2017 on February 13, 2017 at 82 FR 10441, is further delayed to May 20, 2017.

The incorporation by reference of certain publications listed in the final rule published on January 18, 2017, at 82 FR 5886 is approved by the Director of the Federal Register as of May 20, 2017.

FOR FURTHER INFORMATION CONTACT: Christopher Richardson, Assistant Chief Counsel for Legislation, Regulations, and General Law, Office of Chief Counsel, Federal Highway Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: (202) 366–0761. Office hours are from 8:00 a.m. to 4:30 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

A copy of the Notice of Proposed Rulemakings (NPRMs), all comments received, the Final Rules, and all background material may be viewed online at <http://www.regulations.gov> using the docket numbers listed above. A copy of this notice will be placed on each docket. Electronic retrieval help and guidelines are available on the Web site. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's Web site at <http://www.ofr.gov> and the Government Publishing Office's Web site at <http://www.gpo.gov>.

Background

On January 20, 2017, the Assistant to the President and Chief of Staff issued a memorandum entitled, “Regulatory Freeze Pending Review.” This memorandum directed heads of executive departments and agencies to take certain steps to ensure that the President's appointees and designees have the opportunity to review new and pending regulations. It instructed agencies to temporarily postpone the effective dates of regulations that had been published in the **Federal Register** but were not yet effective until 60 days after the date of the memorandum (January 20, 2017). In accordance with that directive, the FHWA delayed the effective date of both regulations to March 21, 2017 on February 13, 2017 at 82 FR 10441. After conducting a preliminary review, the Department is delaying the effective dates of the regulations for an additional 60 days as listed below:

RIN	Title	Agency contact	Original effective date	Delayed effective date
2125–AF53	Assessing Pavement Condition for the National Highway Performance Program and Bridge Condition for the National Highway Performance Program.	Francine Shaw Whitson, Office of Infrastructure, 202–366–8028.	February 17, 2017	May 20, 2017.
2125–AF54	Assessing Performance of the National Highway System, Freight Movement on the Interstate System, and Congestion Mitigation and Air Quality Improvement Program.	Francine Shaw Whitson, Office of Infrastructure, 202–366–8028.	February 17, 2017	May 20, 2017.

Waiver of Rulemaking and Delayed Effective Date

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), FHWA generally offers interested parties the opportunity to comment on proposed regulations and publishes rules not less than 30 days before their effective dates. However, the APA provides that an

agency is not required to conduct notice-and-comment rulemaking or delay effective dates when the agency, for good cause, finds that the requirement is impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)(B) and (d)(3)). There is good cause to waive both of these requirements here as the

President's appointees and designees need to delay the effective dates of these regulations to have adequate time to review new or pending regulations, and neither the notice and comment process nor delayed effective date could be implemented in time to allow for this review.

List of Subjects in 23 CFR Part 490

Bridges, Highway safety, Highways and roads, Incorporation by reference, Reporting and recordkeeping requirements.

Issued on: March 15, 2017.

Walter C. Waidehlich, Jr.,

Acting Deputy Administrator, Federal Highway Administration.

[FR Doc. 2017-05518 Filed 3-20-17; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF LABOR**Occupational Safety and Health Administration****29 CFR Parts 1910, 1915, and 1926**

[Docket No. OSHA-H005C-2006-0870]

RIN 1218-AB76

Occupational Exposure to Beryllium; Further Delay of Effective Date

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Final rule; further delay of effective date.

SUMMARY: On January 9, 2017, the Occupational Safety and Health Administration (OSHA) published a rule entitled “Occupational Exposure to Beryllium” with an effective date of March 10, 2017 (“Beryllium Final Rule”). OSHA subsequently delayed the effective date of the Beryllium Final Rule to March 21, 2017 (February 1, 2017) and proposed to further delay the effective date to May 20, 2017 (March 2, 2017). This action finalizes that proposal. The additional time will allow OSHA the opportunity for further review of the new Beryllium Final Rule, including review of concerns that commenters raised, and is consistent with the memorandum of January 20, 2017, from the Assistant to the President and Chief of Staff, entitled “Regulatory Freeze Pending Review.”

DATES: As of March 21, 2017, the effective date of the final rule amending 29 CFR parts 1910, 1915, and 1926 that published in the **Federal Register** of January 9, 2017 at 82 FR 2470, delayed at 82 FR 8901 on February 1, 2017, is further delayed to May 20, 2017.

ADDRESSES: In accordance with 28 U.S.C. 2112(a), the Agency designates Ann Rosenthal, Associate Solicitor of Labor for Occupational Safety and Health, Office of the Solicitor of Labor, Room S-4004, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, to receive petitions for review of this action.

FOR FURTHER INFORMATION CONTACT:

Frank Meilinger, Director, Office of Communications, Room N-3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693-1999; email *meilinger.francis2@dol.gov*.

SUPPLEMENTARY INFORMATION: OSHA promulgated the Beryllium Final Rule on January 9, 2017 with an effective date of March 10, 2017 (82 FR 2470). On February 1, 2017, OSHA delayed the effective date of the rule to March 21, 2017 (82 FR 8901). OSHA promulgated the extension consistent with the memorandum of January 20, 2017, from the Assistant to the President and Chief of Staff, entitled “Regulatory Freeze Pending Review” (82 FR 8346; January 24, 2017) (“Memorandum”), which contemplated temporarily postponing for 60 days the effective dates of all regulations that had been published in the **Federal Register** but had not yet taken effect, absent certain inapplicable exceptions.

In addition, the Memorandum directed agencies to consider further delaying the effective date for regulations beyond that 60-day period. After further review, OSHA preliminarily determined that it was appropriate to further delay the effective date of the Beryllium Final Rule, for the purpose of further reviewing questions of fact, law, and policy raised therein. Therefore, consistent with the Memorandum, OSHA proposed to further delay the effective date of the Beryllium Final Rule to May 20, 2017 (82 FR 12318; March 2, 2017). Finalization of the proposed delay of the effective date would not affect the compliance dates of the Beryllium Final Rule.

OSHA received twenty-five unique comments on its proposal to extend the effective date by 60 days to May 20, 2017. Several commenters supported the proposal. (e.g., Document ID 2048; 2049; 2050; 2051.) Many of these commenters indicated that they supported the delay considering the ongoing transition to a new administration. (See Document ID 2058; 2052.) Some commenters supported the proposed extension and requested that OSHA further review the impact of the standards on entities which would be affected by changes from the proposed beryllium rule. (Document ID 2051; 2055; 2068.) Congressman Byrne, Chairman of the Subcommittee on Workforce Protections, among others, urged OSHA to delay the effective date beyond the proposed 60 days or even indefinitely and re-propose the Beryllium Final Rule (Document ID

2064; 2067), citing concerns with the rule’s coverage of abrasive blasting operations under the construction and shipyard standards. OSHA also received approximately 2,500 comments with nearly identical messages, urging the Agency to adopt the proposal and delay the effective date, particularly for the construction and shipyards standards. (See, e.g., Document ID 2072.) Several commenters opposed the proposal and argued in favor of keeping the effective date of March 21, 2017, stating that the Beryllium Final Rule was long overdue, based on sound science, and that all interested parties had the opportunity to participate in the rulemaking. (See, e.g., Document ID 2053; 2054; 2059; 2061; 2062.)

After carefully reviewing these comments, OSHA believes commenters have raised substantive concerns, including about the Beryllium Final Rule’s treatment of the construction and shipyard industries, as suggested by Congressman Byrne. Thus, OSHA has decided to adopt the proposal and delay the effective date by an additional 60 days to May 20, 2017 to further evaluate the Beryllium Final Rule in light of those substantive concerns. The Agency has determined that 60 days will provide adequate time to review the rule and consider the issues raised without hindering protections of workers affected by the rule because the delay of the effective date does not alter the Beryllium Final Rule’s compliance dates.

Signed at Washington, DC, on March 16, 2017.

Dorothy Dougherty,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2017-05569 Filed 3-17-17; 8:45 am]

BILLING CODE 4510-26-P

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 165**

[Docket Number USCG-2017-0021]

RIN 1625-AA-08

Safety Zone; Cooper River Bridge Run, Cooper River and Town Creek Reaches, Charleston, SC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the waters of the Cooper River and Town Creek Reaches in Charleston, South Carolina

during the Cooper River Bridge Run. The Cooper River Bridge Run is a 10-K run across the Arthur Ravenel Bridge. The safety zone is necessary for the safety of event participants, spectators, and vessels transiting the navigable waters of the Cooper River and Town Creek Reaches during this event. This regulation prohibits persons and vessels from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port Charleston or a designated representative.

DATES: This rule is effective from 7:30 a.m. to 10:30 a.m. on April 1, 2017.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG–2017–0021 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule call or email Lieutenant Commander John Downing, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740–3184, email John.Z.Downing@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive order
FR	Federal Register
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code
COTP	Captain of the Port

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 insufficient time remains to publish an NPRM and to receive public comments, as the Cooper River Bridge Run event will occur before the rulemaking process would be completed. Because of the dangers posed by the proximity of the proposed run track to the navigable

waters of the Cooper River and Town Creek Reaches impacted by this event, the safety zone is necessary to provide for the safety of event participants, spectators, and vessels transiting the event area. For those reasons, it would be impracticable and contrary to the public interest to publish an NPRM.

For the reason discussed above, 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**.

III. Legal Authority and Need for Rule

The legal basis for this rule is the Coast Guard’s authority to establish regulated safety zones and other limited access areas is 33 U.S.C. 1231. The purpose of the rule is to ensure the safety of the runners, the general public, vessels and the navigable waters during the Cooper River Bridge Run.

IV. Discussion of the Rule

This rule establishes a safety zone on the waters of the Cooper River and Town Creek Reaches in Charleston, South Carolina during the Cooper River Bridge Run. The race is scheduled to take place from 7:30 a.m. to 10:30 a.m. on April 1, 2017. Approximately 40,000 runners are anticipated to participate in the race. Persons and vessels desiring to enter, transit through, anchor in, or remain within the safety zone may contact the Captain of the Port Charleston by telephone at (843) 740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the safety zone is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative. The Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

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

E.O.s 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. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under E.O. 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget. This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The economic impact of this rule is not significant for the following reasons: (1) The safety zone will only be enforced for a total of three hours; (2) although persons and vessels may not enter, transit through, anchor in, or remain within the safety zone without authorization from the Captain of the Port Charleston or a designated representative, they may operate in the surrounding area during the enforcement period; and (3) the Coast Guard will provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

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” comprised of small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

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.

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 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 Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will prohibit persons and vessels from entering, transiting through, anchoring in, or remaining within a limited area surrounding the Cooper River Bridge on the waters of the Cooper River and Town Creek Reaches for a 3 hour period. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

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

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, 160.5; and Department of Homeland Security Delegation No. 0170.

■ 2. Add a temporary § 165.35T07-0021 to read as follows:

§ 165.T07-0021 Safety Zone; Cooper River Bridge Run, Charleston SC.

(a) *Location.* All waters of the Cooper River, and Town Creek Reaches encompassed within the following points: 32°48'32" N., 079°56'08" W., 32°48'20" N., 079°54'20" W., 32°47'20" N., 079°54'29" W., 32°47'20" N., 079°55'28" W.

(b) *Definition.* The term "designated representative" means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Charleston in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Charleston or a designated representative.

(2) Persons and vessels desiring to enter, transit through, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at 843-740-7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement period.* This rule will be enforced from 7:30 a.m. until 10:30 a.m. on April 1, 2017.

Dated: March 15, 2017.

G.L. Tomasulo,

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

[FR Doc. 2017-05547 Filed 3-20-17; 8:45 am]

BILLING CODE 9110-04-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA–R06–OAR–2016–0550; FRL–9957–56–Region 6]

Approval and Promulgation of Implementation Plans; Texas; El Paso Carbon Monoxide Limited Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is taking direct final action to approve the required second carbon monoxide (CO) maintenance plan as a revision to the Texas State Implementation Plan (SIP). The El Paso, Texas CO maintenance area (El Paso Area) has been demonstrating consistent air quality monitoring at or below 85% of the CO National Ambient Air Quality Standard (NAAQS or standard). Because of this, the State of Texas, through its designee, submitted the required second maintenance plan for the El Paso Area as a Limited Maintenance Plan (LMP).

DATES: This rule is effective on May 22, 2017 without further notice, unless the EPA receives relevant adverse comment by April 20, 2017. If the EPA receives such comment, the EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2016–0550, at <http://www.regulations.gov> or via email to riley.jeffrey@epa.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 whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact Jeffrey Riley, 214–665–8542, riley.jeffrey@epa.gov. For the full EPA

public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available at either location (*e.g.*, CBI).

FOR FURTHER INFORMATION CONTACT: Jeffrey Riley, 214–665–8542, riley.jeffrey@epa.gov. To inspect the hard copy materials, please schedule an appointment with Jeffrey Riley or Mr. Bill Deese at 214–665–7253.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” means the EPA.

I. Background

Under the 1990 CAA Amendments, a portion of the City of El Paso, Texas was designated and classified as a moderate nonattainment area for CO because it did not meet the NAAQS for this criteria pollutant 56 FR 56694 (November 1, 1991). The former El Paso CO nonattainment area is restricted to a narrow strip along the Rio Grande, adjacent to Ciudad Juarez, Mexico. El Paso’s former classification as a moderate nonattainment area under sections 107(d)(4)(A) and 186(a) of the CAA imposed a schedule for attainment of the CO NAAQS by December 31, 1995.

EPA approved the El Paso Area’s CAA section 179 attainment demonstration that showed attainment but for emissions from Mexico, the motor vehicle emissions budget, and the contingency plan 68 FR 39457 (July 2, 2003).

EPA approved the redesignation of the El Paso CO nonattainment area to attainment for the CO NAAQS, the associated CAA section 175A(a) maintenance plan, and the included motor vehicle emissions budgets at 73 FR 45162 (August 4, 2008). The maintenance plan ensures continued attainment of the CO standard until 2020.

On September 21, 2016, the Texas Commission on Environmental Quality (TCEQ) submitted a revision to the El Paso SIP, providing the second 10-year update to the CO maintenance plan for the area, as required eight years after redesignation by section 175A(b) of the

Act and also submitted a request for approval of the maintenance plan as a LMP. The purpose of the LMP is to ensure continued maintenance of CO NAAQS in the El Paso Area for the duration of the second 10-year maintenance period of 2018–2028 by demonstrating that future emissions of this criteria pollutant are expected to remain at or below emission levels necessary for continued attainment of the current CO NAAQS.

II. The EPA’s Evaluation

Since there are few specific content requirements defined in section 175A of the Act for subsequent (or second) maintenance plan revisions, EPA has exercised its discretion in determining the recommended content of such plans.¹ If an area meets the criteria, the State (area) may submit a maintenance plan that is more streamlined than a full Maintenance Plan.² Such a streamlined plan is called a Limited Maintenance Plan (LMP), and the criteria of a LMP is detailed more below. EPA’s interpretation of section 175A of the CAA, as it pertains to LMP’s for CO, is contained in the October 6, 1995, national guidance memorandum titled “Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas” from Joseph Paisie, Office of Air Quality Planning and Standards.³ The LMP guidance allows for areas that can demonstrate consistent air quality monitoring data at or below 85% of the NAAQS for carbon monoxide to elect for a LMP. Other criteria for the LMP option are detailed in the 1995 guidance as well. The TCEQ has opted to develop a LMP for the El Paso Area to fulfill the second 10-year CO maintenance period required by the Act.

Consistent with the above guidance, EPA will consider the maintenance demonstration satisfied if the monitoring data show the 8-hour CO design value is at or below 7.65 parts per million (ppm), or 85% of the 8-hour

¹ See generally EPA memorandum “Procedures for Processing Requests for Redesignate Areas to Attainment,” from John Calgani, Director Air Quality Management Division to Regional Air Division Directors (September 4, 1992); and EPA memorandum “Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas” from Sally L. Shaver, Director Air Quality Strategies & Standards Division to Regional Air Division Directors (November 16, 1994). Copies of both memorandums are included in the docket for this rulemaking.

² A limited maintenance plan generally includes all the elements of a full CAA section 175A maintenance plan except that a limited maintenance plan is not required to include motor vehicle emissions budgets for transportation conformity purposes.

³ A copy of the October 6, 1995 Guidance Memorandum is included in the docket for this rulemaking.

CO NAAQS of 9 ppm. The EPA believes that if the area begins the maintenance period at or below 85% of the applicable NAAQS, the continuing applicability of the Prevention of Significant Deterioration Program (PSD) and other Federal measures along with the existing control measures already adopted should provide adequate assurance of maintenance of the NAAQS over the 10-year period.

The EPA has reviewed the State's SIP submittal for the El Paso Area. Per our 1995 guidance above, a LMP consists of several core provisions: An attainment inventory, a demonstration of maintenance of the applicable NAAQS, operation of a monitoring network, a provision for contingency measures, and a discussion of the approach necessary to meet conformity requirements. The following is a summary of the criteria for a LMP and the EPA's evaluation of how each provision has been met by the SIP submittal.

A. Base Year Emissions Inventory

Under the LMP option, a cap on total emissions is not needed during the first or second 10-year maintenance period, and there is no requirement to project emissions over the maintenance period because an area's monitoring data satisfy the air quality criteria of the LMP by beginning the maintenance period at or below 85% of the CO NAAQS. However, the maintenance plan should contain an attainment year emission inventory to identify a level of CO emissions in the area that is sufficient to attain the CO NAAQS. Emission inventories contain estimates of how much CO is produced by all categories in the maintenance area on an annual basis: Point sources, area sources, on-road mobile sources, and non-road mobile sources. The September 21, 2016 SIP submittal contains a summary of the CO emissions inventory for the El Paso Area for the base year 2014. The methods used to determine the El Paso CO emission inventory are consistent with the EPA's most recent guidance on developing emission inventories, and the inventory incorporates the latest information and planning assumptions available at the time of its development.⁴ Because violations of the CO NAAQS are most likely to occur on winter weekdays, the inventory

prepared is for a "typical winter day".⁵ The table below shows the estimated tons of CO emitted per winter day by source category for the 2014 base year.

TABLE I—CO EMISSIONS BY SOURCE CATEGORY, 2014

Source category	Tons per winter weekday
Point	5.12
Area	8.76
Non-road mobile	33.02
On-road mobile	112.26
Total	159.16

This LMP demonstrates continued attainment of the CO standard for El Paso County in 2014 through monitoring data. The 2014 emissions inventory shows that emissions decreased during the initial 10-year maintenance period even with growth in vehicle miles traveled, economic activity, and population.

B. Demonstration of Maintenance

The State has chosen to demonstrate maintenance of the NAAQS by continued monitoring of the air quality in the El Paso Area. To qualify for the LMP option, the design value for each monitor should be at or below 85% of the 8-hour CO NAAQS. The value corresponding to this 85% threshold is 7.65 ppm for the 8-hour CO NAAQS. The last monitored violation of the CO NAAQS in the El Paso Area occurred in 1993 and monitored CO levels have been steadily in decline ever since. For this submission, the State provided data showing monitored CO values from 2006–2015, reflecting a 2015 8-hour CO design value of 2.8 ppm. Thus, the design value for the 8-hour standard is less than 31% of the CO NAAQS. The EPA believes that if an area begins the maintenance period at or below the 85% threshold, it is unreasonable to expect that so much growth will occur during the 10-year maintenance period to cause a violation of the NAAQS.⁶

The CO control program for El Paso Area is comprised of both Federal and local measures. The current maintenance plan 73 FR 45162 (August 4, 2008) for the area includes several control strategies that will remain in place for the duration of the second 10-

year maintenance period of 2018–2028. The Federal strategies are continued implementation of the Tier 2 motor vehicle emission standards along with the requirement for reduced sulfur in gasoline, which became effective on February 10, 2000. 65 FR 6697 (February 10, 2000). Additionally, EPA's newly approved Tier 3 Motor Vehicle Emission and Fuel Standards at 79 FR 23414 (April 28, 2014) will reduce CO emissions from new, light-duty motor vehicles, light-duty trucks, and medium-duty passenger vehicles beginning model year 2017 and will be fully phased in by model year 2025. The Tier 3 fuel standards will lower the sulfur content of gasoline and make emission control systems more effective for both existing and new vehicles. As newer vehicles gradually replace older ones in the fleet, these control programs will result in lowered CO emissions in the El Paso County Area and elsewhere.⁷

Local control strategies remaining in place for the duration of the second 10-year LMP include a vehicle emissions Inspection and Maintenance (I&M) Program, an Oxygenated Fuels Program, and the PSD Program. 73 FR 45162 (August 4, 2008). The I&M program has been in effect in the El Paso Area since January 1, 1987, and initially consisted of two-speed idle (TSI) testing for all vehicles. On January 1, 2007, an enhanced vehicle I&M program began On-Board Diagnostics testing for all model year 1996 and newer vehicles and continued to use TSI testing for all model year 1995 and older vehicles. All vehicle emissions inspection stations in the El Paso I&M program area are required to offer both tests. The program addresses CO emissions as well as ozone precursor emissions. The original program as described above will remain in place for the duration of the second 10-year maintenance period (2018–2028).

The El Paso Oxygenated Fuel Program aims to reduce vehicle emissions by providing for the use of oxygenated fuels. Various forms of this program have been in place during the winter months (October 1 through March 31) since October 1, 1992. The minimum oxygenate content of winter fuels in El Paso County is 2.7% by weight, and this requirement will remain in effect for the

⁴ See Procedures for the Preparation of Emission Inventories for Carbon Monoxide and Precursors of Ozone. Volume I: General Guidance for Stationary Sources, EPA-450/4-91-016, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, May 1991; and Air Emissions Inventory Improvement Program (EIIIP) Technical Report Series—Volumes 1–10.

⁵ See the above-referenced October 1995 CO LMP guidance under "3.a.—Attainment Inventory" and EPA's EI guidance titled "Procedures for the Preparation of Emission Inventories for Carbon Monoxide and Precursors of Ozone: Volume I," also cited in the October 1995 CO LMP guidance.

⁶ See Section IV.b of the above referenced 11/16/1994 ozone LMP guidance (November 16, 1994).

⁷ The Tier 2 final rule Regulatory Impact Analysis notes reductions in NO, VOC, particulate, SO_x, CO, and hazardous air pollutant emissions from cars and light trucks by mandating lower VOC, NO_x, and PM emission standards for these vehicles' emissions control systems, as well as requiring gasoline sulfur levels be reduced. Sulfur interferes with the operation of advanced exhaust treatment systems; reduced gasoline sulfur content improves the efficiency of these systems.

duration of the second 10-year (2018–2028) maintenance period. This requirement controls CO emissions by creating more complete combustion of fuel.

Although not a direct local control measure, the State's PSD Program is a preconstruction permitting program that has been approved as part of the Texas SIP and applies to El Paso County. This program has been in effect for CO since the El Paso Area was redesignated to attainment in 2008. Under this program, new stationary sources of CO are evaluated and are required to use the Best Available Control Technology (BACT) to control emissions. This program will continue as a control strategy during the second maintenance period of 2018–2028. Therefore, we find that the State demonstrates continued maintenance of the standard.

C. Monitoring Network and Verification of Continued Attainment

The Plan includes a commitment to maintain operation of the existing EPA-approved air quality monitoring network in accordance with 40 CFR part 58. The TCEQ will continue to monitor CO through the end of the second 10-year maintenance period to ensure the CO level remains below 85% of the NAAQS. This data will be reported to EPA annually.

To comply with national ambient air monitoring requirements, and to better understand El Paso's air quality problems, the State has operated a CO monitoring network in the El Paso Area since the 1970's. In 2000, the El Paso monitoring network consisted of seven sites, including the Ascarate Park site at the Texas/Mexico border, which recorded the highest concentrations of CO that year. In recognition of significantly declining CO concentrations in the El Paso Area since 2000, Texas has gradually reduced and consolidated the El Paso CO monitoring network to three sites in 2015 with approval from the EPA. To verify the attainment status of the area over the maintenance period, the LMP should contain provisions for continued operation of an appropriate, EPA-approved monitoring network in accordance with 40 CFR part 58. The State has an approved monitoring network that includes CO monitoring in the El Paso Area that was most recently approved by the EPA on October 27, 2016. In the El Paso CO LMP, the State commits to maintaining a CO monitoring network to verify continued attainment of the NAAQS.

D. Contingency Plan

Contingency measures are specific control strategies that will be activated if they are triggered by a predefined event. Section 175A(d) of the Act requires that a maintenance plan include contingency provisions to promptly correct any violation of the NAAQS that occurs after redesignation of the area to attainment. To meet this requirement, the State has identified appropriate contingency measures along with a schedule for the development and implementation of such measures. In the September 21, 2016 submittal, the State specifies the contingency trigger as a violation of the CO standard based upon air quality monitoring data from the El Paso monitoring network. In the event that a monitored violation of the CO standard occurs in any portion of the maintenance area, the State will first analyze the data to determine if the violation was caused by actions outside TCEQ's jurisdiction (e.g., emissions from Mexico or another state) or within its jurisdiction. If the violation was caused by actions outside TCEQ's jurisdiction, TCEQ will notify the EPA. If TCEQ determines the violation was caused by actions within TCEQ's jurisdiction, TCEQ commits to adopt and implement the identified contingency measures as expeditiously as practicable, but no later than 18 months.

The State specifically identifies the following contingency measures to re-attain the standard:

- Vehicle idling restrictions.
- Improved vehicle I/M.

The LMP indicates that the State may evaluate other potential strategies to address any future violations in the most appropriate and effective manner possible. Based on the above, we find that the contingency measures provided in the State's El Paso CO LMP are sufficient and meet the requirements of section 175A(d) of the CAA.

E. Transportation and General Conformity

Transportation conformity is required by section 176(c) of the CAA. The EPA's conformity rule requires that transportation plans, programs, and projects that are funded under 23 U.S.C. or the Federal Transit Act conform to SIPs. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS.

The transportation conformity rule (40 CFR parts 51 and 93) and the general conformity rule (40 CFR parts 51 and 93) apply to nonattainment areas and

maintenance areas covered by an approved maintenance plan. Under either conformity rule, an acceptable method of demonstrating that a Federal action conforms to the applicable SIP is to demonstrate that expected emissions from the planned action are consistent with the emissions budget for the area.

While the EPA's LMP Option does not exempt an area from the need to affirm conformity, it explains that the area may demonstrate conformity without submitting an emissions budget. Under the LMP Option, emissions budgets are treated as essentially not constraining for the length of the maintenance period because it is unreasonable to expect that the qualifying areas would experience so much growth in that period that a violation of the CO NAAQS would result.⁸ Similarly, Federal actions subject to the general conformity rule could be considered to satisfy the "budget test" specified in section 93.158(a)(5)(i)(A) for the same reasons that the budgets are essentially considered to be unlimited.

While areas with maintenance plans approved under the LMP Option are not subject to the budget test, the areas remain subject to other transportation conformity requirements of 40 CFR part 93, subpart A. Thus, the metropolitan planning organization (MPO) in the area or the State must document and ensure that:

- a. Transportation plans and projects provide for timely implementation of SIP transportation control measures in accordance with 40 CFR 93.113;
- b. Transportation plans and projects comply with the fiscal constraint element per 40 CFR 93.108;
- c. The MPO's interagency consultation procedures meet applicable requirements of 40 CFR 93.105;
- d. Conformity of transportation plans is determined no less frequently than every four years, and conformity of plan amendments and transportation projects is demonstrated in accordance with the timing requirements specified in 40 CFR 93.104;
- e. The latest planning assumptions and emissions model are used as set forth in 40 CFR 93.110 and 40 CFR 93.111;
- f. Projects do not cause or contribute to any new localized carbon monoxide or particulate matter violations, in accordance with procedures specified in 40 CFR 93.123; and
- g. Project sponsors and/or operators provide written commitments as specified in 40 CFR 93.125.

The EPA confers regularly with the El Paso Area MPO and Transportation

⁸ 78 FR 48611, 48613 (August 9, 2013).

Policy Board, TCEQ, the Texas Department of Transportation, the Federal Highway Administration, and the Federal Transit Administration to review the Transportation Improvement Program for the El Paso Area to determine if the area is meeting the transportation conformity requirements under 40 CFR part 93, subpart A. The El Paso Area is currently meeting the requirements of 40 CFR part 93, subpart A.

Based on the evaluation outlined above, the LMP satisfies the requirements of the Act for the second 10-year update to the El Paso CO maintenance area.

III. Final Action

The EPA is approving the CO LMP for the El Paso Area submitted by the TCEQ on September 21, 2016 as a revision to the Texas SIP because the State adequately demonstrates that the El Paso Area will maintain the CO NAAQS and meet all the criteria of a LMP through the second 10-year maintenance period. The EPA is publishing this rule without prior proposal because we view this as a non-controversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on May 22, 2017 without further notice unless we receive relevant adverse comment by April 20, 2017. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive relevant adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action

merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the

Congress and to the Comptroller General of the United States. The EPA will submit a report containing this 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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 22, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Samuel Coleman was designated the Acting Regional Administrator on March 13, 2017, through the order of succession outlined in Regional Order R6-1110.1, a copy of which is included in the docket for this action.

Dated: March 13, 2017.

Samuel Coleman,

Acting Regional Administrator, Region 6.

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 SS—Texas

- 2. In § 52.2270 (e), the second table entitled "EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP" is amended by adding an entry to the end of the table to read follows:

§ 52.2270 Identification of plan.

* * * * *

(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or non-attainment area	State submittal/ effective date	EPA approval date	Comments
Second 10-year Carbon Monoxide maintenance plan (limited maintenance plan) for the El Paso CO area.	El Paso, TX	9/21/2016	3/21/2017 [Insert Federal Register citation].	

* * * * *

[FR Doc. 2017-05379 Filed 3-20-17; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2017-0043; FRL-9959-00-Region 9]

Approval and Promulgation of Implementation Plans; California; California Mobile Source Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a revision to the California State Implementation Plan (SIP) consisting of state regulations establishing standards and other requirements relating to the control of emissions from new on-road and new and in-use off-road vehicles and engines. The EPA is approving the SIP revision because the regulations meet the applicable requirements of the Clean Air Act. Approval of the regulations as part of the California SIP makes them federally enforceable.

DATES: This rule is effective on May 22, 2017 without further notice, unless the EPA receives adverse comments by April 20, 2017. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2017-0043 at <http://www.regulations.gov>, or via email to John Ungvarsky, at Ungvarsky.John@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit

electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: John Ungvarsky, EPA Region IX, (415) 972-3963, ungvarsky.john@epa.gov.

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

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I. Background

Under the Clean Air Act (CAA or “Act”), the EPA establishes national ambient air quality standards (NAAQS) to protect public health and welfare, and has established such ambient standards for a number of pervasive air pollutants including ozone, carbon

monoxide, nitrogen dioxide, sulfur dioxide, lead and particulate matter. Under section 110(a)(1) of the CAA, states must submit plans that provide for the implementation, maintenance, and enforcement of the NAAQS within each state. Such plans are referred to as SIPs and revisions to those plans are referred to as SIP revisions. Section 110(a)(2) of the CAA sets forth the content requirements for SIPs. Among the various requirements, SIPs must include enforceable emission limitations and other control measures, means, or techniques as may be necessary or appropriate to meet the applicable requirements of the CAA. *See* CAA section 110(a)(2)(a).

As a general matter, the CAA assigns mobile source regulation to the EPA through title II of the Act and assigns stationary source regulation and SIP development responsibilities to the states through title I of the Act. In so doing, the CAA preempts various types of state regulation of mobile sources as set forth in section 209(a) (preemption of state emissions standards for new motor vehicles and engines), section 209(e) (preemption of state emissions standards for new and in-use off-road vehicles and engines),¹ and section 211(c)(4)(A) [preemption of state fuel requirements for motor vehicle emission control, *i.e.*, other than California’s motor vehicle fuel requirements for motor vehicle emission control—see section 211(c)(4)(B)]. For certain types of mobile source emission standards, the State of California may request a waiver (for motor vehicles) or authorization (for off-road engines and equipment) for standards relating to the control of emissions and accompanying enforcement procedures. *See* CAA sections 209(b) (new motor vehicles) and 209(e)(2) (most categories of new and in-use off-road vehicles).

¹ EPA regulations refer to “nonroad” vehicles and engines whereas California regulations refer to “off-road” vehicles and engines. These terms refer to the same types of vehicles and engines, and for the purposes of this action, we will be using the state’s chosen term, “off-road,” to refer to such vehicles and engines.

Over the years, the California Air Resources Board (CARB) has submitted many requests for waiver or authorization of its standards and other requirements relating to the control of emissions from new on-road and new and in-use off-road vehicles and engines, and the EPA has granted many such requests. For example, the EPA has granted waivers for CARB's Low Emission Vehicle (LEV III) criteria pollutant standards for light- and medium-duty vehicles, and has authorized emissions standards for off-road vehicle categories. *See, e.g.*, 78 FR 2112 (January 9, 2013) (Advanced Clean Cars) and 80 FR 76468 (December 9, 2015) (Off-Road Large Spark-Ignition Engines).

Also over the years, CARB has submitted, and the EPA has approved, many local or regional California air district rules regulating stationary source emissions as part of the California SIP. *See generally* 40 CFR 52.220(c). With respect to mobile sources in general, California has submitted, and the EPA has approved, certain specific state regulatory programs, such as the in-use, heavy-duty, diesel-fueled truck rule, various fuels regulations, and the vehicle inspection and maintenance program (I/M, also known as "smog check"). *See, e.g.*, 77 FR 20308 (April 4, 2012) (in-use truck and bus regulation), 75 FR 26653 (May 12, 2010) (revisions to California on-road reformulated gasoline and diesel fuel regulations) and 75 FR 38023 (July 1, 2010) (revisions to California motor vehicle I/M program).

California relies on these local, regional, and state stationary and mobile source regulations to meet various CAA requirements and includes the corresponding emissions reductions in

the various regional air quality plans developed to attain and maintain the NAAQS. The EPA generally allows California to take credit for the corresponding emissions reductions relied upon in the various regional air quality plans because, among other reasons, the regulations are approved as part of the SIP and are thereby federally enforceable as required under CAA section 110(a)(2)(A).

However, California also relies on emissions reductions from the regulations for which the EPA has previously granted waivers or authorizations, and historically, the EPA has approved regional air quality plans that take credit for emissions reductions from such regulations, notwithstanding the fact that California has not submitted these particular regulations as part of the California SIP.

The EPA's longstanding practice of approving California plans that rely on emissions reductions from such "waiver measures," notwithstanding the lack of approval as part of the SIP, was challenged in several petitions filed in the Ninth Circuit Court of Appeals. In a 2015 decision, the Ninth Circuit held in favor of the petitioners on this issue and concluded that CAA section 110(a)(2)(A) requires that all state and local control measures on which SIPs rely to attain the NAAQS be included in the SIP and thereby subject to enforcement by the EPA and members of the general public. *See Committee for a Better Arvin v. EPA*, 786 F.3d 1169 (9th Cir. 2015).

In response to the decision in *Committee for a Better Arvin v. EPA*, CARB submitted SIP revisions on August 14, 2015, and December 7, 2016, consisting of state mobile source regulations that establish standards and

other requirements for the control of emissions from various new on-road and new and in-use off-road vehicles and engines for which the EPA has issued waivers or authorizations and that are relied upon by California regional plans to attain and maintain the NAAQS. The EPA finalized its approval of CARB's August 14, 2015 submittal at 81 FR 39424 (June 16, 2016). In today's action, the EPA is finalizing CARB's December 7, 2016 SIP revision submittal.

II. The State's Submittal

A. What regulations did the state submit?

On December 7, 2016, CARB submitted a SIP revision that included a set of state mobile source regulations for which waivers or authorizations have been granted by the EPA under section 209 of the CAA since August 2015. The SIP revision consists of the regulations themselves and documentation of the public process conducted by CARB in approving the regulations as part of the California SIP. Table 1 below presents the contents of the SIP revision by mobile source category and provides, for each such category, a listing of the relevant sections of the California Code of Regulations (CCR) that establish standards and other requirements for control of emissions from new or in-use vehicles or engines; the corresponding date of CARB's hearing date or Executive Officer action through which the regulations or amendments were adopted; and the notice of decision in which the EPA granted a waiver or authorization for the given set of regulations.

TABLE 1—CARB SIP REVISION SUBMITTAL SUMMARY

Source category	Relevant sections of California Code of Regulations	Date of relevant CARB hearing date or executive officer action	EPA notice of decision
2013 Amendments to the On-Board Diagnostic (OBD) System Requirements Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines (OBD II).	13 CCR § 1968.2, effective for state law purposes on July 31, 2013 ^a .	August 23, 2012	81 FR 78143 (November 7, 2016).
2013 Amendments to the OBD II Enforcement Regulation.	13 CCR § 1968.5, effective for state law purposes on July 31, 2013 ^b .	August 23, 2012	81 FR 78143 (November 7, 2016).
2013 Amendments to the Heavy-Duty Engine OBD System Requirements (HD OBD).	13 CCR § 1971.1, effective for state law purposes on July 31, 2013 ^a .	August 23, 2012	81 FR 78149 (November 7, 2016).
2013 Amendments to HD OBD Enforcement Regulation.	13 CCR § 1971.5, effective for state law purposes on July 31, 2013 ^b .	August 23, 2012	81 FR 78149 (November 7, 2016).
2008 Amendments to the Off-Road Large Spark-Ignition (LSI) Regulation.	13 CCR § 2433, effective for state law purposes on October 20, 2009.	November 21, 2008 ...	80 FR 76468 (December 9, 2015).
2010 Amendments to Off-Road LSI Fleet Regulation.	13 CCR § 2775, 2775.1, and 2775.2, effective for state law purposes on December 14, 2011.	December 17, 2010 ...	80 FR 76468 (December 9, 2015).
2011 Amendments to Small Off-Road Engines (SORE) Regulation.	13 CCR §§ 2403, 2404, and 2407, effective for state law purposes on January 10, 2013.	December 16, 2011 ...	80 FR 76971 (December 11, 2015).

TABLE 1—CARB SIP REVISION SUBMITTAL SUMMARY—Continued

Source category	Relevant sections of California Code of Regulations	Date of relevant CARB hearing date or executive officer action	EPA notice of decision
2011 Amendments to Tier 4 Off-Road Compression-Ignition (CI) Engines Regulation.	13 CCR §§ 2421, 2423, 2424, 2425, 2425.1, 2426, and 2427, effective for state law purposes on January 10, 2013 ^c .	December 16, 2011 ...	80 FR 76971 (December 11, 2015).
2010 Amendments to Certification Fuel for Off-Road Spark-Ignition (SI) Engines, Equipment and Vehicles ^d .	13 CCR §§ 2412, 2433, 2447, 2783 and 2784, effective for state law purposes on January 10, 2013.	December 16, 2011 ...	80 FR 76971 (December 11, 2015).

NOTES:

^aExcluding the definitions of the terms “emission standard,” “evaporative emission standards,” and “exhaust emission standards” or “tailpipe emission standards.”

^bExcluding the definition of the term “nonconforming OBD system.”

^cExcluding the optional alternative non-methane hydrocarbon (NMHC)² plus oxides of nitrogen (NO_x) Tier 4 exhaust emission standards and associated family emission limits.

^dIncludes Off-Road LSI, Off-Highway Recreational Vehicles and Engines (OHRV), and Spark-Ignition Marine Engines (SIME) off-road mobile source categories.

The regulations submitted by CARB and listed in table 1 incorporate by reference documents that establish test procedures and labeling specifications, among other things, and CARB submitted the documents as part of the overall SIP revision. Table 2 lists the incorporated documents included in the SIP submittal.

TABLE 2—DOCUMENTS INCORPORATED BY REFERENCE IN CARB REGULATIONS LISTED IN TABLE 1, ABOVE, AND SUBMITTED AS PART OF SIP REVISION

Off-Road LSI Engines:

California Exhaust and Evaporative Emission Standards and Test Procedures for New 2010 and Later Off-Road Large Spark-Ignition Engines, as last amended November 21, 2008.

California Exhaust and Evaporative Emission Standards and Test Procedures for New 2010 and Later Off-Road Large Spark-Ignition Engines (2010 and Later Test Procedure 1048), as last amended October 25, 2012.

California Exhaust and Evaporative Emission Standards and Test Procedures for New 2007 and Later Off-Road Large Spark-Ignition Engines (Test Procedures 1065 and 1068), as last amended October 25, 2012.

Small Off-Road Engines (SORE):

Test Procedure for Determining Permeation Emissions from Small Off-Road Engines and Equipment Fuel Tanks (TP-901), adopted July 26, 2004.

Test Procedure for Determining Diurnal Evaporative Emissions from Small Off-Road Engines and Equipment (TP-902), adopted July 26, 2004.

Certification and Approval Procedure for Small Off-Road Engine Fuel Tanks (CP-901), adopted July 26, 2004.

Certification and Approval Procedures for Evaporative Emission Control Systems (CP-902), adopted July 26, 2004.

California Exhaust Emission Standards and Test Procedures for 2005–2012 Small Off-Road Engines, as last amended October 25, 2012.

California Exhaust Emission Standards and Test Procedures for New 2013 and Later Small Off-Road Engines; Engine-Testing Procedures (Part 1054), adopted October 25, 2012.

California Exhaust Emission Standards and Test Procedures for New 2013 and Later Small Off-Road Engines; Engine-Testing Procedures (Part 1065), adopted October 25, 2012.

Off-Road Compression-Ignition (OFCI) Engines:

California Exhaust Emission Standards and Test Procedures for New 2008–2010 and Later Tier 4 Off-Road Compression-Ignition Engines, as last amended October 25, 2012.

California Exhaust Emission Standards and Test Procedures for New 2011 and Later Tier 4 Off-Road Compression-Ignition Engines, Part I–D, as last amended October 25, 2012.^a

California Exhaust Emission Standards and Test Procedures for New 2011 and Later Tier 4 Off-Road Compression-Ignition Engines, Part I–F, as last amended October 25, 2012.

California Exhaust Emission Standards and Test Procedures for New 2011 and Later Tier 4 Off-Road Compression-Ignition Engines, Part I–E, as adopted October 25, 2012.

Off-Highway Recreational Vehicles and Engines (OHRVs):

California Exhaust Emission Standards and Test Procedures for 1997 and Later Off-Highway Recreational Vehicles and Engines, as last amended October 25, 2012.

Spark-Ignition Marine Engines (SIME):

California Exhaust Emission Standards and Test Procedures for 2001 Model Year and Later Spark-Ignition Marine Engines, as last amended October 25, 2012.

Note:

^aExcluding optional alternative NMHC plus NO_x Tier 4 exhaust emission standards and associated family emission limits.

We note that CARB has expressly excluded from the December 7, 2016, SIP submittal certain amended provisions of California code that were not included in the related

authorization request from CARB to the EPA and thus not included in the EPA’s authorization. These provisions pertain to an optional alternative NMHC plus NO_x Tier 4 exhaust emission standards

and associated family emission limits for OFCI engines; however, the optional alternative was no longer available after December 31, 2014.

² NMHC and reactive organic gases (ROG) are terms used by California in their air quality plans

and regulations. NMHC and ROG are essentially

synonymous with volatile organic compounds (VOCs).

B. Are there other versions of these regulations?

As noted previously, the CAA generally assigns to the EPA the responsibility of establishing standards for the control of emissions from mobile sources. However, the State of California was a pioneer in establishing standards for the control of emissions from new motor vehicles, and, in part due to the state's pioneering efforts, Congress established in 1967 a process under which California, alone among the states, would be granted a waiver from preemption (if certain criteria are met) and thereby enforce its own standards and other requirements for the control of emissions from new motor vehicles. In the 1990 CAA Amendments, Congress extended a similar process that had been established under section 209 for new motor vehicles to new and in-use off-road vehicles and engines. *See* CAA section 209(e)(2). Under the 1990 CAA Amendments, the EPA must authorize California standards for the control of emissions of off-road vehicles and engines if certain criteria are met.

The first waiver granted was for California's On-Road Emissions Standards for Model Year (MY) 1968. *See* 33 FR 10160 (July 16, 1968). Since then, there have been dozens of waivers and authorizations granted by the EPA for new and amended CARB mobile source regulations. The EPA's Office of Transportation and Air Quality maintains a Web site that provides a general description of the waiver and authorization process and lists all of the various waivers and authorizations granted by the Agency to CARB over the

years. *See* <http://www.epa.gov/otaq/cafr.htm>.

Historically, as noted above, CARB regulations subject to the section 209 waiver or authorization process were not submitted to the EPA as a revision to the California SIP. However, in the wake of the Ninth Circuit's decision in *Committee for a Better Arvin v. EPA*, on August 14, 2015, CARB submitted a large set of mobile source regulations to the EPA as a SIP revision and the EPA took final approval action on this first set of regulations on June 16, 2016 (81 FR 39424). CARB's initial set of regulations included regulations establishing standards and other requirements relating to the control of emissions from new on-road vehicles and engines, including certain requirements related to OBD systems, and from new and in-use off-road vehicles and engines, including LSI, SORE, CI, OHRV and SIME categories of vehicles and engines. CARB's December 7, 2016 SIP revision submittal contains certain amended OBD regulations for new on-road vehicles and engines and certain amendments to the regulations affecting LSI, SORE, CI, OHRV, and SIME categories of off-road vehicles and engines.

C. What is the purpose of the submitted regulations?

Historically, California has experienced some of the most severe and most persistent air pollution problems in the country. Under the CAA, based on ambient data collected at numerous sites throughout the state, the EPA has designated areas within

California as nonattainment areas for the ozone NAAQS and the particulate matter (PM) NAAQS, which includes both coarse and fine particulate (*i.e.*, PM₁₀ and PM_{2.5}). *See*, generally, 40 CFR 81.305. California also includes a number of areas that had been designated as nonattainment areas for the carbon monoxide NAAQS that the EPA has redesignated as attainment areas because they have attained the standard and are subject to an approved maintenance plan demonstrating how they will maintain the carbon monoxide standard into the future.

Mobile source emissions constitute a significant portion of overall emissions of carbon monoxide, volatile organic compounds (VOC), oxides of nitrogen (NO_x), sulfur dioxide (SO₂) and PM in the various air quality planning areas within California, and thus, the purpose of CARB's mobile source regulations is to reduce these emissions and thereby reduce ambient concentrations to attain and maintain the NAAQS throughout California.³ At elevated levels, ozone and PM harm human health and the environment by contributing to premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems.

D. What requirements do the regulations establish?

Table 3 below generally describes the amended regulations listed in table 1 above and summarizes some of the key emissions control requirements contained in the rules.

TABLE 3—GENERAL DESCRIPTION OF REQUIREMENTS ESTABLISHED IN THE MOBILE SOURCE REGULATIONS INCLUDED IN THE DECEMBER 7, 2016 SIP REVISION

Source category	Description of requirements in submitted regulation
OBD II System Requirements for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines.	The amendments to the OBD II system requirements are found in 13 CCR § 1968.2, and they became effective for state law purposes on July 31, 2013. The OBD II amendments primarily affect medium-duty vehicles, to align the OBD II monitoring requirements with those adopted by CARB for heavy-duty diesel engines. For more information about CARB's OBD II regulations, <i>see</i> 81 FR 78143 (November 7, 2016).
OBD System Requirements for On-Road Heavy-Duty Engines (HD OBD).	The amendments to the HD OBD system requirements are found in 13 CCR § 1971.1, and they became effective for state law purposes on July 31, 2013. The amendments primarily affect the monitoring and performance requirements of HD OBD systems. Specifically, the amendments "accelerate the start date for OBD system implementation on alternate-fueled engines from the 2020 MY to the 2018 MY, relax some requirements for OBD systems on heavy-duty hybrid vehicles for the 2013 through 2015 MY, relax malfunction thresholds for three major emission control systems (<i>i.e.</i> , PM filters, NO _x catalysts, and NO _x sensors) on diesel engines until the 2016 MY, delay monitoring requirements for some diesel-related components until 2015 to provide further lead time for emission control strategies to stabilize, and clarify requirements for several monitors and standardization." <i>See</i> 81 FR 78149 at 78150 (November 7, 2016).

³ VOC and NO_x are precursors responsible for the formation of ozone, and NO_x and SO₂ are

precursors for PM_{2.5}. SO₂ belongs to a family of compounds referred to as sulfur oxides. PM_{2.5}

precursors also include VOC and ammonia. *See* 40 CFR 51.1000.

TABLE 3—GENERAL DESCRIPTION OF REQUIREMENTS ESTABLISHED IN THE MOBILE SOURCE REGULATIONS INCLUDED IN THE DECEMBER 7, 2016 SIP REVISION—Continued

Source category	Description of requirements in submitted regulation
OBD II and HD OBD Enforcement Regulations	The amendments to the OBD II and HD OBD enforcement regulations are found in 13 CCR §§ 1968.5 and 1971.5, respectively, and they became effective for state law purposes on July 31, 2013. The amendments align the enforcement regulations with the proposed diesel-related changes to the OBD II and HD OBD regulations, specifically the selection criteria of engines/vehicles for the test sample group and the mandatory recall provisions for diesel engines. For more information about CARB's OBD II and HD OBD regulations, see 81 FR 78143 (November 7, 2016) and 81 FR 78149 (November 7, 2016).
Off-Road LSI Engines	The amendments to the LSI new engine emissions standards are found in 13 CCR § 2433, and they became effective for state law purposes on October 20, 2009. The LSI new engine amendments create two new subcategories of LSI engines (<i>i.e.</i> , LSI engines less than or equal to 825 cubic centimeters (cc) and LSI engines greater than 825 cc but less than 1.0 liter) and establish exhaust emission standards for new 2011 and subsequent MY LSI engines in each of these new subcategories and establish more stringent standards for the 825 cc through 1 liter subcategory beginning with the 2015 MY. The amendments to LSI fleet requirements are found in 13 CCR §§ 2775.1, and 2775.2 and effective for state law purposes on December 14, 2011. The LSI fleet amendments establish provisions that enhance the compliance flexibility provisions of the existing LSI Fleet regulation. For more information about CARB's LSI regulations, see 80 FR 76468 (December 9, 2015).
Small Off-Road Engines (SORE)	The amendments are found in 13 CCR §§ 2403, 2404, and 2407, and various new or amended test procedures for SORE; these amendments became effective for state law purposes on January 10, 2013. The SORE amendments modify California's existing SORE test procedures by aligning California procedures to be consistent with recent amendments by the EPA to the federal certification and exhaust emission testing requirements at 40 CFR Parts 1054 and 1065. For more information about CARB's SORE regulations, see 80 FR 76971 (December 11, 2015).
Tier 4 Off-Road Compression-Ignition (CI) Engines.	The amendments are found in 13 CCR §§ 2421, 2423, 2424, 2425, 2425.1, 2426, and 2427, and in various new or amended test procedures for off-road CI engines. The amendments became effective for state law purposes on January 10, 2013. The off-road CI engine amendments enhance the harmonization of CARB's exhaust emission requirements for new off-road CI engines with the corresponding federal emissions requirements for nonroad CI engines set forth in 40 CFR Parts 1039, 1065, and 1068. For more information about CARB's Tier 4 off-road CI engine regulations, see 80 FR 76971 (December 11, 2015).
Certification Fuel for Off-Road CI and SI Engines, Equipment and Vehicles.	The amendments are found in 13 CCR §§ 2412, 2433, 2447, 2783, and 2784, and in various new or amended test procedures for SORE, off-road CI engines, LSI engines, OHRV, and recreational marine SI engines. The amendments became effective for state law purposes on January 10, 2013. The amendments to the certification test fuel for off-road SI, gasoline-fueled engines allow the use of 10-percent ethanol-blend of gasoline as an option for certification exhaust emission testing of new gasoline-fueled SORE, LSI, recreational marine, and OHRV off-road categories from the 2013 through 2019 MY, and requires its use for such purposes for these categories beginning with the 2020 MY. For more information, see 80 FR 76971 (December 11, 2015).

III. EPA's Evaluation and Final Action

A. How is the EPA evaluating the regulations?

The EPA has evaluated the submitted regulations discussed above against the applicable procedural and substantive requirements of the CAA for SIPs and SIP revisions and has concluded that they meet all of the applicable requirements. Generally, SIPs must include enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary to meet the requirements of the Act [see CAA section 110(a)(2)(A)]; must provide necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out such SIP (and is not prohibited by any provision of federal or state law from carrying out such SIP) [see CAA section

110(a)(2)(E)]; must be adopted by a state after reasonable notice and public hearing [see CAA section 110(l)], and must not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act [see CAA section 110(l)].⁴

B. Do the state regulations meet CAA SIP evaluation criteria?

1. Did the state provide adequate public notification and comment periods?

Under CAA section 110(l), SIP revisions must be adopted by the state,

⁴CAA section 193, which prohibits any pre-1990 SIP control requirement relating to nonattainment pollutants in nonattainment areas from being modified unless the SIP is revised to insure equivalent or greater emission reductions of such air pollutants, does not apply to these regulations because they amend regulations previously approved in the California SIP in 2016, and thus, do not constitute an amendment to a pre-1990 SIP control requirement.

and the state must provide for reasonable public notice and hearing prior to adoption. In 40 CFR 51.102(d), we specify that reasonable public notice in this context refers to at least 30 days.

All of the submitted regulations have gone through extensive public comment processes including CARB's workshop and hearing processes prior to state adoption of each rule. Also, the EPA's waiver and authorization processes provide an opportunity for the public to request public hearings to present information relevant to the EPA's consideration of CARB's request for waiver or authorization under section 209 of the CAA and to submit written comment.

In addition, on June 19, 2015, CARB published a notice of public hearing to be held on July 23, 2015, to consider adoption and submittal of certain adopted regulations, including those submitted to the EPA on August 15,

2015 (and for which the EPA has already taken action) and those submitted to the EPA on December 7, 2016, as a revision to the California SIP. CARB held the public hearing on July 23, 2015. No written comments were submitted to CARB in connection with the proposed SIP revision, and no public comments were made at the public hearing. CARB adopted the SIP revision at the July 23, 2015 Board Hearing (see Board Resolution 15–40), and submitted the relevant mobile source regulations to the EPA along with evidence of the public process conducted by CARB in adopting the SIP revision. We conclude that CARB's December 7, 2016, SIP revision submittal meets the applicable procedural requirements for SIP revisions under the CAA section 110(l) and 40 CFR 51.102.

2. Does the state have adequate legal authority to implement the regulations?

CARB has been granted both general and specific authority under the California Health & Safety Code (H&SC) to adopt and implement these regulations. California H&SC sections 39600 (“Acts required”) and 39601 (“Adoption of regulation; Conformance to federal law”) confer on CARB the general authority and obligation to adopt regulations and measures necessary to execute CARB's powers and duties imposed by state law. California H&SC sections 43013(a) and 43018 provide broad authority to achieve the maximum feasible and cost-effective emission reductions from all mobile source categories. Regarding in-use motor vehicles, California H&SC sections 43600 and 43701(b), respectively, grant CARB authority to adopt emission standards and emission control equipment requirements.

As a general matter, as noted above, the CAA assigns mobile source regulation to the EPA through title II of the Act and assigns stationary source regulation and SIP development responsibilities to the states through title I of the Act. In so doing, the CAA preempts various types of state regulation of mobile sources as set forth in section 209(a) (preemption of state emissions standards for new motor vehicles and engines), section 209(e) (preemption of state emissions standards for new and in-use nonroad vehicles and engines) and section 211(c)(4)(A) [preemption of state fuel requirements for motor vehicles, *i.e.*, other than California's motor vehicle fuel requirements for motor vehicle emission control—section 211(c)(4)(B)]. For certain types of mobile source standards, the State of California may

request a waiver (for motor vehicles) or authorization (for off-road vehicles or engines) for standards relating to the control of emissions and accompanying enforcement procedures. See CAA sections 209(b) (new motor vehicles) and 209(e)(2) (most categories of new and in-use off-road vehicles).

The mobile source regulations that are the subject of today's direct final rule were submitted by CARB under CAA section 209 with a request for waiver or authorization and for which the EPA has granted such waiver or authorization. Thus, the regulations approved today are not preempted under the CAA. For additional information regarding California's motor vehicle emission standards, please see the EPA's “California Waivers and Authorizations” Web page at URL address: <http://www.epa.gov/otaq/cafr.htm>. This Web site also lists relevant **Federal Register** notices that have been issued by the EPA in response to California waiver and authorization requests.

In addition, the EPA is unaware of any non-CAA legal obstacle to CARB's enforcement of the regulations and thus we conclude that the state has provided the necessary assurances that the state has adequate authority under state law to carry out the SIP revision (and is not prohibited by any provision of federal or state law from carrying out such SIP) and thereby meets the requirements of CAA section 110(a)(2)(E) with respect to legal authority.

3. Are the regulations enforceable as required under CAA section 110(a)(2)?

We have evaluated the enforceability of the amended mobile source regulations with respect to applicability and exemptions; standard of conduct and compliance dates; sunset provisions; discretionary provisions; and test methods, recordkeeping and reporting,⁵ and have concluded for the reasons given below that the proposed regulations would be enforceable for the purposes of CAA section 110(a)(2).

First, with respect to applicability, we find that the amended regulations would be sufficiently clear as to which persons and which vehicles or engines are affected by the regulations. See, *e.g.*, 13 CCR section 2775 (applicability provision for off-road LSI engine fleet requirements).

Second, we find that the amended regulations would be sufficiently

specific so that the persons affected by the regulations would be fairly on notice as to what the requirements and related compliance dates are. For instance, see the fleet average emission level standards for large and medium forklift fleets and non-forklift fleets in 13 CCR section 2775.1(a). Third, none of the submitted regulations contain sunset provisions that automatically repeal the emissions limits by a given date or upon the occurrence of a particular event, such as the change in the designation of an area from nonattainment to attainment.

Fourth, a number of the amended regulations contain provisions that allow for discretion on the part of CARB's Executive Officer. Such “director's discretion” provisions can undermine enforceability of a SIP regulation, and thus prevent full approval by the EPA. However, in the instances of “director's discretion” in the submitted regulations, the discretion that can be exercised by the CARB Executive Officer is reasonably limited under the terms of the regulations. For instance, the HD OBD requirements in 13 CCR section 1971.1 allow a manufacturer to request that the Executive Officer approve to use an alternate definition for engine start (*e.g.*, ignition key “on”) for hybrid vehicles or for engines employing alternate engine start hardware or strategies (*e.g.*, integrated starter and generators); however, Executive Officer approval of the alternate definition must be based on equivalence to an engine start for a conventional vehicle. With such constraints on discretion, the “director's discretion” contained in the amended regulations would not significantly undermine enforceability of the rules by citizens or the EPA.

Lastly, the amended regulations identify appropriate test methods and includes adequate recordkeeping and reporting requirements sufficient to ensure compliance with the applicable requirements. The technical support document provides more detail concerning the contents of the amended regulations.

4. Do the regulations interfere with reasonable further progress and attainment or any other applicable requirement of the Act?

All of the state's reasonable further progress (RFP), attainment, and maintenance plans rely to some extent on the emission reductions from CARB's mobile source program, including the emissions standards and other requirements for which the EPA has issued waivers or authorizations. For some plans, the reliance is substantial

⁵ These concepts are discussed in detail in an EPA memorandum from J. Craig Potter, EPA Assistant Administrator for Air and Radiation, *et al.*, titled “Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency,” dated September 23, 1987.

and for others the reliance is less. CARB's mobile source program is reflected in the emissions estimates for mobile sources that are included in the emissions inventories that form the quantitative basis for the RFP, attainment, and maintenance demonstrations. As such, CARB's mobile source regulations submitted for approval as a revision to the California SIP support the various RFP, attainment, and maintenance plans, and would not interfere with such requirements for the purposes of CAA section 110(l).

5. Will the state have adequate personnel and funding for the regulations?

In its SIP revision submittal dated August 14, 2015, CARB refers to the annual approval by the California Legislature of funding and staff resources for carrying out CAA-related responsibilities and notes that a large portion of CARB's budget has gone toward meeting CAA mandates.⁶ CARB indicates that a majority of CARB's funding comes from dedicated fees collected from regulated emission sources and other sources such as vehicle registration fees and vehicles license plate fees and that these funds can only be used for air pollution control activities. *Id.* For the 2014–2015 budget cycle, CARB had over 700 positions and almost \$500 million dedicated for the mobile source program developing and enforcing regulations. *Id.* Given the longstanding nature of CARB's mobile source program, and its documented effectiveness at achieving significant reductions from mobile sources, we find that CARB has provided necessary assurances that the state has adequate personnel and funding to carry out the amended mobile source regulations submitted for approval on December 7, 2016.

6. EPA's Evaluation Conclusion

Based on the above discussion, we believe these regulations are consistent with the relevant CAA requirements and with relevant EPA policies and guidance.

C. Final Action and Public Comment

Under section 110(k)(3) of the CAA, and for the reasons given above, we are approving a SIP revision submitted by CARB on December 7, 2016, that includes certain sections of title 13 of the California Code of Regulations that establish standards and other

requirements relating to the control of emissions from new and in-use on-road and off-road vehicles and engines. We are approving these regulations as part of the California SIP because we believe they fulfill all relevant CAA requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by April 20, 2017, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on May 22, 2017. This will incorporate these rules into the federally enforceable SIP.

Please note that if the EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, the EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Incorporation by Reference

In this rule, the EPA is finalizing rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of certain sections of title 13 of the California Code of Regulations that establish standards and other requirements relating to the control of emissions from new on-road and new and in-use off-road vehicles and engines, as described in section II of this preamble. Therefore, these materials have been approved by the EPA for inclusion in the State Implementation Plan, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.⁷ The EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the appropriate EPA office (see

the **ADDRESSES** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. 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);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a

⁶ Letter from Richard W. Corey, Executive Officer, CARB, to Jared Blumenfeld, Regional Administrator, EPA Region IX, August 14, 2015.

⁷ 62 FR 27968 (May 22, 1997).

tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 22, 2017. 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today’s **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that the EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

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

Dated: January 18, 2017.

Alexis Strauss,

Acting Regional Administrator, Region IX.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

■ 2. Section 52.220a as amended as follows:

■ a. In paragraph (c), table 1 is amended by:

■ i. By adding entries for “1968.2(a), (c) (excluding “emission standard,” “evaporative emission standards,” and “exhaust emission standards” or “tailpipe emission standards”), (d)(3), (d)(4), (e)(6), (e)(15), (f)(1)–(f)(9), (f)(12), (f)(13), (f)(15), (f)(17), (h)(4), (i)(1), (i)(2), and (j)(2)” and “1968.5(a)(3) (excluding “nonconforming OBD II system”), (b)(3), (b)(6), and (c)(3)” after the three entries for “1965”;

■ ii. By revising the entry for “1971.1”;

■ iii. By adding an entry for “1971.5(a)(3) (excluding amendments to the existing definition for “nonconforming OBD system”), (b)(3), (b)(6) and (d)(3)”, after the entry for “1971.5”;

■ iv. By adding an entry for “2403(b)(2)(B) and (d)” after the entry for “2403(b)(2), (b)(3), (b)(4), (d), (e)(1)”;

■ v. By adding an entry for “2404(c)(4)(A)” after the entry for “2404(m)(1), (m)(2), (m)(3)”;

■ vi. By adding an entry for “2407(a)(7)” after the entry for “2406(b)(1), (b)(2)”;

■ vii. By adding an entry for “2412(c) and (d)(1)” after the entry for “2412”;

■ viii. By adding an entry for “2421(a)(1)–(a)(4), (a)(15), (a)(19)–(a)(65)” after the entry for “2421”;

■ ix. By adding an entry for “2423(a), (b) (excluding optional alternative NO_x + NMHC standards and associated family emission limits), (c), (d), (e), (f), (g), (h), (j), (k), (l) and (m)” after the entry for “2423”;

■ x. By adding an entry for “2424(a), (b), (c) and (l)” after the entry for “2424(a)”;

■ xi. By adding an entry for “2425(a)” after the entry for “2425(e)”;

■ xii. By revising the entry for “2425.1”;

■ xiii. By adding an entry for “2426(a) and (b)” after the entry for “2426”;

■ xiv. By adding an entry for “2427(c)” after the entry for “2427”;

■ xv. By adding entries for “2433(b)(1)(A), (b)(2), (b)(3), (b)(4),

(b)(5), (c) and (d)” and “2433(c) and (d)(1)” after the entry for “2433”;

■ xvi. By revising the entries for “2447”, “2775”, “2775.1”, and “2775.2”;

■ xvii. By adding a new table entry titled “Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 15 (Additional Off-Road Vehicles and Engines Pollution Control Requirements), Article 3 (Verification Procedure, Warranty, and In-Use Compliance Requirements for Retrofits to Control Emissions from Off-Road Large Spark-Ignition Engines)” after the revised entry “2775.2”; and under the new heading, adding entries for “2783(d)(1)–(d)(4)” and “2784(c)(1)–(c)(4)”;

and

■ b. Paragraph (c), table 2 is amended by:

■ i. By adding an entry for “California Exhaust and Evaporative Emission Standards and Test Procedures for New 2010 and Later Off-Road Large Spark-Ignition Engines, (2010 and Later Test Procedure 1048), amended November 21, 2008” and “California Exhaust and Evaporative Emission Standards and Test Procedures for New 2010 and Later Off-Road Large Spark-Ignition Engines, (2010 and Later Test Procedure 1048), amended October 25, 2012” after the entry for “California Exhaust and Evaporative Emission Standards and Test Procedures for New 2010 and Later Off-Road Large Spark-Ignition Engines, (2010 and Later Test Procedure 1048), adopted March 2, 2007”;

■ ii. By adding entries for “California Exhaust and Evaporative Emission Standards and Test Procedures for New 2007 and Later Off-Road Large Spark-Ignition Engines (Test Procedures 1065 and 1068), amended October 25, 2012”, “Small Off-Road Engine and Equipment Evaporative Emissions Test Procedure (TP–901), adopted July 26, 2004”, “Small Off-Road Engine and Equipment Evaporative Emissions Test Procedure (TP–902), adopted July 26, 2004”, “Small Off-Road Engine Evaporative Emission Control System Certification Procedure (CP–901), adopted July 26, 2004”, and “Small Off-Road Engine Evaporative Emission Control System Certification Procedure (CP–902), adopted July 26, 2004” after the entry for “California Exhaust and Evaporative Emission Standards and Test Procedures for New 2007 and Later Off-Road Large Spark-Ignition Engines (Test Procedures 1065 and 1068), adopted March 2, 2007”;

■ iii. By adding entries for “California Exhaust Emission Standards and Test Procedures for 2005 and Later Small Off-Road Engines, as last amended October 25, 2012”, “California Exhaust

Emission Standards and Test Procedures for New 2013 and Later Small Off-Road Engines, Engine-Testing Procedures (Part 1054), adopted October 25, 2012” and “California Exhaust Emission Standards and Test Procedures for New 2013 and Later Small Off-Road Engines, Engine-Testing Procedures (Part 1065), adopted October 25, 2012” after the entry for “California Exhaust Emission Standards and Test Procedures for 2005 and Later Small Off-Road Engines, as last amended February 24, 2010”;

■ iv. By adding entries for “California Exhaust Emission Standards and Test Procedures for New 2008–2010 Tier 4 Off-Road Compression-Ignition Engines, Part I–C, as last amended October 25, 2012”, “California Exhaust Emission Standards and Test Procedures for New 2011 and Later Tier 4 Off-Road Compression-Ignition Engines, Part I–D,

as last amended October 25, 2012 (excluding optional alternative NO_x + NMHC standards and associated family emission limits in § 1039.102(e)”, “California Exhaust Emission Standards and Test Procedures for New 2011 and Later Tier 4 Off-Road Compression-Ignition Engines, Part I–F, as last amended October 25, 2012”, and “California Exhaust Emission Standards and Test Procedures for New 2011 and Later Tier 4 Off-Road Compression-Ignition Engines, Part I–E, adopted October 25, 2012” after the entry for “California Exhaust Emission Standards and Test Procedures for New 2008 and Later Tier 4 Off-Road Compression-Ignition Engines, Part I–C, adopted October 20, 2005”;

■ v. By adding an entry for “California Exhaust Emission Standards and Test Procedures for 2001 Model Year and Later Spark-Ignition Marine Engines, as

last amended October 25, 2012” after the entry for “California Exhaust Emission Standards and Test Procedures for 2001 Model Year and Later Spark-Ignition Marine Engines, as last amended June 5, 2009”; and

■ vi. By adding an entry for “California Exhaust Emissions Standards and Test Procedures for 1997 and Later Off-Highway Recreational Vehicles and Engines, as last amended October 25, 2012” after the entry for “California Exhaust Emissions Standards and Test Procedures for 1997 and Later Off-Highway Recreational Vehicles, and Engines, as last amended August 15, 2007”.

The additions and revisions read as follows:

§ 52.220a Identification of plan—in part.

* * * * *

(c) * * *

TABLE 1—EPA-APPROVED STATUTES AND STATE REGULATIONS ¹

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
* * *	* * *	* * *	* * *	* * *
1968.2(a), (c) (excluding “emission standard,” “evaporative emission standards,” and “exhaust emission standards” or “tailpipe emission standards”), (d)(3), (d)(4), (e)(6), (e)(15), (f)(1)–(f)(9), (f)(12), (f)(13), (f)(15), (f)(17), (h)(4), (i)(1), (i)(2), and (j)(2).	Malfunction and Diagnostic System Requirements—2004 and Subsequent Model-Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines.	7/31/2013	[Insert Federal Register citation], 03/21/2017.	Provisions relate to On-Board Diagnostic systems requirements (OBD II).
1968.5(a)(3) (excluding “non-conforming OBD II system”), (b)(3), (b)(6), and (c)(3).	Enforcement of Malfunction and Diagnostic System Requirements for 2004 and Subsequent Model-Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines.	7/31/2013	[Insert Federal Register citation], 03/21/2017.	Provisions related to enforcement of OBD II requirements.
1971.1, excluding the following definitions: “emission standard,” “evaporative emission standards,” and “exhaust emission standards” or “tailpipe emission standards”).	On-Board Diagnostic System Requirements—2010 and Subsequent Model-Year Heavy-Duty Engines.	7/31/2013	[Insert Federal Register citation], 03/21/2017.	Amends emission standards and other requirements for On-Board Diagnostic OBD (OBD) systems for heavy-duty vehicles.
* * *	* * *	* * *	* * *	* * *
1971.5(a)(3) (excluding amendments to the existing definition for “nonconforming OBD system”), (b)(3), (b)(6) and (d)(3).	Enforcement of Malfunction and Diagnostic System Requirements for 2010 and Subsequent Model-Year Heavy-Duty Engines.	7/31/2013	[Insert Federal Register citation], 03/21/2017.	Amends certain enforcement-related provisions for the OBD systems requirements for heavy-duty vehicles.
* * *	* * *	* * *	* * *	* * *
2403(b)(2)(B) and (d)	Exhaust Emission Standards and Test Procedures—Small Off-Road Engines.	1/10/2013	[Insert Federal Register citation], 03/21/2017.	Amends certain certification requirements and test procedures.
* * *	* * *	* * *	* * *	* * *
2404(c)(4)(A)	Emission Control Labels and Consumer Information—1995 and Later Small Off-Road Engines.	1/10/2013	[Insert Federal Register citation], 03/21/2017.	Amends the rule to revise certain engine label content requirements.

TABLE 1—EPA-APPROVED STATUTES AND STATE REGULATIONS ¹—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
2407(a)(7)	New Engine Compliance and Production Line Testing—New Small Off-Road Engine Selection, Evaluation, and Enforcement Action.	1/10/2013	[Insert Federal Register citation], 03/21/2017.	Specifies use of certain test procedures.
2412(c) and (d)(1)	Emission Standards and Test Procedures—New Off-Highway Recreational Vehicles and Engines.	1/10/2013	[Insert Federal Register citation], 03/21/2017.	Updates references to test procedures.
2421(a)(1)–(a)(4), (a)(15), (a)(19)–(a)(65).	Definitions	1/10/2013	[Insert Federal Register citation], 03/21/2017.	Amends and adds certain defined terms.
2423(a), (b) (excluding optional alternative NO _x + NMHC standards and associated family emission limits), (c), (d), (e), (f), (g), (h), (j), (k), (l) and (m).	Exhaust Emission Standards and Test Procedures—Off-Road Compression-Ignition Engines.	1/10/2013	[Insert Federal Register citation], 03/21/2017.	Amends the rule to harmonize certain aspects of the California emissions requirements with the corresponding federal emissions requirements.
2424(a), (b), (c) and (l)	Emission Control Labels—1996 and Later Off-Road Compression-Ignition Engines.	1/10/2013	[Insert Federal Register citation], 03/21/2017.	Amends the rule to reflect updated test procedures and to add provisions prohibiting altering or removal of emission control information labels except under certain circumstances.
2425(a)	Defects Warranty Requirements for 1996 and Later Off-Road Compression-Ignition Engines.	1/10/2013	[Insert Federal Register citation], 03/21/2017.	Amends the rule to apply certain federal warranty-related requirements to 2011 and later model-year compression-ignition engines.
2425.1	Defect Investigation and Reporting Requirements.	1/10/2013	[Insert Federal Register citation], 03/21/2017.	Amends the rule to reflect certain updated test procedures.
2426(a) and (b)	Emission Control System Warranty Statement.	1/10/2013	[Insert Federal Register citation], 03/21/2017.	Amends an existing SIP rule to make changes conforming to the changes made in 13 CCR § 2423.
2427(c)	Production Engine Testing, Selection, Evaluation, and Enforcement Action.	1/10/2013	[Insert Federal Register citation], 03/21/2017.	Amends an existing SIP rule to reflect updated test procedures.

TABLE 1—EPA-APPROVED STATUTES AND STATE REGULATIONS ¹—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
* * *	* * *	* * *	* * *	* * *
2433(b)(1)(A), (b)(2), (b)(3), (b)(4), (b)(5), (c) and (d).	Emission Standards and Test Procedures—Off-Road Large Spark Ignition Engines.	10/20/2009	[Insert Federal Register citation], 03/21/2017.	Amends the rule creating two new subcategories of LSI engines, establishing exhaust and evaporative emissions standards for new 2011 and subsequent model year LSI engines in each of these new subcategories, and establishing more stringent exhaust emissions standards for 2015 and subsequent model year LSI engines with engine displacement 825cc <1.0 L.
2433(c) and (d)(1)	Emission Standards and Test Procedures—Off-Road Large Spark Ignition Engines.	1/10/2013	[Insert Federal Register citation], 03/21/2017.	Amends the rule to refer to updated test procedures.
* * *	* * *	* * *	* * *	* * *
2447	California Exhaust Emission Standards and Test Procedures for 2001 Model Year and Later Spark-Ignition Marine Engines.	1/10/2013	[Insert Federal Register citation], 03/21/2017.	Specifies certain test procedures.
* * *	* * *	* * *	* * *	* * *
2775	Applicability	12/14/2011	[Insert Federal Register citation], 03/21/2017.	Applies to operators of certain off-road LSI engine forklifts, sweepers/scrubbers, industrial tow tractors or airport ground support equipment operated within the State of California. Exemptions provided for small fleets and certain other equipment. Includes definitions.
2775.1	Standards	12/14/2011	[Insert Federal Register citation], 03/21/2017.	Establishes fleet average emission level standards with certain exceptions.
2775.2	Compliance Requirements for Fleet Operators.	12/14/2011	[Insert Federal Register citation], 03/21/2017.	Compliance and record-keeping requirements, provisions for extensions in compliance dates.
Title 13 (Motor Vehicles), Division 3 (Air Resources Board), Chapter 15 (Additional Off-Road Vehicles and Engines Pollution Control Requirements), Article 3 (Verification Procedure, Warranty, and In-Use Compliance Requirements for Retrofits to Control Emissions from Off-Road Large Spark-Ignition Engines)				
2783(d)(1)–(d)(4)	Emissions Reduction Testing Requirements.	1/10/2013	[Insert Federal Register citation], 03/21/2017.	Specifies test fuels for emissions reduction testing purposes for gasoline-fueled, off-road, large spark-ignition engines.
2784(c)(1)–(c)(4)	Durability Demonstration Requirements.	1/10/2013	[Insert Federal Register citation], 03/21/2017.	Specifies test fuels for durability demonstration purposes for gasoline-fueled, off-road, large spark-ignition engines.
* * *	* * *	* * *	* * *	* * *

¹ Table 1 lists EPA-approved California statutes and regulations incorporated by reference in the applicable SIP. Table 2 of paragraph (c) lists approved California test procedures, test methods and specifications that are cited in certain regulations listed in table 1. Approved California statutes that are nonregulatory or quasi-regulatory are listed in paragraph (e).

TABLE 2—EPA-APPROVED CALIFORNIA TEST PROCEDURES, TEST METHODS, AND SPECIFICATIONS

Title/subject	State effective date	EPA Approval date	Additional explanation
* * *	*	*	*
California Exhaust and Evaporative Emission Standards and Test Procedures for New 2010 and Later Off-Road Large Spark-Ignition Engines, (2010 and Later Test Procedure 1048), amended November 21, 2008.	10/20/2009	[Insert Federal Register citation], 03/21/2017.	Submitted by CARB on December 7, 2016.
California Exhaust and Evaporative Emission Standards and Test Procedures for New 2010 and Later Off-Road Large Spark-Ignition Engines, (2010 and Later Test Procedure 1048), amended October 25, 2012.	1/10/2013	[Insert Federal Register citation], 03/21/2017.	Submitted by CARB on December 7, 2016.
* * *	*	*	*
California Exhaust and Evaporative Emission Standards and Test Procedures for New 2007 and Later Off-Road Large Spark-Ignition Engines (Test Procedures 1065 and 1068), amended October 25, 2012.	1/10/2013	[Insert Federal Register citation], 03/21/2017.	Submitted by CARB on December 7, 2016.
Small Off-Road Engine and Equipment Evaporative Emissions Test Procedure (TP-901), adopted July 26, 2004.	10/20/2004	[Insert Federal Register citation], 03/21/2017.	Submitted by CARB on December 7, 2016.
Small Off-Road Engine and Equipment Evaporative Emissions Test Procedure (TP-902), adopted July 26, 2004.	10/20/2004	[Insert Federal Register citation], 03/21/2017.	Submitted by CARB on December 7, 2016.
Small Off-Road Engine Evaporative Emission Control System Certification Procedure (CP-901), adopted July 26, 2004.	10/20/2004	[Insert Federal Register citation], 03/21/2017.	Submitted by CARB on December 7, 2016.
Small Off-Road Engine Evaporative Emission Control System Certification Procedure (CP-902), adopted July 26, 2004.	10/20/2004	[Insert Federal Register citation], 03/21/2017.	Submitted by CARB on December 7, 2016.
* * *	*	*	*
California Exhaust Emission Standards and Test Procedures for 2005 and Later Small Off-Road Engines, as last amended October 25, 2012.	1/10/2013	[Insert Federal Register citation], 03/21/2017.	Submitted by CARB on December 7, 2016.
California Exhaust Emission Standards and Test Procedures for New 2013 and Later Small Off-Road Engines, Engine-Testing Procedures (Part 1054), adopted October 25, 2012.	1/10/2013	[Insert Federal Register citation], 03/21/2017.	Submitted by CARB on December 7, 2016.
California Exhaust Emission Standards and Test Procedures for New 2013 and Later Small Off-Road Engines, Engine-Testing Procedures (Part 1065), adopted October 25, 2012.	1/10/2013	[Insert Federal Register citation], 03/21/2017.	Submitted by CARB on December 7, 2016.
* * *	*	*	*
California Exhaust Emission Standards and Test Procedures for New 2008–2010 Tier 4 Off-Road Compression-Ignition Engines, Part I–C, as last amended October 25, 2012.	1/10/2013	[Insert Federal Register citation], 03/21/2017.	Submitted by CARB on December 7, 2016.
California Exhaust Emission Standards and Test Procedures for New 2011 and Later Tier 4 Off-Road Compression-Ignition Engines, Part I–D, as last amended October 25, 2012 (excluding optional alternative NO _x + NMHC standards and associated family emission limits in § 1039.102(e)).	1/10/2013	[Insert Federal Register citation], 03/21/2017.	Submitted by CARB on December 7, 2016.
California Exhaust Emission Standards and Test Procedures for New 2011 and Later Tier 4 Off-Road Compression-Ignition Engines, Part I–F, as last amended October 25, 2012.	1/10/2013	[Insert Federal Register citation], 03/21/2017.	Submitted by CARB on December 7, 2016.
California Exhaust Emission Standards and Test Procedures for New 2011 and Later Tier 4 Off-Road Compression-Ignition Engines, Part I–E, adopted October 25, 2012.	1/10/2013	[Insert Federal Register citation], 03/21/2017.	Submitted by CARB on December 7, 2016.
* * *	*	*	*
California Exhaust Emission Standards and Test Procedures for 2001 Model Year and Later Spark-Ignition Marine Engines, as last amended October 25, 2012.	1/10/2013	[Insert Federal Register citation], 03/21/2017.	Submitted by CARB on December 7, 2016.
* * *	*	*	*
California Exhaust Emissions Standards and Test Procedures for 1997 and Later Off-Highway Recreational Vehicles and Engines, as last amended October 25, 2012.	1/10/2013	[Insert Federal Register citation], 03/21/2017.	Submitted by CARB on December 7, 2016.

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[FR Doc. 2017-05059 Filed 3-20-17; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[DC104-2052; FRL-9955-98-Region 3]

Air Plan Approval; District of Columbia; Update to Materials Incorporated by Reference**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule; notice of administrative change.

SUMMARY: The Environmental Protection Agency (EPA) is updating the materials that are incorporated by reference (IBR) into the District of Columbia state implementation plan (SIP). The regulations affected by this update have been previously submitted by the District of Columbia Department of Energy and Environment (DoEE) and approved by EPA. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration (NARA) and the EPA Regional Office.

DATES: This action is effective March 21, 2017.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and NARA. For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. To view the material at the EPA, Region III Office, EPA requests that you email the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Sharon McCauley, (215) 814-3376 or by email at mccauley.sharon@epa.gov.

SUPPLEMENTARY INFORMATION:**I. Background**

The SIP is a living document which the state revises as necessary to address its unique air pollution problems. Therefore, EPA, from time to time, must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference federally

approved SIPs, as a result of consultations between EPA and the Office of the Federal Register (OFR). The description of the revised SIP document, IBR procedures and “Identification of plan” format are discussed in further detail in the May 22, 1997 **Federal Register** document. On December 7, 1998 (63 FR 67407), EPA published a document in the **Federal Register** beginning the new IBR procedure for the District of Columbia. On August 6, 2004 (69 FR 47773), September 6, 2005 (70 FR 52919), March 19, 2009 (74 FR 11647), and February 22, 2011 (76 FR 9652), EPA published updates to the IBR material for the District of Columbia.

Since the publication of the last IBR update, EPA has approved the following regulatory changes to the following District of Columbia regulations:

A. Added Regulations and Statutes

1. Chapter 2 (General and Non-attainment Area Permits), sections 208 and 210.
2. Chapter 7 (Volatile Organic Compounds), sections 714, 755 through 758 inclusive, and 763 through 778 inclusive.
3. DC Official Code, Title I, Chapter 11A, (Government Ethics and Accountability), sections 1-1161.01(Definitions), 1-1161.23 (Conflicts of Interest), 1-1161.24 (Public Reporting), and 1-1161.25 (Confidential Disclosure of Financial Interest).

B. Revised Regulations

1. Chapter 1 (General), sections 100 and 199.
2. Chapter 2 (General and Non-attainment Area Permits), sections 200, 204, and 299.
3. Chapter 7, (Volatile Organic Compounds), sections 700, 710, 715 through 737 inclusive, 743 through 749, 751 through 754 inclusive, and 799.
4. Chapter 10, title change to Air Quality—Non EGU Limits on Nitrogen Oxides Emissions, as well as title changes and revisions to sections 1001 through 1004.

C. Removed Regulations

1. Chapter 2 (General and Non-attainment Area Permits), section 206
2. Chapter 7, (Volatile Organic Compounds), sections 707, 708, 738 through 742 inclusive, and 750.
3. Chapter 10 (Air Quality—Non EGU Limits on Nitrogen Oxides Emissions), sections 1005 through 1014 inclusive, and 1099.

II. EPA Action

In this action, EPA is doing the following:

A. In 40 CFR 52.470(b)

Announcing the update to the IBR material as of July 1, 2016 and revising the text within 40 CFR 52.470(b).

B. In 40 CFR 52.470(c)

1. Correcting a typographical error in the title for chapter 7, section 702.

2. Removing the five existing entries for chapter 7, section 799 with an EPA approval date prior to April 29, 2013.

C. In 40 CFR 52.470(e)

Revising the Applicable Geographic Area from “Statewide” to “District of Columbia” for the following titled areas currently found within 52.470(e): Regional Haze Plan; Section 110(a)(2) Infrastructure Requirements for the 2008 Lead NAAQS; the Clean Air Act (CAA) section 128 requirements in relation to State Boards; section 110(a)(2) Infrastructure Requirements for the 2010 Nitrogen Dioxide (NO₂) National Ambient Air Quality Standards (NAAQS); Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone NAAQS; Section 110(a)(2) Infrastructure Requirements for the 2010 Sulfur Dioxide (SO₂) NAAQS; Emergency Air Pollution Plan; and the Interstate Pollution Transport Requirements for the 2010 NO₂ NAAQS.

III. Good Cause Exemption

EPA has determined that today’s rule falls under the “good cause” exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding “good cause,” authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). This rule simply codifies provisions which are already in effect as a matter of law in federal and approved state programs. Under section 553 of the APA, an agency may find good cause where procedures are “impractical, unnecessary, or contrary to the public interest.” Public comment is “unnecessary” and “contrary to the public interest” since the codification only reflects existing law. Immediate notice in the Code of Federal Register benefits the public by removing outdated citations and incorrect table entries.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of previously EPA approved regulations promulgated by the District of Columbia and federally effective prior to July 1, 2016. Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference by the

Director of the Federal Register in the next update to the SIP compilation.¹ The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and/or at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

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 Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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 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 rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

EPA has also determined that the provisions of section 307(b)(1) of the CAA pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the District of Columbia SIP compilations had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for this "Identification of plan" update action for the District of Columbia.

List of Subjects in 40 CFR Part 52

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

Dated: March 7, 2017.

Cecil Rodrigues,

Acting 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 J—District of Columbia

■ 2. Section 52.470 is amended by:

- a. Revising paragraph (b);
- b. Revising paragraph (c) table entry for Section 702;
- c. Removing the second through sixth entries for Section 799 from paragraph (c) table; and
- d. In paragraph (e), by revising the following entries: Regional Haze Plan; Section 110(a)(2) Infrastructure Requirements for the 2008 Lead NAAQS; CAA section 128 requirements in relation to State Boards; Section 110(a)(2) Infrastructure Requirements for the 2010 NO₂ NAAQS; Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone NAAQS; Section 110(a)(2) Infrastructure Requirements for the 2010 SO₂ NAAQS; Emergency Air Pollution Plan; and Interstate Pollution Transport Requirements for the 2010 NO₂ NAAQS.

The amendments read as follows:

§ 52.470 Identification of plan.

* * * * *

(b) *Incorporation by reference.* (1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to July 1, 2016, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with the EPA approval dates after July 1, 2016 for the District of Columbia, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region III certifies that the materials provided by EPA at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated state rules/regulations which have been approved as part of the state implementation plan as of the dates referenced in paragraph (b)(1). No additional revisions were made to paragraph (d) between December 1, 2010 and July 1, 2016.

¹ 62 FR 27968 (May 22, 1997).

(3) Copies of the materials incorporated by reference into the state implementation plan may be inspected at the Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. To

obtain the material, please call the Regional Office at (215) 814-3376. You may also inspect the material with an EPA approval date prior to July 1, 2016 for the District of Columbia at the National Archives and Records

Administration (NARA). For information on the availability of this material at NARA, go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.
(c) * * *

EPA-APPROVED REGULATIONS AND STATUTES IN THE DISTRICT OF COLUMBIA SIP

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
District of Columbia Municipal Regulations (DCMR), Title 20—Environment				
*	*	*	*	*
Chapter 7 Volatile Organic Compounds				
*	*	*	*	*
Section 702	Control of Volatile Organic Compound Leaks from Petroleum Refinery Equipment.	3/15/85	10/27/99, 64 FR 57777.	
*	*	*	*	*
(e) * * *				
Name of non-regulatory SIP revision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
Regional Haze Plan	District of Columbia	10/27/11	2/2/12, 77 FR 5191.	
*	*	*	*	*
Section 110(a)(2) Infrastructure Requirements for the 2008 Lead NAAQS.	District of Columbia	7/18/13	10/22/13, 78 FR 62455.	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof.
CAA section 128 requirements in relation to State Boards.	District of Columbia	7/18/13	10/22/13, 78 FR 62455.	
*	*	*	*	*
Section 110(a)(2) Infrastructure Requirements for the 2010 NO ₂ NAAQS.	District of Columbia	6/9/14	4/13/15, 80 FR 19538.	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). PSD related portions are addressed by FIP in 40 CFR 52.499.
Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone NAAQS.	District of Columbia	6/13/14	4/13/15, 80 FR 19538.	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). PSD related portions are addressed by FIP in 40 CFR 52.499.
Section 110(a)(2) Infrastructure Requirements for the 2010 SO ₂ NAAQS.	District of Columbia	6/13/14	4/13/15, 80 FR 19538.	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). PSD related portions are addressed by FIP in 40 CFR 52.499.
Emergency Air Pollution Plan.	District of Columbia	6/13/14	4/13/15, 80 FR 19538.	This action addresses the requirements of 40 CFR 51, subpart H for particulate matter, sulfur oxides (SOX), carbon monoxide (CO), and ozone, as well as section 110(a)(2)(G) of the CAA for the 2008 ozone, 2010 SO ₂ , and 2010 NO ₂ NAAQS.
*	*	*	*	*
Interstate Pollution Transport Requirements for the 2010 NO ₂ NAAQS.	District of Columbia	6/6/14	2/19/16, 81 FR 8406	This action addresses the infrastructure element of CAA section 110(a)(2)(D)(i)(I), or the good neighbor provision, for the 2010 NO ₂ NAAQS.

Name of non-regulatory SIP revision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*

[FR Doc. 2017-05201 Filed 3-20-17; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2011-0695; FRL-9957-41-Region 6]

Approval and Promulgation of Implementation Plans; New Mexico; Albuquerque/Bernalillo County; Inspection and Maintenance Program Error Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or Act), the Environmental Protection Agency (EPA) is taking direct final action to correct a previously approved diesel inspection and maintenance (I/M) program provision in Albuquerque/Bernalillo County's State Implementation Plan (SIP). This action is based on our determination that at the time EPA approved the diesel I/M Program the State did not have the legal authority to expand its program to require the testing of 1998 and newer diesel motor vehicles greater than 1,000 and less than 10,001 pounds.

DATES: This rule is effective on May 22, 2017 without further notice, unless the EPA receives relevant adverse comment by April 20, 2017. If the EPA receives such comment, the EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket No. EPA-R06-OAR-2011-0695, at <http://www.regulations.gov> or via email to walser.john@epa.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 whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the

official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact Mr. John Walser, 214-665-7128, walser.john@epa.gov. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available at either location (*e.g.*, CBI).

FOR FURTHER INFORMATION CONTACT: Mr. John Walser, 214-665-7128, walser.john@epa.gov. To inspect the hard copy materials, please schedule an appointment with Mr. John Walser or Mr. Bill Deese at 214-665-7253.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” means the EPA.

I. Background

A. Requirements for SIP Submittals and EPA Action on SIP Submittals

Congress enacted the National Ambient Air Quality Standards (NAAQS) and SIP requirements in the 1970 CAA Amendments. CAA section 110(a)(1) requires that states adopt and submit to EPA for approval SIPs that implement the NAAQS. CAA section 110(a)(2) contains a detailed list of requirements that all SIPs must include to be approvable by EPA. Of particular relevance to this action is subparagraph (E)(i) of CAA section 110(a)(2) which provides that SIPs must provide “necessary assurances that the state . . . will have adequate . . . authority under State (and as appropriate, local) law to carry out such [an] implementation plan.” As applicable to inspection and maintenance programs, this provision means that EPA may approve the submitted I/M provisions as part of the SIP only if EPA is satisfied that the state

will have adequate legal authority under state law to implement the program.

B. Authority for EPA To Revise Previous Action on SIPs

EPA has authority to revise its previous actions taken on SIP submittals. Two mechanisms are available to EPA: The error correction mechanism provided under CAA section 110(k)(6), and EPA's general administrative authority to reconsider its own actions under CAA sections 110 and 301(a), in light of case law. CAA section 110(k)(6) provides as follows:

Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and public.

Therefore, the Administrator has the authority to “determine[]” when a SIP approval was “in error,” and may then revise the SIP approval “as appropriate,” in the same manner as the approval, and without requiring any further submission from the state.¹

C. Albuquerque/Bernalillo County Submission

On August 1, 2012, EPA proposed to approve revisions to the SIP for Air Quality submitted by the City of Albuquerque/Bernalillo County (the County) area on July 28, 2011 pursuant to the Clean Air Act. (77 FR 45530). These revisions included provisions that expanded the County's I/M program to include 1998 and newer diesel motor vehicles greater than 1,000 and less than 10,001 pounds. The County submitted a SIP Completeness Checklist pursuant to 40 CFR 51, Appendix V in which it certified that it had the necessary legal authority to include compression ignition powered (diesel) engine testing in its I/M program. We received no comments on this proposal and finalized our approval on October 31, 2012. (77 FR 65821).

¹ Please see the “Legal Support” document in the docket for a more in depth explanations of the EPA's authority to revise previous SIP actions.

II. EPA's Analysis

Federal law does not require, nor did it require at the time the SIP revision was submitted, a diesel I/M program. However, under the CAA an agency is free to submit for approval as part of the SIP regulations that are more stringent than federal requirements should it choose to. On August 19, 2016, we received a letter from the Albuquerque Bernalillo County Air Quality Control Board indicating that the County did not have the necessary legal authority to require testing of diesel engines at the time the SIP was submitted to EPA. The County requested that EPA perform an error correction under CAA section 110(k)(6).² New Mexico statute states that the County may only require testing for vehicles powered by spark ignited combustion engines.³ Diesel engines are not spark ignited but instead rely on compression ignition. Further, the State's law provides that the County cannot enact any rule that is more stringent than what is federally required; every rule enacted by the County must be at least as stringent, but no more stringent than what is federally required.⁴

As explained above, EPA has the authority to correct approvals of SIPs should we find that the approval was made in error. Since the County did not have the necessary authority to require testing of diesel engines at the time the SIP revision was submitted, our approval of this diesel I/M provision was made in error. As such, we are taking final action to remove this provision from the County's SIP.

III. What action is EPA taking?

EPA is removing the following provisions related to testing diesel vehicles from the County's SIP: NMAC 20.11.100.5(B), 20.11.100.17(E)(2), and the reference to compression ignition engines in 20.11.100.7(LL)(1), as adopted by the Air Board on May 11, 2011.

IV. Incorporation by Reference

In this rule, we are finalizing regulatory text that includes

incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of the revisions to the New Mexico regulations as described in the Final Action section above. We have made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the EPA Region 6 office.

V. Statutory and Executive Order Reviews

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

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

B. Paperwork Reduction Act (PRA)

This final action does not impose an information collection burden under the PRA because it does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action merely approves or disapproves a SIP submission as not meeting the CAA.

D. 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.

E. Executive Order 13132: Federalism

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

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

This action does not have tribal implications as specified in Executive Order 13175. This action does not apply on any Indian reservation land, any other area where EPA or an Indian tribe has jurisdiction, or non-reservation areas of Indian country. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it merely approves or disapproves a SIP submission as not meeting the CAA.

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

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

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

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

EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. This action merely approves or disapproves a SIP submission as not meeting the CAA requirements.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 22, 2017. Filing a

² See, "Request for administrative error correction under 40 U.S.C. 7601(k)(6) to provisions of the New Mexico State Implementation Plan regarding emissions testing of certain diesel fuel motor vehicles" dated August 19, 2016.

³ "Any local authority that is located within a transportation-related pollutant nonattainment area or maintenance area may provide for a vehicle emission inspection and maintenance program for vehicles under twenty-six thousand pounds gross vehicle weight powered by a spark-ignited internal combustion engine, which program shall be no more stringent than that required under the federal act or under federal air quality standards." NMSA 74–2–4(E)

⁴ NMSA 74–2–5(C).

petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping

requirements, Sulfur oxides, Volatile organic compounds.

Samuel Coleman was designated the Acting Regional Administrator on March 13, 2017, through the order of succession outlined in Regional Order R6-1110.1, a copy of which is included in the docket for this action.

Dated: March 13, 2017.

Samuel Coleman,

Acting Regional Administrator, Region 6.

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 GG—New Mexico

- 2. In § 52.1620(c), the second table titled “EPA Approved Albuquerque/Bernalillo County, NM regulations” is amended by revising the entry for “Part 100 (20.11.100 NMAC)” to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED ALBUQUERQUE/BERNALILLO COUNTY, NM REGULATIONS

State citation	Title/subject	State approval/ effective date	EPA approval date	Explanation
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
Part 100 (20.11.100 NMAC)	Motor Vehicle Inspection—Decentralized.	08/16/2016	03/21/2017 [Insert <i>ister Citation</i>].	Federal Reg- 20.11.100.5(B), 20.11.100.7(LL)(I) and 20.11.100.17(E)(2) are NOT part of the SIP.
*	*	*	*	*

* * * * *

[FR Doc. 2017-05376 Filed 3-20-17; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2015-0067; FRL-9960-35-Region 10]

Partial Approval and Partial Disapproval of Attainment Plan for the Idaho Portion of the Logan, Utah/Idaho PM_{2.5} Nonattainment Area; Further Delay of Effective Date

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; further delay of effective date.

SUMMARY: In accordance with the Presidential directive as expressed in the memorandum of January 20, 2017, from the Assistant to the President and Chief of Staff, entitled “Regulatory Freeze Pending Review,” and the **Federal Register** document published by the Environmental Protection Agency (EPA or Agency) on January 26, 2017, the EPA is taking final action further delaying the effective date for Partial Approval and Partial Disapproval of Attainment Plan for the Idaho Portion of

the Logan, Utah/Idaho PM_{2.5} Nonattainment Area until April 20, 2017.

DATES: As of March 21, 2017, the effective date of the rule amending 40 CFR part 52 published in the **Federal Register** at 82 FR 729 on January 4, 2017, delayed at 82 FR 8499 on January 26, 2017, is further delayed to a new effective date of April 20, 2017.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R10-OAR-2015-0067. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information may not be publicly available, *i.e.*, Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and is publicly available only in hard copy form. Publicly available docket materials are available at <http://www.regulations.gov> or at EPA Region 10, Office of Air and Waste, 1200 Sixth Avenue, Seattle, Washington 98101. The EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are

Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt, Air Planning Unit, Office of Air and Waste (OAW-150), Environmental Protection Agency, Region 10, 1200 Sixth Ave, Suite 900, Seattle, WA 98101; telephone number: (206) 553-0256; email address: hunt.jeff@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background Information

On January 26, 2017, the EPA published a document in the **Federal Register** entitled “Delay of Effective Date for 30 Final Regulations Published by the Environmental Protection Agency Between October 28, 2016 and January 17, 2017” (82 FR 8499). In that document, the EPA delayed the effective date of Partial Approval and Partial Disapproval of Attainment Plan for the Idaho Portion of the Logan, Utah/Idaho PM_{2.5} Nonattainment Area to March 21, 2017, as requested in the memorandum of January 20, 2017, from the Assistant to the President and Chief of Staff, entitled “Regulatory Freeze Pending Review” (January 20 Memo). That memo directed the heads of Executive Departments and Agencies to temporarily postpone for 60 days from the date of the January 20 Memo the effective dates of all regulations that had

been published in the **Federal Register** but had not yet taken effect.

The January 20 Memo also states: “Where appropriate and as permitted by applicable law, [agencies] should consider proposing for notice and comment a rule to delay the effective date for regulations beyond that 60-day period.” On February 24, 2017, the EPA proposed to further delay the effective date for the Partial Approval and Partial Disapproval of Attainment Plan for the Idaho Portion of the Logan, Utah/Idaho PM_{2.5} Nonattainment Area until April 20, 2017. In this document, the EPA is finalizing action further delaying the effective date for Partial Approval and Partial Disapproval of Attainment Plan for the Idaho Portion of the Logan, Utah/Idaho PM_{2.5} Nonattainment Area until April 20, 2017. This additional delay will give Agency officials the opportunity to decide whether they would like to conduct a substantive review of this rule. If Agency officials decide to conduct a substantive review of Partial Approval and Partial Disapproval of Attainment Plan for the Idaho Portion of the Logan, Utah/Idaho PM_{2.5} Nonattainment Area, the EPA will take appropriate actions to conduct such a review, including, but not limited to, issuing a document in the **Federal Register** addressing any further delays of the effective date of Partial Approval and Partial Disapproval of Attainment Plan for the Idaho Portion of the Logan, Utah/Idaho PM_{2.5} Nonattainment Area or extensions of compliances dates in the rule. If Agency officials decide not to conduct a substantive review of Partial Approval and Partial Disapproval of Attainment Plan for the Idaho Portion of the Logan, Utah/Idaho PM_{2.5} Nonattainment Area, it will become effective on April 20, 2017.

II. Response to Comments

The EPA received two comments generally opposing delaying the effective date of the final rule, arguing that it was “absurd . . . under any circumstances” (*Commenter 1*) and that there were “no grounds whatsoever” for the delay (*Commenter 2*).

Response: Contrary to the position asserted by comments, there are reasonable grounds for this additional short delay of the effective date. As explained in the proposal and above, and consistent with the January 20 Memo, this extension of the effective date is needed to give Agency officials—many of whom have arrived at the Agency in recent weeks—an opportunity to review the action and to decide whether they would like to conduct a substantive review of this rule, including any necessary briefings

that may be needed to make such a determination.

III. Final Action

The EPA is further delaying the effective date for Partial Approval and Partial Disapproval of Attainment Plan for the Idaho Portion of the Logan, Utah/Idaho PM_{2.5} Nonattainment Area until April 20, 2017.

March 13, 2017.

Michelle L. Pirzadeh,

Acting Regional Administrator, Region 10.

[FR Doc. 2017–05552 Filed 3–20–17; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 510 and 512

[CMS–5519–IFC]

RIN 0938–AS90

Medicare Program; Advancing Care Coordination Through Episode Payment Models (EPMs); Cardiac Rehabilitation Incentive Payment Model; and Changes to the Comprehensive Care for Joint Replacement Model; Delay of Effective Date

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Interim final rule with comment period; delay of effective date.

SUMMARY: This interim final rule with comment period (IFC) further delays the effective date of the final rule entitled “Advancing Care Coordination Through Episode Payment Models (EPMs); Cardiac Rehabilitation Incentive Payment Model; and Changes to the Comprehensive Care for Joint Replacement Model” published in the January 3, 2017 **Federal Register** (82 FR 180) from March 21, 2017 until May 20, 2017. This IFC also delays the applicability date of the regulations at 42 CFR part 512 from July 1, 2017 to October 1, 2017 and effective date of the specific CJR regulations itemized in the **DATES** section from July 1, 2017 to October 1, 2017. We seek comment on the appropriateness of this delay, as well as a further applicability date delay until January 1, 2018.

DATES: *Effective date:* As of March 20, 2017, the effective date for the provisions of the final rule published in the January 3, 2017 **Federal Register** (82 FR 180), which was delayed until March

21, 2017 on February 18, 2017 (82 FR 10961), is further delayed to May 20, 2017. Additionally, the effective date of the provisions of the final rule contained in the following amendatory instructions is delayed from July 1, 2017 to October 1, 2017: Number 3 amending 42 CFR 510.2; number 4 adding 42 CFR 510.110; number 6 amending 42 CFR 510.120; number 14 amending 42 CFR 510.405; number 15 amending 42 CFR 510.410; number 16 revising 42 CFR 510.500; number 17 revising 42 CFR 510.505; number 18 adding 42 CFR 510.506; and number 19 amending 42 CFR 510.515.

Applicability date: The applicability date of the regulations at 42 CFR part 512 is delayed from their current applicability date of July 1, 2017 until October 1, 2017.

Comment date: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on April 19, 2017.

ADDRESSES: In commenting, please refer to file code CMS–5519–IFC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed).

1. *Electronically.* You may submit electronic comments on this regulation to <http://www.regulations.gov>. Follow the “Submit a comment” instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–5519–IFC, P.O. Box 8013, Baltimore, MD 21244–8013.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–5519–IFC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses prior to the close of the comment period:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Sean Harris (410) 786–0812.

For questions related to the EPMs: EPMRULE@cms.hhs.gov. For questions related to the CJR model: CJR@cms.hhs.gov.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: <http://regulations.gov>. Follow the search instructions on that Web site to view public comments.

Comments received timely will be also available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Provisions of the Interim Final Rule With Comment Period

In the January 3, 2017 **Federal Register** (82 FR 180), we published a final rule entitled “Advancing Care Coordination Through Episode Payment Models (EPMs); Cardiac Rehabilitation

Incentive Payment Model; and Changes to the Comprehensive Care for Joint Replacement Model” which implements three new Medicare Parts A and B EPMs and a Cardiac Rehabilitation (CR) Incentive Payment model, and implements changes to the existing Comprehensive Care for Joint Replacement model under section 1115A of the Social Security Act (the Act). Under the three new episode payment models, acute care hospitals in certain selected geographic areas will participate in retrospective EPMs targeting care for Medicare fee-for-service beneficiaries receiving services during acute myocardial infarction, coronary artery bypass graft, and surgical hip/femur fracture treatment episodes. All related care within 90 days of hospital discharge will be included in the episode of care. Under the CR Incentive Payment model, acute care hospitals in certain selected geographic areas will receive retrospective incentive payments for beneficiary utilization of cardiac rehabilitation/intensive cardiac rehabilitation services during the 90 days following discharge from a hospitalization treatment of an acute myocardial infarction or coronary artery bypass graft surgery.

The January 3, 2017 final rule (82 FR 180) included an effective date of February 18, 2017 for all provisions except those contained in the following amendatory instructions, which were to become effective on July 1, 2017: Number 3 amending 42 CFR 510.2; number 4 adding 42 CFR 510.110; number 6 amending 42 CFR 510.120; number 14 amending 42 CFR 510.405; number 15 amending 42 CFR 510.410; number 16 revising 42 CFR 510.500; number 17 revising 42 CFR 510.505; number 18 adding 42 CFR 510.506; and number 19 amending 42 CFR 510.515.

In the February 17, 2017 **Federal Register** (82 FR 10961), as directed by the memorandum of January 20, 2017, from the Assistant to the President and Chief of Staff, entitled “Regulatory Freeze Pending Review”, we published a final rule that delayed the effective date of the final rule published in the January 3, 2017 **Federal Register** (82 FR 180) for provisions that were to become effective on February 18, 2017, to an effective date of March 21, 2017. In the February 17, 2017 final rule (82 FR 10961), we stated that the provisions contained in the amendatory instructions summarized in the previous paragraph remained effective July 1, 2017. The January 20, 2017 “Regulatory Freeze Pending Review” memorandum encourages agencies to consider proposing for notice and comment a

rule to delay the effective date for regulations beyond that 60-day period. As explained below, this interim final rule with comment period (IFC) further delays the effective date of the final rule published in the January 3, 2017 **Federal Register** (82 FR 180), from March 21, 2017 (as provided in the final rule published in the February 17, 2017 **Federal Register** (82 FR 10961)) to May 20, 2017. This IFC also delays the applicability date of the regulations that were to be applicable on July 1, 2017 to an applicability date of October 1, 2017 and delays the effective date of conforming changes to CJR provisions that were to be effective July 1, 2017 to October 1, 2017. These delays postpone the applicability of the EPMs and the CR Incentive Payment model, as well as the date on which conforming changes to the CJR model regulations take effect, for an additional 3 months. This additional 3-month delay is necessary to allow time for additional review, to ensure that the agency has adequate time to undertake notice and comment rulemaking to modify the policy if modifications are warranted, and to ensure that in such a case participants have a clear understanding of the governing rules and are not required to take needless compliance steps due to the rule taking effect for a short duration before any potential modifications are effectuated. We note that, in light of this potential need for further notice and comment rulemaking prior to the start of the models, it would be problematic not to adjust the start date for EPMs from July 1, 2017. Given the need for advanced notice of the terms of the models by participants, and the fact that the episodes in the models involved exceed 90 days in duration, we believe that immediately moving the start date of the model to October 1, 2017 is appropriate. Moreover, in the January 3, 2017 final rule, payment year one for the EPMs is currently established to cover the 6-month period from July 1, 2017 through December 31, 2017. Subsequent EPM model years run a full 12 months in accordance with the calendar year. Considering the length of episodes in the models, we believe it would be preferable to maintain a duration of at least 6 months for payment year 1 and it would be less burdensome for participants to adhere as closely to the calendar year as possible when defining model payment years. Further, to the extent that we propose and finalize revisions to the model, should we determine modifications are warranted, participants should have reasonable time to prepare. We remain committed

to providing some period of time between establishing final model parameters and beginning the model to allow participants to prepare for the unique attributes of this model. Therefore, we seek comment on a longer delay of the applicability (model start) date, including to January 1, 2018, and we will address these comments and effectuate any additional delay in the model start date when we finalize this IFC. If we effectuate any additional delay in the model start date, we also would delay the effective date of the conforming CJR regulation changes so that the effective date of those changes remains aligned with the applicability (model start) date of the EPMs.

To the extent that section 553 of the Administrative Procedure Act (APA) applies to this action to further delay the rule's effective date for the purpose of ensuring adequate time for subsequent notice and comment rulemaking if that is warranted, this IFC is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b)(A). Furthermore, 5 U.S.C. 553(b)(B) permits a waiver of prior notice and comment if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest. Similarly, section 1871 of the Act, which normally requires prior notice and a 60-day public comment period for rules that establish or change a substantive legal standard, permits waiver of prior notice and comment when there is good cause for an exception under 5 U.S.C. 553(b)(B). In addition, the requirement under section 553(d) of the APA for a 30-day delay in the effective date of a rule can be waived for good cause. The January 20, 2017 "Regulatory Freeze Pending Review" executive memorandum stated that the rules under review should be delayed 60 days from the date of the memorandum. In addition, that memorandum provided that agencies should consider issuing a notice of proposed rulemaking and solicit public comment if they believed that a delay beyond 60 days from the date of the memorandum was necessary. Given that the provisions of the final rule that provide for a start date for the EPMs and CR Incentive Payment model of July 1, 2017 will take effect on March 21, 2017, there is insufficient time to undertake full notice and comment rulemaking ahead of the March 21, 2017 effective date. We have determined that issuing this IFC as a proposed rule, such that it would not become effective until after public comments are submitted, considered and responded to in a final

rule, would be contrary to the public interest, since the models would begin July 1, 2017 as originally set forth in the January 3, 2017 final rule, which could lead to a good deal of confusion for the public. In setting forth revised effective and applicability dates, we seek to ensure that all parties could participate in any rulemaking resulting from further review as requested in the January 20, 2017 presidential memorandum. Therefore, we are publishing this IFC to delay the effective date of the rule to May 20, 2017 and to move the applicability date for the EPM provisions from July 1, 2017 to October 1, 2017. We are also delaying the effective date of the CJR regulation amendments that were to take effect July 1, 2017 to October 1, 2017, to maintain our policy of aligning these changes with EPMs and to avoid confusion. Because we are immediately adjusting the effective and applicability dates of the EPMs by 3 months but believe a 6-month delay in the applicability (model start) date to be warranted, in this IFC we are soliciting public comment on the appropriateness of a further delay in the applicability (model start) date and will take those comments into consideration. For these same reasons, we find good cause to waive the 30-day delay in effective date provided for in 5 U.S.C. 553(d). Based on these findings, this rule is effective immediately upon publication in the **Federal Register**.

As discussed previously, timing considerations support an immediate delay to the effective and applicability dates and necessitate that the delay operate on a quarterly basis. Moreover, our ongoing review of the policy, consistent with the January 20, 2017 presidential memorandum, and our identification of the possibility of additional notice and comment rulemaking to make any warranted modifications to the policy, further necessitate immediate delay. As discussed in the January 3, 2017 final rule (82 FR 184), under the 5-year models governed by the rule, participants will have a significant opportunity to redesign care. Delaying the effective and applicability (model start) dates will prevent participant confusion and corresponding disruption to these efforts, ensure that the agency has adequate time to undertake notice and comment rulemaking to modify the policy if modifications are warranted, and ensure that in the case of policy modifications, participants have a clear understanding of the governing rules and are not required to take needless compliance steps due to the rule taking

effect for a short duration before any potential modifications are effectuated.

II. Responses to Public Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

CMS-5519-IFC

Dated: March 16, 2017.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

Approved: March 17, 2017.

Thomas E. Price,

Secretary, Department of Health and Human Services.

[FR Doc. 2017-05692 Filed 3-20-17; 8:45 am]

BILLING CODE 4120-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 10-90, 14-58; FCC 17-12]

Connect America Fund, ETC Annual Reports and Certifications

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) takes another step towards implementing the Connect America Phase II auction in which service providers will compete to receive support of up to \$1.98 billion to offer voice and broadband service in unserved high-cost areas.

DATES: Effective April 20, 2017.

FOR FURTHER INFORMATION CONTACT:

Alexander Minard, Wireline Competition Bureau, (202) 418-7400 or TTY: (202) 418-0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order and Order on Reconsideration in WC Docket Nos. 10-90, 14-58; FCC 17-12, adopted on February 23, 2017 and released on March 2, 2017. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street SW.,

Washington, DC 20554, or at the following Internet address: https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-12A1.pdf

I. Introduction

1. With this Report and Order and Order on Reconsideration (Order), the Commission takes another step towards implementing the Connect America Phase II (Phase II) auction in which service providers will compete to receive support of up to \$1.98 billion to offer voice and broadband service in unserved high-cost areas. The decisions the Commission makes in this Order aim to maximize the value the American people will receive for the universal service dollars the Commission spends, balancing higher-quality services with cost efficiencies.

2. First, the Commission resolves issues raised in the *Phase II Auction Order FNPRM*, 81 FR 44414, July 7, 2016 and 81 FR 40235, June 21, 2016. The Commission adopts weights to compare bids among the service performance and latency tiers adopted in the *Phase II Auction Order*, 81 FR 44414, July 7, 2016. Additionally, the Commission declines to adopt specific preferences for certain states and Tribal lands in the Phase II auction and decline to adopt alternative interim

deployment obligations for a subset of Phase II auction recipients. However, the Commission does adopt preferences that will be implemented in the Remote Areas Fund auction for states where the Phase II offer of model-based support was declined, subject to certain conditions.

3. Second, the Commission also considers several petitions for reconsideration of decisions made in the *Phase II Auction Order*. The Commission denies a petition for reconsideration of the Commission's decision to score bids relative to the reserve price, grants a petition for reconsideration of the Commission's decision to retain the option to re-auction certain areas served by high latency bidders if a set subscription rate is not met, and grants a petition for reconsideration of the Commission's decision to require bidders in the Above-Baseline and Gigabit performance tiers to offer an unlimited monthly usage allowance.

II. Report And Order

4. *Discussion.* The Commission now adopts weights for the Phase II auction performance and latency tiers that will account for the value of higher speeds, higher usage allowances, and low latency, but that will also balance these

preferences against the Commission's objective of maximizing the effectiveness of its funds to serve consumers across unserved areas with the Commission's finite budget.

5. The Commission first clarifies that weights are positive values that will be added to a particular bid-price-to-reserve price ratio to arrive at a score. Mathematically, $S = 100 \times B/R + T + L$, where S is the bid's score, B is the current bid price, R is the reserve price, T is the weight assigned to the bid's associated tier of service, and L is the weight assigned to the bid's associated latency. Because the Phase II auction will be a reverse auction, higher service tiers will accordingly have lower weights.

6. Specifically, the Commission will weigh bids so that Minimum performance tier bids will have a 65 weight; Baseline performance tier bids will have a 45 weight; Above Baseline performance tier bids will have a 15 weight; and Gigabit performance tier bids will have zero weight. Moreover, high latency bids will have a 25 weight and low latency bids will have zero weight added to their respective performance tier weight.

7. The following charts summarize the Commission's adopted approach:

Performance tier	Speed	Usage allowance	Weight
Minimum	≥ 10/1 Mbps	≥ 150 GB	65
Baseline	≥ 25/3 Mbps	≥ 150 GB or U.S. median, whichever is higher.	45
Above Baseline	≥ 100/20 Mbps	2 TB	15
Gigabit	≥ 1 Gbps/500 Mbps	2 TB	0

Latency	Requirement	Weight
Low Latency	≤ 100 ms	0
High Latency	≤ 750 ms & MOS of ≥ 4	25

8. A number of commenters proposed different ways to apply weights. Some parties also suggested using positive weights, while others suggested negative weights, and some suggested a mix of both. By adding increasing weight as speed and usage allowances decrease and latency increases, the Commission concludes that its approach is a straightforward representation of the fact that the Commission values higher speeds and usage allowances and lower latency, and should be easier for bidders to understand and simpler for us to implement. Moreover, a number of parties suggested that the Commission uses percentage weights but suggested various ways to apply the percentage. The Commission concludes that their

overall approach of adding the weight to the bid-to-reserve price ratio appropriately applies the weights uniformly across all areas, thereby increasing competition and giving providers in all eligible areas opportunities to win. The Commission also declines to adopt the approach it suggested in the *Phase II Auction FNPRM*, 81 FR 40235, June 21, 2016, whereby the weight would be subtracted directly from the dollar amount placed by the bidder. The Commission is persuaded by commenters who suggest such an approach would have a disproportionate impact on bidders that place bids for smaller dollar amounts.

9. The Commission's weighting scheme for the performance tiers is

designed to balance its finite budget with the reality that, in some areas, speeds of 10/1 Mbps may be the limit of what is achievable in the near term but will still offer significant benefits to currently unserved areas, including the potential that service providers may choose to increase speeds to meet consumer demand once they have made the initial investment of deploying to certain areas. At the same time, the weights the Commission implements also attempt to leverage its finite budget to achieve speeds that are scalable to meet the evolving needs of consumers over the 10-year term and the broader community in areas where it is cost-effective to do so.

10. The record regarding the weights that the Commission should adopt for the different performance tiers varies, with parties arguing for weights as low as 5 and as high as 100 between tiers, and relying on several different methodologies for establishing the weights. To sift through these proposals and establish a reasonable range of weights to choose from, the Commission relies on the following propositions.

11. *First*, the Commission starts with the principle that the Connect America Phase II auction must indeed be an auction, not simply a procurement process. The Commission wants this to be a competitive auction where every bidder has the opportunity to exert competitive pressure on all other bidders, and weighting increments of 100 or more would effectively result in each tier always winning over bids placed in lower tiers, which may provide an incentive for bidders in higher tiers to inflate their bids. The Commission already decided that all bids would be considered simultaneously, and it would not realize the benefits of competition if one type of bid effectively always wins over another regardless of the bids' support amounts. Or, as the Commission puts it in the *New York Auction Order*, an "absolute preference" for "one type of technology or speed" would be fiscally irresponsible "when more cost-effective, reasonably comparable options may be available."

12. *Second*, the Commission takes that principle one step further and conclude that every bidder—no matter the service tier or latency—must have the opportunity to exert competitive pricing pressure on every other bidder. In other words, the total band of weights must be less than 100. This principle should maximize the competitive pressure all bidders bring to bear, ensuring that even the highest-tier services take into account the bang-for-the-buck they are delivering to consumers nationwide. It also ensures that the Commission examines its weights holistically, so that the accumulation of weights does not lead to untoward and unexpected consequences.

13. *Third*, the Commission concludes that the weights it assign should strive to reflect the value of higher-speed and lower-latency services to consumers. The purpose of the Connect America Phase II auction is to maximize the value the Commission can bring for consumers through the use of scarce universal service funds—in effect, the weights recognize that consumers can and do spend more to receive higher quality services. Accordingly, the

Commission rejects claims to set weights that normalize the deployment costs for the performance tiers based on technology. The Commission sees no reason to spend scarce universal service funds to pay for more-expensive services just because they are more expensive. Indeed, the value to a consumer of a fiber-based service is not its cost but the faster speeds and lower latencies it offers—and the goal of the Commission is and must be to minimize (not maximize) the cost of such services. Moreover, adding a separate weight to account for technology costs would be contrary to the Commission's objective to maximize its cost-effective budget because it could result in paying more for higher cost technologies when it might be more cost-effective to support lower cost technologies. And given the challenges of determining representative costs for each type of technology, such an approach is likely to add complexity to auction process and could lead to delay. In a similar vein, the Commission rejects claims to weight bids in correlation to the respective download speeds. Such an approach would have the effect of heavily weighting the Gigabit performance tier, without any evidence that consumers do indeed value that service in proportion to its speed or would be willing to spend 100 times more for such service than for service at the Minimum performance tier.

14. *Fourth*, the Commission concludes that adopting minimal weights between each tier would be inappropriate. Consumers clearly value higher speed and lower latency services, and minimal weighting could deprive rural consumers of the higher-speed, lower latency services that are common in urban areas. Indeed, such an approach would likely result in bids in lower tiers prevailing, leaving all consumers with minimum service even though some service providers might be able to offer increased speeds for marginally more support. Additionally, the upcoming Remote Areas Fund auction will provide an opportunity to ensure that all Americans at least have the opportunity to receive some broadband service. For purposes of the Phase II auction, the Commission's aim is to maximize consumer welfare given the limited budget they have. The Commission disagrees with commenters that suggest that giving bids placed in the Gigabit tier anything other than a minimal preference violates its statutory duty to support reasonably comparable services because Gigabit services are not widely available in urban areas. The Commission is not persuaded that it

must only support services that have "through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers" First, this is only one of several factors the Commission must consider when establishing the definition of supported services. Second, the Communications Act of 1934, as amended (the Act) makes clear that universal service is an "evolving level" of services, and thus the Commission must consider the fact that through the auction it will be providing support to voice and broadband services over a 10-year term. At the same time, the Commission disagrees with arguments suggesting that it is a violation of the Commission's statutory duty to promote access to services that are reasonably comparable to those services offered in urban areas if the Commission awarded support to bids committing to provide a minimum of 10/1 Mbps speeds given the 10-year support term and the fact that most urban areas have access to higher speeds. Instead, the Commission finds that it is reasonably and responsibly leveraging the Phase II auction to make significant steps towards achieving its overarching statutory responsibility to support reasonably comparable services for all consumers. The Commission has adopted a range of performance tiers with increasing weights, starting with speeds and usage allowances the Commission has deemed reasonably comparable in the near term and with maximum speeds and usage allowances that are scalable to meet the needs of consumers at the end of the 10-year term.

15. With those principles in mind, the Commission reviews the weight of the record. Most parties proposing within these parameters suggest increment values somewhere between 5 and 60. Parties arguing for smaller weight increments between speed tiers with a focus on the lower speed tiers suggest that the Commission's focus should be on maximizing the number of locations that have access to services that are reasonably comparable to those offered in urban areas, and that giving a heavy preference to higher speed and usage allowance tiers would be an inefficient use of the finite budget, favoring high speeds and usage allowances at the expense of leaving many without service. They argue that heavily weighting bids or assigning any weight to bids committing to a Gigabit performance tier would violate the Commission's statutory duty to support reasonably comparable services, and they claim that consumers are more

concerned with having access to service at reasonable prices than subscribing to expensive high speed packages. They suggest that if consumers' needs evolve and they begin to demand higher speeds, carriers will have an incentive to increase the speeds they offer as deployment costs go down. Supporters of narrow weights also claim that such weights would promote efficiency by challenging bidders seeking to offer services in the higher tiers to place more cost-effective bids.

16. By contrast, other parties argue that higher speeds and usage allowances should have heavier weights so these bids are more likely to prevail. Some of these parties suggest that the speeds in the Minimum and Baseline performance tiers would not be sufficient to constitute reasonably comparable services. They argue that the Commission should focus on supporting "future proof" networks given that speeds that are reasonably comparable today may not be reasonably comparable throughout the 10-year support term. They also suggest that certain technologies that may be more cost-effective today are likely to be more expensive in the long term because such networks will need to be upgraded to meet consumers' needs, and that it would be more efficient to support speeds that can be leveraged by entire communities. They claim that if higher tier bids are not given sufficient weight, bidders able to offer such services will be less likely to participate, and bidders in lower tiers could win without having to place cost-effective bids. Some of these commenters argue that higher speeds should be given a near absolute preference, while others argue for more moderate increments between the tiers.

17. Taking into account these principles and the record, the Commission finds that increments of 15–30 between performance tiers appropriately balance the concerns of these potential bidders, and their representatives, by adopting increments that are within a reasonable range of the increments proposed by both sets of commenters. Based on the Commission's predictive judgment, the Commission concludes that this approach is likely to promote competition both within and across areas by giving all service providers the opportunity to place competitive bids, regardless of the technology they intend to use to meet their obligations. The Commission weights appropriately recognize the value to rural consumers of higher speeds and higher usage allowances, but bids placed in the higher tiers will not necessarily win because of the generally greater costs of

deploying a higher capacity network at higher speeds. Bids placed for lower speeds and usage allowances will still have the opportunity to compete for support, but will have to be particularly cost-effective to compete with higher tier bids.

18. The Commission is not convinced by suggestions that it should adopt weights that are based on metrics derived from consumer preference data. Commenters proposed several competing data sources and methodologies in an attempt to substantiate their proposed weights as "objective," but the Commission declines to adopt any of these proposals. The Commission concludes that establishing weights based on specific data is likely to be a drawn out and complicated process that may further delay the Phase II auction and may not produce an improved outcome in the auction. Moreover, a consumer's decision to subscribe to a particular service may be based on numerous variables and does not necessarily suggest that one level of service should be valued by a particular percentage over another level of service in areas where consumers currently have no options for service. The Commission is not persuaded that its decision to adopt weights that are not derived from specific data is "arbitrary." Instead, the Commission adopts weights between each tier that recognize the value of increased speeds and usage allowances and select weights that fall within the range of weights proposed by parties in the record that do not seek to give any one tier an absolute preference.

19. The Commission is not persuaded that some of the other proposals parties made in the record regarding how to approach weighting the different tiers would be consistent with its objectives and statutory duties. First, the Commission disagrees with the suggestion that it should only weight bids in higher tiers if sufficient funding is available to fund all bids at the Baseline performance tier. While this approach might permit us to serve more consumers, the Commission would lose out on the opportunity to balance its other objective of funding service that will achieve reasonable comparability for the long term. Section 254 of the Act makes clear that universal service requires an evolving level of service.

20. Second, the Commission is not convinced that it should fund extremely high-cost locations only after the Commission has funded all bids for high-cost locations. When it decided to include the extremely high-cost census blocks in the Phase II auction, the Commission explicitly recognized that

in some areas a service provider might be able to make a business case to serve extremely high-cost areas efficiently even though the Connect America Cost Model has determined an area to be extremely high-cost. The Commission has explained that, because extremely high-cost areas are interspersed among high-cost areas, including extremely high-cost census blocks in the Phase II auction enables parties to build integrated networks that span both types of areas as appropriate. The approach gives bidders the flexibility to decide how to most efficiently upgrade or extend their networks. It would contradict this rationale to refuse to fund bids in extremely high-cost areas until high-cost area bids have been awarded because such an approach would assume that bids in high-cost areas would be more cost-effective.

21. The Commission also concludes that its decision to adopt a weight of 25 for high latency bids appropriately balances its objective of using its finite budget in a cost-effective manner, but also supporting services that will meet consumers' needs. The Commission decided in the *Phase II Auction Order* to open the Phase II auction to participation from satellite providers "in the interest of making this auction as competitive as possible." It adopted objectively measured latency performance standards to ensure that consumers received an appropriate level of service.

22. Commenters propose a wide range of weights in the record for the latency tiers, from weights as high as 100 to weights as low as 10, with commenters proposing weights lower than 100 suggesting a weight within the range of 10 to 75. Because they propose latency tier weights relative to their proposed performance tier weights, the Commission similarly considers weights for the latency tiers relative to the weights it adopted for the performance tiers above. The Commission is not persuaded by commenters that argue that low latency services should be heavily weighted or by comments suggesting that low latency services should always win over high latency services. Thus, the Commission concludes a weight of 100 or 75 would be too high. While many commenters raise concerns about high latency services, the Commission already took such concerns into account when deciding to adopt objective performance requirements so that high latency providers can participate. The Commission is not persuaded that high latency providers should have to partner with terrestrial providers in order to participate competitively in the Phase II

auction. Indeed, by choosing to adopt alternative latency requirements for high latency providers, the Commission has already rejected the concept that this is the only way high latency providers can be competitive. While the Commission welcomes such partnerships, it concludes that it serves the public interest to permit service providers to determine how they are best able to place a competitive bid, either by leveraging their own network or partnering with other providers.

23. Commenters suggesting weights below 75 argue for a range of weights between 10 and 45 relative to their own various performance tier proposals. Similarly, based on the weights the Commission has adopted for the performance tiers above, it concludes that a weight of 25 would reasonably maximize competition. A weight of 25 is appropriate because a bidder placing a low latency bid in the Gigabit performance tier will not necessarily win, which will add pressure on such bidders to make more cost-effective bids. A Minimum performance high latency bidder will have cumulative weight of 90 (65 for the Minimum performance tier; 25 for the high latency bid), which will provide a reasonable opportunity for high latency bidders to make competitive bids in the lower performance tiers.

24. Relative to the performance tiers the Commission has adopted, it also concludes that a weight of 25 is more appropriate than a narrower weight like 10 or 15, given the arguments in the record about the benefits of low latency services, especially in areas where the Phase II auction recipient is the only voice provider. The Commission concludes that like the weighting approach it has adopted for the performance tiers, adopting a moderate weight will take a significant step towards ensuring consumers throughout the country have access to reasonably comparable services pursuant to the Commission's statutory duty, while also balancing the realities of its finite budget and the high costs of providing voice and broadband to these unserved areas. The Commission rejects arguments that it should adopt a narrower weight for latency than it has adopted for speed tiers to account for claims that consumers value higher speeds over lower latency. First, the performance tier weighting the Commission has adopted already accounts for the value of higher speeds given that, as speeds increase, the weights will decrease. Second, while high latency providers suggest that consumers' satisfaction with high latency services has improved so that it

is comparable to some cable services, some consumers have chosen high latency services over low latency services, and that terrestrial providers emphasize speed and price over latency in their marketing materials, these claims do not address the concerns raised by commenters about the inherent limitations of high latency services—particularly for interactive, real-time applications and voice services given that high latency providers may be the only voice providers in the area. The Commission is not persuaded that it should use consumer data to establish the bidding weight between low and high latency bids. As explained above, such an approach has the potential to be highly subjective, and the process would likely be complex and time-consuming. Moreover, the fact that parties subscribe to more low latency services in urban areas could be due to a number of factors and does not necessarily suggest that a high latency service would not meet the needs of consumers living in otherwise unserved high-cost areas.

25. Finally, the Commission is not persuaded that it should adopt other types of weights that have been proposed in the record. Generally, the Commission finds that the more weights it adopts to effectuate various perceived policy preferences, the more the Commission moves away from the objective of maximizing the reach of its budget by awarding bids based on cost-effectiveness. Moreover, additional weights add more complexity to the auction design and, in turn, this increased complexity could drive down interest and participation in the Phase II auction. In addition, the Commission explains above why the weights it has adopted serves the public interest because they help us balance other important objectives, like ensuring that consumers have access to reasonably comparable services. Parties proposing that the Commission adopts other types of weights to advance other objectives have not demonstrated similarly compelling public interest benefits.

26. For example, the Commission declines to adopt weights that would improve a bid's ranking if it covers small areas. The Commission notes that in some cases, service providers may be able to take advantage of economies of scale by bidding on larger areas, and in those instances bids for larger areas may be more cost-effective. But the Commission also declines to adopt weights that would give a preference to bids that included 75 percent or more funded locations within a state. The Commission notes that there could be instances when it is more cost-effective

for a number of carriers to offer service within a state. Similarly, the Commission declines to adopt weights to give a preference to small bidders. The Commission's focus is on maximizing the effectiveness of its funds to serve consumers nationwide. While the Commission encourages small bidders to participate in the Phase II auction and have adopted eligibility requirements to facilitate their participation, it is not persuaded that giving a preference to smaller bidders will necessarily achieve its objectives when it is possible that a larger bidder may be able to make a more cost-effective bid in a higher performance or lower latency tier. Rather than artificially give a preference to smaller or larger bids or to small bidders, the Commission prefers to rely on the cost-effectiveness scores of bids to determine how its budget can best be maximized to serve the most consumers with service that is reasonably comparable to service offered in urban areas.

27. If unqualified bidders are able to participate in the auction and divert support from qualified bidders able to offer service meeting the Commission's requirements then consumers would ultimately be harmed. In the *Phase II Auction Order*, the Commission required bidders to submit with their short-form applications any information required to establish their eligibility for weights adopted by the Commission. Now that the Commission has adopted weights for the performance and latency tiers, it is persuaded that in some circumstances it may serve the public interest to require potential bidders to submit evidence that demonstrates that they can meet the service requirements associated with the tiers in which they intend to bid. The Commission concludes that such an approach is likely to provide further assurance that Phase II auction support will be awarded to qualified bidders. In a future Commission-level public notice after opportunity for further comment, the Commission intends to: (1) specify what evidence or other information must be submitted, (2) establish the conditions for when such information must be submitted, (3) adopt the applicable standards that bidders must demonstrate, (4) set procedures for reviewing and validating the submitted information, and (5) adopt any additional penalties if capabilities are misrepresented.

28. While the Commission already requires that potential bidders make certain showings in their short-form applications, the Commission is not persuaded by claims that this information will offer sufficient

assurance that potential bidders are qualified to meet the applicable tier requirements in all circumstances. Instead, given the varying capabilities of the technologies that the Commission expects bidders will propose to use to meet their obligations, it concludes there may be circumstances where it will serve the public interest for the Commission to make an independent, objective decision regarding potential bidders' capabilities and also require bidders to demonstrate they have undergone the necessary due diligence to ensure they can meet the applicable requirements before bidding in particular tiers. The Commission also disagrees with claims that the technical showings it requires in the long-form application will sufficiently address the Commission's concerns because it will not have access to this information until winning bidders have already been selected.

29. Finally, the Commission rejects suggestions that the Commission intended to adopt the same eligibility process it adopted for the rural broadband experiments or that the Commission would need to reconsider the eligibility requirements it has already adopted in the *Phase II Auction Order* to require potential bidders to submit additional evidence in their short-form applications. Instead, the Commission made clear that potential bidders would be required to submit any information or documentation required to establish their eligibility for bidding weights adopted by the Commission. Moreover, eligibility considerations are different in the Phase II auction context than they were for the rural broadband experiments. The intent of the rural broadband experiments was to award support to discrete experiments. If a bidder was found to be unqualified after being announced as a winning bidder, the relevant service area would be made eligible for Phase II if the Commission determined that the area remained unserved. By contrast, one of the main objectives of the Phase II auction is to maximize coverage. As the Commission explained above, selecting bidders that are later determined to be unqualified will thwart this objective because the areas included in the unqualified winning bid and other areas covered by bids that would have otherwise been selected will lose an opportunity to be served through the Phase II auction.

30. Although the Commission declines to adopt state-based preferences or ceiling in the Connect America Phase II auction, it is persuaded that it should reserve funding in the Remote Areas Fund for any state

that did not receive support equal to the funding declined in the statewide election process, subject to the conditions described below. The Commission continues to recognize the importance of connecting consumers in areas that would have been reached had the Phase II offer been accepted and to provide sufficient universal service funds to do so. Accordingly, the Commission intends to observe the outcome of the Phase II auction, and will adopt a process for the Remote Areas Fund to ensure that states receive an equitable distribution of funds. In order to ensure service is extended expeditiously to areas not supported in the Phase II auction, the Commission also reaffirms that the Commission will seek to commence the Remote Areas Fund auction no later than one year after the commencement of the Phase II auction.

31. Specifically, once the Commission has had the opportunity to observe the results of the Phase II auction it will prioritize bids in the Remote Areas Fund auction that are placed in such declined states until it has awarded enough support to make up the difference between the total Phase II declined support and the total support that was awarded in the state by the Phase II auction, to the extent possible based on bids placed, remaining eligible areas, and budget available. To ensure that support is targeted to commercially reasonable bids, the Commission anticipates that only bids that are at or below the reserve price would be eligible for this preference. Any implementation details will be adopted when the Commission finalizes the procedures for the Remote Areas Fund auction after observing the outcome of the Phase II auction.

32. The Commission acknowledges that this approach may mean that some areas in declined states have to wait longer to get service than if support was awarded through the Phase II auction. Nevertheless, on balance the Commission concludes this approach serves the public interest because it reasonably enables us to achieve its objectives by first using the Phase II auction to maximize its budget by prioritizing cost-effective bids and then targeting support to areas that remain unserved in the Remote Areas Fund. Indeed, the areas where support has been declined are, according to the Commission's cost model, lower cost than the extremely high-cost areas that are eligible nationwide. While it is possible that some areas that would have received support if the Commission implemented preferences in the Phase II auction may be left

unserved after the Phase II auction, it is also possible that bidders will be attracted to serve these lower-cost areas and will be awarded support through the Phase II auction to the extent that they place cost-effective bids when compared to the reserve price and bids nationwide.

33. For these reasons, the Commission concludes that this approach is preferable to adopting weights for the Phase II auction for states where Phase II auction support was declined, or adopting other measures like support thresholds, ceilings, or rankings in the Phase II auction. Instead, the possibility that state preferences in the Phase II auction could divert funding from more cost-effective and higher service quality bids in the Phase II auction, and the added complexity they would introduce to the Phase II auction, outweigh the potential benefits. The Commission concludes that any inequitable distribution issues would be better addressed after the Phase II auction, after bidders have had the opportunity to place cost-effective competitive bids in all states.

34. The Commission disagrees with commenters that argue that the Commission should not implement any preferences for states where Phase II model-based support was declined. Instead, the Commission has acknowledged that an incumbent price cap carrier's decision to decline Phase II model-based support does not diminish the Commission's universal service obligation to connect consumers in areas that would have been reached had the offer been accepted and to provide sufficient universal service funds to do so. To the extent unserved areas remain in declined states after cost-effective bids have been awarded in the Phase II auction and bidders are willing to serve those areas with support equal to or less than the relevant reserve price, the Commission concludes that it is reasonable to spend at least as much support through the Phase II and Remote Areas Fund auctions that the Commission was willing to spend through the Phase II offer of support to address a similar number of unserved consumers in these states. And as the Commission explained above, it is using this approach as a backstop, once it has had the opportunity to select bids based on cost-effectiveness and service quality through the Phase II auction.

35. The Commission is not persuaded that it should adopt weights or any other kind of preferences for states where the state has either provided state broadband funding or has committed to co-invest funds for winning Phase II auction bids, or where the state is a net

payer to the universal service fund. First, as noted above, these proposals would add additional complexity to the Phase II auction, both for the Commission in designing and executing an auction that would incorporate these preferences and for bidders that may face difficulty in putting together a cost-effective bid that accounts for such preferences. Second, if a state has implemented a broadband program, Phase II bidders could use those funds to supplement the funds they are seeking from the federal Connect America program, thereby lowering their bids so that they are more competitive. The state's contribution to a project will already effectively lower the amount of support a bidder needs from the federal universal service fund. Third, the Commission's universal service programs are designed to target areas where there is not a business case for service providers to offer reasonably comparable services at reasonably comparable rates. By virtue of the geography of each state, some states have more of these areas than others and thus require more support to achieve the Commission's universal service objectives. It would contradict the Commission's statutory responsibility to connect all Americans with reasonably comparable services if the Commission were to target federal universal service support to certain states for the sole reason that their ratepayers contribute more into the universal service fund than the states receive from all disbursement programs in the aggregate.

36. The Commission is not convinced that it should set up a separate mechanism to allocate support directly to declined states—either in lieu of those states participating in the Phase II auction or for those states that do not receive a certain level of support in the Phase II auction—or work in partnership with the states to choose winning projects based on specified criteria. Not only would this cause further delay in getting support to those areas because the Commission would need to establish rules for a new mechanism, it would also contradict its decision to allocate unclaimed Phase II support using market-based mechanisms—the Phase II auction and the Remote Areas Fund auction. For all the reasons explained above, the Commission continues to conclude that requiring bidders to compete for support rather than using more subjective measures to select awardees will lead to a more efficient use of its finite budget.

37. While the Commission acknowledges that it conditionally waived the Phase II auction program rules to make available *up to* an amount

of support that is equivalent to the amount of support Verizon declined in New York to be allocated in partnership with New York's New NY Broadband Program, the Commission did not guarantee that carriers in New York would be awarded the full \$170.4 million if winning bidders were not authorized for this amount by the Commission in coordination with New York's program. Moreover, such support will be allocated to service providers rather than directly to the state. Such bidders are required to compete for funds through New York's broadband program and will only be eligible to be authorized for Phase II support if they are selected as winning bidders and if New York commits a matching amount of support at the minimum. The Commission also finds that the public interest considerations in that context are different than the considerations here. The Commission's decision to allocate up to \$170.4 million in coordination with New York's program was premised on the fact that New York had committed a significant amount of state support and had already established a program that is compatible with the objectives of Connect America Phase II and that will lead to faster build out and potentially higher speeds than if the Commission had waited for the Phase II auction to allocate the support. Working in partnership with New York also meant that the Commission could eliminate potential overlaps between the two programs that could otherwise thwart the Commission's Connect America objectives. No other state has demonstrated that they have adopted a similar program that would achieve the same or similar public interest benefits.

38. While the Commission remains committed to promoting deployment on Tribal lands, it declines to adopt a Tribal-specific preference for Tribal entities or entities choosing to serve Tribal lands in the Phase II auction. For the reasons described above, the Commission concludes that it serves the public interest to award Phase II support to the most cost-effective bids, subject to the performance and latency weights it adopts above. The Commission's decision to score a bid's cost-effectiveness relative to the reserve price will ensure that service providers that place cost-effective bids that commit to serve Tribal lands will be competitive. Furthermore, the Connect America Cost Model used to set reserve prices already takes into consideration many factors causing varying deployment costs. With this approach, the auction is able to use a market-based mechanism to award support for the purposes of connecting

all consumers, including those on Tribal lands. The Commission's action today does not preclude us from adopting preferences for Tribal entities or entities serving Tribal lands in the Remote Areas Fund auction if Tribal lands remain unserved after the Phase II auction and after the Commission has had the opportunity to observe the outcome of the Phase II auction.

39. It is unclear at this time what the effect of a Tribal bidding credit would be given the Commission's decision to adopt weights for service and latency tiers. The Commission concludes that it serves the public interest to maximize its budget by first determining whether the Commission's recent policy decisions will result in cost-effective competitive bids on Tribal lands in the Phase II auction. If not, the Commission will be able to observe bidders' behavior in the Phase II auction to determine how to best implement a targeted preference that will encourage deployment on Tribal lands that remain unserved.

40. The Commission is not persuaded that Tribal governments should instead select the service providers that will be serving Tribal lands or that Tribally-owned or -controlled carriers should have the right of first refusal. The Commission's paramount goal must be to maximize the value of the universal service dollars it is spending on behalf of consumers—including those on Tribal lands—and creating artificial barriers to competing for support or deploying service on Tribal lands will only serve to delay the build out of high-quality services that rural Americans on Tribal lands want and need. Such an approach would be contrary to the Commission's decision to conduct a competitive bidding process in these areas to select service providers that will efficiently use support to offer reasonably comparable services. Moreover, eligible Tribally-owned or -controlled carriers will have the opportunity to participate in the Phase II auction and potentially win support if they place competitive bids.

41. The Commission concludes that it would not serve the public interest to adopt alternative interim service milestones for non-terrestrial service providers or service providers that already have deployed the infrastructure they intend to use to fulfill their Phase II obligations. The Commission expects that determining whether a recipient has sufficiently built out its network and thus would be subject to the alternative milestones would be a subjective and possibly time-consuming fact-specific inquiry. Also, tracking and verifying different milestones for a subset of Phase II auction recipients that

are based on the timing of consumer requests would complicate the Commission and USAC's oversight responsibilities. Additionally, subjecting such providers to more aggressive interim milestones could potentially undermine both their incentives to participate in the Phase II auction and their willingness to take steps to deploy facilities prior to being awarded Phase II auction support.

42. The Commission concludes that these considerations outweigh the public interest benefits of the potential that in some circumstances recipients will offer the required services faster if they have to meet more aggressive milestones. Indeed, carriers that have deployed infrastructure already have an incentive to meet their obligations quickly. First, carriers will want to supplement universal service support with customer revenue. Second, Phase II auction recipients are required to maintain an open and renewed letter of credit only until they have certified they have met their 100 percent service milestone and that certification has been verified. As a result, Phase II auction recipients may choose to accelerate the rate at which they offer the required services so that they can close out their letter of credit sooner.

III. Order on Reconsideration

43. In this Order on Reconsideration the Commission considers several petitions for reconsideration of decisions made in the *Phase II Auction Order*. First, the Commission denies a petition for reconsideration of its decision to score bids relative to the reserve price. Second, the Commission grants a petition for reconsideration of its decision to retain the option to re-auction certain areas served by high latency bidders if a set subscription rate is not met. Finally, the Commission grants a petition for reconsideration of its decision to require bidders in the Above-Baseline and Gigabit performance tiers to offer an unlimited monthly usage allowance.

44. *Discussion.* The Commission declines to reconsider the decision to score bids relative to the applicable reserve price. While one of the Commission's objectives is to maximize the number of locations that are served with its finite budget and ranking bids based on the dollar per location would achieve that goal, the Commission has also made clear that it is focused on adopting an auction design that balances this objective with other goals, including efficiently and effectively allocating support among the states. The Commission concludes that ranking

bids relative to the reserve price reasonably balances these objectives.

45. As the Commission explained in the *Phase II Auction Order*, it made the decision to adopt this bid-to-reserve price ratio methodology to prevent support from disproportionately flowing to those states where the cost to serve per location is, relatively speaking, lower than other states. It is the Commission's statutory duty to support universal service, which includes "[c]onsumers in all regions of the Nation," not just those living in denser areas. By ranking bids relative to the reserve price, the Commission will be providing an opportunity for bidders across the country to make competitive bids while also working to maximize its available funds by awarding support to the most cost-effective bids nationwide. Awarding support to those areas where there are more locations might mean that the Commission would get "more bang for the buck" by serving more locations with its budget, but that approach might also preclude us from taking advantage of efficiencies in cases where service providers are able to serve areas with fewer locations but with support that is far below the applicable reserve price. While the Commission acknowledges that it could instead choose to award support to denser areas in the Phase II auction and address the remaining areas in the Remote Areas Fund auction, it concludes that on balance the public interest will be served by giving consumers nationwide the opportunity to be served sooner if cost-effective bids are placed in those areas. The Commission notes that its decision to cap reserve prices for extremely high-cost areas will help ensure that its budget is not disproportionately diverted to these extremely high-cost areas. Support will only be awarded to service providers that can make a business case to serve these areas with support below the capped amount and that submit cost-effective bids relative to other bids nationwide.

46. The Commission reconsiders the Commission's decision with regard to re-auctioning areas served by high latency bidders where there is low subscribership. Instead, all authorized Phase II auction recipients will have a full 10-year term of support if they comply with the terms and conditions of Phase II support. While the Commission had adopted the subscriber standard to give high latency providers something objective and quantifiable that they could track to determine if the areas they serve would be placed in the Phase III auction, after further reflection, the Commission is persuaded that this

approach does not necessarily reflect the quality of that service or the value to consumers.

47. First, the Commission agrees that it may be difficult for high latency service providers to obtain enough subscribers to meet the 35 percent threshold given that by the end of the third year of support, Phase II auction recipients will only be required to offer service to 40 percent of the required number of locations and may not have focused on adoption efforts while working on deploying their networks. And even if the Commission were to push this option to later in the support term, it would be difficult to determine an appropriate timeframe at this point without knowing the timing for any subsequent auctions. Second, consumers may decide not to subscribe to a service for any number of reasons, and the Commission is persuaded by comments that suggest that many of the factors that are related to low adoption are likely to be present in more rural high-cost areas of the country.

48. While commenters suggest that they have had success in encouraging broadband adoption in high-cost areas, they do not address the Commission's timing concerns. Moreover, such a general statement about their success does not provide us with adequate assurance that high latency providers would have the same experience in the areas they are awarded support absent service quality issues. In fact, if the Commission uses a low adoption rate as the measure to determine if service is meeting consumers' needs, it would seem to follow that the Commission should also re-auction areas served by low latency service providers that have low subscribership. For these reasons, the Commission concludes that subscribership is not an appropriate measure for determining whether a high latency service is meeting the needs of consumers.

49. The Commission is also sympathetic to claims that even if it were to come up with an alternative objective and quantifiable standard, by simply retaining the option to shorten a high latency service provider's support term it will create uncertainty for such bidders. The Commission would be asking high latency providers to commit significant resources to deploy at a minimum 40 percent of their network while reserving the option to take away their support and potentially fund a competitor in that same area. Such conditions may mean that high latency providers will not participate in the auction or will inflate their bids to compensate for the risk, which would undermine the Commission's decision

to include high latency providers in the Phase II auction to maximize the budget by increasing competition.

50. On balance, the Commission is persuaded that these harms outweigh the public interest benefits of having the opportunity to include areas served by high latency bidders in a subsequent auction prior to the end of the 10-year term. As the Commission discussed above, it acknowledges that some parties have significant concerns about whether high latency services will meet the needs of consumers. Nevertheless, the Commission concludes that the performance standards it has adopted for high latency bidders will offer sufficient protection to consumers living in areas served by a high latency bidder. Moreover, as the Commission explains above, recognizing these concerns it has adopted weights that give a preference to low latency bids to achieve a reasonable balance between using its budget cost-effectively to maximize the deployment of service to unserved consumers with service quality. The Commission concludes that the potential that it would undermine competition by retaining the option to re-auction certain service areas could throw off this balance and potentially thwart its ability to leverage the Phase II auction to further the Commission's statutory objective of supporting reasonably comparable services nationwide within its finite budget.

51. In order to encourage robust bidding, the Commission grants Verizon's request for reconsideration of the Commission's prior decision to require bidders in the Above-Baseline and Gigabit performance tiers to offer an unlimited monthly usage allowance. Instead, the Commission will require bidders in these tiers to offer a monthly usage allowance of at least 2 terabytes (TB) per month.

52. As Verizon explains, a requirement of unlimited data could discourage bidding on those tiers, because a potential bidder would have to factor in additional investments and operating expenses to accommodate a small number of customers whose very high usage would be responsible for a disproportionate share of demand. Rather than require unlimited usage, Verizon argues that the Commission could set a very high allowance, which would provide a greater usage allowance than the baseline tier but still permit providers to address true outliers that increase the cost of providing rural broadband service. The Commission is persuaded by Verizon's argument that requiring bidders to offer unlimited usage would raise the cost of providing higher performance services in rural

areas and could discourage bidding in these tiers.

53. Therefore, instead of requiring bidders in the Above-Baseline and Gigabit performance tiers to offer unlimited data allowances, the Commission will require bidders in these tiers to offer a monthly usage allowance of at least 2 terabytes (TB) per month. The Commission finds that a 2 TB usage allowance is sufficiently high to ensure that rural America is not left behind, and will enable more bidders to offer higher performance services in rural areas. Although Verizon originally suggested that recent urban rate survey data shows that many urban providers have usage limits for services of 100 Mbps or more that range from 250 GB to 1,000 GB (1 TB) per month, it more recently suggested a usage allowance of 1 TB per month. Verizon cited usage limits from last years' urban rate survey data, and the Commission finds it reasonable to adopt a higher usage limit for a 10-year term of support. A data allowance of 250 GB was the lower end of the range for comparable services from this year's urban rate survey data. The Commission therefore disagrees with WISPA's suggestion that a usage tier of only 250 GB for the Above-Baseline tier is sufficient for a 10-year support term. Nor does the Commission agree with WISPA's argument there should not be any usage limits for the Gigabit tier. WISPA did not raise any substantive arguments to counter Verizon's arguments about the additional costs of requiring unlimited usage in high-cost areas. The Commission is therefore persuaded that an unlimited usage cap could impose additional costs on bidders that may discourage them from offering services that exceed its Baseline performance requirements in rural areas. As always, Phase II winners will be free to offer an array of service plans, including those with unlimited usage.

IV. Procedural Matters

54. This document does not contain new information collection requirements subject to the PRA. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

55. As required by the Regulatory Flexibility Act of 1980 (RFA) as amended, an Initial Regulatory Flexibility Analyses (IRFA) was incorporated in the *Further Notice of Proposed Rulemaking* adopted in November 2011 (*USF/ICC*

Transformation FNPRM, 76 FR 78384, December 16, 2011), the *Further Notice of Proposed Rulemaking* adopted in July 2014 (*Rural Broadband Experiments FNPRM*, 79 FR 44352, July 31, 2014), and the *Further Notice of Proposed Rulemaking* adopted in May 2016 (*Phase II Auction FNPRM*). The Commission sought written public comment on the proposals in the *USF/ICC Transformation FNPRM*, the *State Action FNPRM*, and the *Phase II Auction FNPRM*, including comment on the IRFAs. The Commission did not receive any relevant comments in response to these IRFAs. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

56. With this Report and Order and Order on Reconsideration (Order), the Commission takes another step towards implementing the Connect America Phase II (Phase II) auction in which service providers will compete to receive support of up to \$1.98 billion to offer voice and broadband service in unserved high-cost areas. The decisions the Commission makes in this Order aim to maximize the value the American people will receive for the universal service dollars it spends, balancing higher-quality services with cost efficiencies.

57. First, the Commission resolves issues raised in the *Phase II Auction Order FNPRM*. The Commission adopts weights to compare bids among the service performance and latency tiers adopted in the *Phase II Auction Order*. Additionally, the Commission declines to adopt specific preferences for certain states and Tribal lands in the Phase II auction and decline to adopt alternative interim deployment obligations for a subset of Phase II auction recipients. However, the Commission does adopt preferences that will be implemented in the Remote Areas Fund auction for states where the Phase II offer of model-based support was declined, subject to conditions.

58. Second, the Commission also considers several petitions for reconsideration of decisions made in the *Phase II Auction Order*. The Commission denies a petition for reconsideration of the Commission's decision to score bids relative to the reserve price and grant a petition for reconsideration of the Commission's decision to retain the option to re-auction certain areas served by high latency bidders if a set subscription rate is not met.

59. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA

generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act. A small-business concern” is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

60. *Total Small Entities.* The Commission’s proposed action, if implemented, may, over time, affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three comprehensive, statutory small entity size standards. First, nationwide, there are a total of approximately 28.2 million small businesses, according to the SBA, which represents 99.7% of all businesses in the United States. In addition, a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” Nationwide, as of 2007, there were approximately 1,621,215 small organizations. Finally, the term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” Census Bureau data for 2011 indicate that there were 90,056 local governmental jurisdictions in the United States. The Commission estimates that, of this total, as many as 89,327 entities may qualify as “small governmental jurisdictions.” Thus, the Commission estimates that most governmental jurisdictions are small.

61. The Report and Order and Order on Reconsideration do not impose any specific reporting, recordkeeping, or compliance requirements for entities, including small entities. Instead, the Report and Order adopts or declines to adopt measures that will affect all bidders participating in the Phase II auction. For example, the Report and Order adopts weights for the Phase II auction technology-neutral service and latency tiers, and indicates that the Commission will seek comment on requiring potential bidders to establish their eligibility for such weights. The Report and Order declines to take further action to give a preference to certain states, Tribal bidders, or other types of bids in the Phase II auction. However, the Report and Order does adopt a preference for certain states in the Remote Areas Fund auction where

the Phase II offer of model-based support was declined, subject to conditions. The Report and Order also declines to subject entities that have already deployed a network capable of meeting their Phase II obligations to different interim build-out milestones than the interim build-out milestones that were adopted in the *Phase II Auction Order*.

62. The Order on Reconsideration declines to reconsider the Commission’s decision to score bids relative to the reserve price by instead ranking bids on a dollar-per-location basis. In the Order on Reconsideration the Commission also decides that all Phase II auction recipients will have a 10-year support term, thereby reconsidering the Commission’s decision to retain the option to shorten the support term of certain high latency bidders that are unable to meet a set subscribership threshold.

63. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. The Commission has considered all of these factors subsequent to receiving substantive comments from the public and potentially affected entities. The Commission has considered the economic impact on small entities, as identified in comments filed in response to the *USF/ICC Transformation FNRPM*, the *Rural Broadband Experiments FNRPM* and the *Phase II Auction FNRPM* and their IRFAs, in reaching its final conclusions and taking action in this proceeding.

64. Generally, the decisions that the Commission makes in this Order will apply in equal force to all Phase II auction bidders, including small bidders. Thus, the decisions made in this Order generally do not impose unique burdens or benefits on small bidders. For example, the Commission’s decision to adopt weights for the performance and latency tiers that will not grant an absolute preference to any kind of service is unlikely to uniquely impact small bidders, but it is likely to help maximize participation by making it possible for all entities, including

small entities, to be competitive if they place a cost-effective bid. Additionally, like all bidders in the Phase II auction, to the extent smaller bidders choose to bid in less populated areas, they may benefit from the Commission’s decision to retain a bid ranking method that will score bids relative to the applicable reserve price rather than a dollar per location basis.

65. In the Order, the Commission does decline to adopt proposals for other weights or preferences in the Phase II auction, including a preference specifically for small entities. The Commission concludes that such an approach would not further its objective of maximizing the effectiveness of its funds to serve consumers nationwide. Nevertheless, recognizing the important role that small entities can play in bringing voice and broadband services to unserved consumers, the Commission has already adopted specific eligibility requirements for the Phase II auction in an effort to facilitate the participation of small entities.

66. The Commission also indicates in the Order that it is persuaded that in some circumstances it may serve the public interest to require potential bidders to submit evidence that demonstrates that they can meet the service requirements associated with the tiers in which they will bid in their short-form applications. The Commission will seek comment on this issue and will consider the unique challenges faced by small entities in submitting any required information.

V. Ordering Clauses

67. Accordingly, *it is ordered*, pursuant to the authority contained in sections 4(i), 214, 254, 303(r), 403, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 214, 254, 303(r), 403, and 405, and sections 1.1, 1.427, and 1.429 of the Commission’s rules, 47 CFR 1.1, 1.427, and 1.429, that this Report and Order and Order on Reconsideration *is adopted*, effective thirty (30) days after publication of the text or summary thereof in the **Federal Register**. It is the Commission’s intention in adopting these rules that if any of the rules that the Commission retains, modifies or adopts herein, or the application thereof to any person or circumstance, are held to be unlawful, the remaining portions of the rules not deemed unlawful, and the application of such rules to other persons or circumstances, shall remain in effect to the fullest extent permitted by law.

68. *It is further ordered* that, pursuant to section 1.429 of the Commission’s rules, 47 CFR 1.429 the Petition for Reconsideration filed by Verizon on

August 8, 2016 is *denied in part* to the extent described herein.

69. *It is further ordered* that, pursuant to section 1.429 of the Commission's rules, 47 CFR 1.429 the Petition for Reconsideration filed by ViaSat, Inc. on August 8, 2016 is *granted in part* to the extent described herein.

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

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

[FR Doc. 2017-05468 Filed 3-20-17; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 270

[Docket No. FRA-2011-0060, Notice No. 5]

RIN 2130-AC31

System Safety Program

AGENCY: Federal Railroad Administration (FRA), Department of Transportation.

ACTION: Final rule; stay of regulations.

SUMMARY: On August 12, 2016, FRA published a final rule requiring commuter and intercity passenger railroads to develop and implement a system safety program (SSP) to improve the safety of their operations. On February 10, 2017, FRA stayed the SSP final rule's requirements until March 21, 2017. This document extends that stay until May 22, 2017.

DATES: Effective March 20, 2017, 49 CFR part 270 is stayed until May 22, 2017.

FOR FURTHER INFORMATION CONTACT: Matthew Navarrete, Trial Attorney, U.S. Department of Transportation, Federal Railroad Administration, Office of Chief Counsel; telephone: 202-493-0138; email: Matthew.Navarrete@dot.gov.

SUPPLEMENTARY INFORMATION: On August 12, 2016, FRA published a final rule requiring commuter and intercity passenger railroads to develop and implement an SSP to improve the safety of their operations. See 81 FR 53850. On February 10, 2017, FRA stayed the SSP final rule's requirements until March 21, 2017 consistent with the new Administration's guidance issued January 20, 2017, intended to provide the Administration an adequate opportunity to review new and pending

regulations. 82 FR 10443, Feb. 13, 2017. To provide time for that review, FRA needs to extend the stay until May 22, 2017.

FRA's implementation of this action without opportunity for public comment is based on the good cause exceptions in 5 U.S.C. 553(b)(B) and 553(d)(3), in that seeking public comment is impracticable, unnecessary and contrary to the public interest. The delay in the effective date until May 22, 2017, is necessary to provide the opportunity for further review and consideration of this new regulation, consistent with the new Administration's January 20, 2017 guidance. Given the imminence of the effective date of the "System Safety Program" final rule, seeking prior public comment on this temporary delay would be impractical, as well as contrary to the public interest in the orderly promulgation and implementation of regulations.

Authority: 49 U.S.C. 20103, 20106-20107, 20118-20119, 20156, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

Issued in Washington, DC, on March 15, 2017.

Robert C. Lauby,

Associate Administrator for Railroad Safety and Chief Safety Officer.

[FR Doc. 2017-05509 Filed 3-20-17; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 380, 383, and 384

[FMCSA-2007-27748]

RIN 2126-AB66

Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule; further delay of effective date.

SUMMARY: In accordance with the Presidential directive as expressed in the memorandum of January 20, 2017, from the Assistant to the President and Chief of Staff, entitled "Regulatory Freeze Pending Review," this action temporarily delays, until May 22, 2017, the effective date of the final rule titled "Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators," initially effective on February 6, 2017.

DATES: As of March 21, 2017, the effective date of the final rule published on December 8, 2016 (81 FR 88732), delayed until March 21, 2017 at 82 FR 8903 on February 1, 2017, is further delayed until May 22, 2017.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, Driver and Carrier Operations (MC-PSD) Division, FMCSA, 1200 New Jersey Ave. SE., Washington, DC 20590-0001, by telephone at 202-366-4325, or by email at MCPSD@dot.gov.

SUPPLEMENTARY INFORMATION: FMCSA bases this action on the Presidential directive as expressed in the memorandum of January 20, 2017, from the Assistant to the President and Chief of Staff, entitled "Regulatory Freeze Pending Review" (the January 20, 2017, memorandum). That memorandum directed the heads of Executive Departments and Agencies to temporarily postpone for 60 days from the date of the memorandum the effective dates of certain regulations that had been published in the **Federal Register**, but had not yet taken effect. Because the original effective date of the final rule published on December 8, 2016, fell within that 60-day window, the effective date of the rule was extended to March 21, 2017, in a final rule published on February 1, 2017 (82 FR 8903). Consistent with the memorandum of the Assistant to the President and Chief of Staff, and as stated in the February 1, 2017, final rule delaying the effective date, the Agency further delays the effective date of this regulation until May 22, 2017.

The Agency's implementation of this action without opportunity for public comment is based on the good cause exceptions in 5 U.S.C. 553(b)(B) and 553(d)(3), in that seeking public comment is impracticable, unnecessary and contrary to the public interest. The delay in the effective date until May 22, 2017, is necessary to provide the opportunity for further review and consideration of this new regulation, consistent with the January 20, 2017, memorandum. Given the imminence of the effective date of the "Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators" final rule, seeking prior public comment on this temporary delay would be impractical, as well as contrary to the public interest in the orderly promulgation and implementation of regulations.

Issued under the authority of delegation in 49 CFR 1.87 on: March 15, 2017.

Daphne Y. Jefferson,
Deputy Administrator.

[FR Doc. 2017-05525 Filed 3-20-17; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 585

[Docket No. NHTSA-2016-0125]

RIN 2126-AK93

Federal Motor Vehicle Safety Standards; Minimum Sound Requirements for Hybrid and Electric Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: In accordance with the Presidential directive as expressed in the memorandum of January 20, 2017, from the Assistant to the President and Chief of Staff, entitled “Regulatory Freeze Pending Review,” this action temporarily delays until May 22, 2017, the effective date of the final rule titled “Federal Motor Vehicle Safety Standards; Minimum Sound Requirements for Hybrid and Electric Vehicles,” initially scheduled to become effective on February 13, 2017.

DATES: As of March 21, 2017, the effective date of the final rule published on December 14, 2016 (81 FR 90416), delayed on February 6, 2017 (82 FR 9368), is further delayed until May 22, 2017. The compliance date is September 1, 2018, with full phase in by September 1, 2019.

FOR FURTHER INFORMATION CONTACT: For legal issues, contact Tom Healy, Office of Chief Counsel, at (202) 366-2992. For non-legal issues, contact Mike Pyne, Office of Rulemaking, at (202) 366-4171.

SUPPLEMENTARY INFORMATION: NHTSA bases this action on the Presidential directive expressed in the memorandum of January 20, 2017, from the Assistant to the President and Chief of Staff, entitled “Regulatory Freeze Pending Review” (the January 20, 2107 memorandum). That memorandum directed the heads of Executive Departments and Agencies to temporarily postpone for 60 days from the date of the memorandum the effective dates of certain regulations that had been published in the **Federal**

Register, but had not yet taken effect. Because the original effective date of the final rule published on December 14, 2016, fell within that 60-day window, the effective date of the rule was extended to March 21, 2017, in a final rule published on February 6, 2017 (82 FR 9368). Consistent with the memorandum of the Assistant to the President and Chief of Staff, and as stated in the February 6, 2017, final rule delaying the effective date, the Agency further delays the effective date of this regulation until May 22, 2017.

The Agency’s implementation of this action without opportunity for public comment is based on the good cause exceptions in 5 U.S.C. 553(b)(B) and 553(d)(3), in that seeking public comment is impracticable, unnecessary and contrary to the public interest. The delay in the effective date until May 22, 2017, is necessary to provide the opportunity for further review and consideration of this new regulation, consistent with the January 20, 2017 memorandum. Given the imminence of the effective date of the “Federal Motor Vehicle Safety Standards; Minimum Sound Requirements for Hybrid and Electric Vehicles” final rule, seeking prior public comment on this temporary delay would be impractical, as well as contrary to the public interest in the orderly promulgation and implementation of regulations.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30116; delegation of authority at 49 CFR 1.95.

Issued on: March 16, 2017.

Jack Danielson,
Acting Deputy Administrator.

[FR Doc. 2017-05543 Filed 3-20-17; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 1206013412-2517-02]

RIN 0648-XF166

Reef Fish Fishery of the Gulf of Mexico; 2017 Recreational Accountability Measures and Closure for Gulf of Mexico Greater Amberjack

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

ACTION: Temporary rule; recreational quota reduction and closure.

SUMMARY: NMFS implements accountability measures (AMs) for the greater amberjack recreational sector in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf) for the 2017 fishing year through this temporary rule. NMFS has determined that the 2016 recreational annual catch limit (ACL) for Gulf greater amberjack was exceeded; therefore, NMFS reduces the greater amberjack recreational ACL and annual catch target (ACT) in 2017. NMFS has also determined that the reduced recreational ACT for Gulf greater amberjack will be reached by March 24, 2017. Therefore, the greater amberjack recreational season in the Gulf EEZ will close on March 24, 2017. This closure is necessary to protect the Gulf greater amberjack resource.

DATES: This rule is effective from 12:01 a.m., local time, March 24, 2017, until 12:01 a.m., local time, on January 1, 2018.

FOR FURTHER INFORMATION CONTACT:

Kelli O'Donnell, NMFS Southeast Regional Office, telephone: 727-824-5305, email: kelli.odonnell@noaa.gov.

SUPPLEMENTARY INFORMATION:

NMFS manages the Gulf reef fish fishery, which includes greater amberjack, under the Fishery Management Plan for the Reef Fish Resources of the Gulf (FMP). The Gulf of Mexico Fishery Management Council (Council) prepared the FMP and NMFS implements the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. All greater amberjack weights discussed in this temporary rule are in round weight.

The 2017 recreational ACL for Gulf greater amberjack specified in 50 CFR 622.41(a)(2)(iii) is 1,255,600 lb (569,531 kg) and the recreational ACT specified in 50 CFR 622.39(a)(2)(ii) is 1,092,372 lb (495,492 kg). However, NMFS has determined that in 2016, the recreational harvest of greater amberjack exceeded the 2016 recreational ACL by 756,631 lb (343,202 kg). Under 50 CFR 622.41(a)(2)(ii), NMFS is required to reduce the recreational ACT and the recreational ACL for greater amberjack in the year following an overage of the recreational ACL, by the amount of any recreational overage in the prior fishing year. Therefore, NMFS reduces the recreational ACL for greater amberjack in 2017 to 498,969 lb (226,329 kg) and the recreational ACT to 335,741 lb (152,290 kg).

Under 50 CFR 622.41(a)(2)(i), NMFS is required to close the recreational sector for greater amberjack when the recreational ACT is reached, or is

projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS has determined the 2017 recreational ACT will be reached by March 24, 2017. Accordingly, NMFS is closing recreational harvest of greater amberjack for the rest of the 2017 fishing year effective at 12:01 a.m., local time, March 24, 2017, until 12:01 a.m., local time, January 1, 2018, the start of the next fishing year.

During the recreational closure, the bag and possession limits for greater amberjack in or from the Gulf EEZ are zero. The prohibition on possession in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for Gulf reef fish has been issued applies regardless of whether greater amberjack were harvested in state or Federal waters.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of Gulf greater amberjack and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.41(a)(2)(i) and (ii) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best scientific information available. The Assistant Administrator for NOAA Fisheries (AA) finds that the need to immediately implement this action to close the recreational sector for greater amberjack constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment on this temporary rule pursuant to the authority set forth in 5 U.S.C. 553(b)(B), because such procedures are unnecessary and

contrary to the public interest. Such procedures are unnecessary because the rule establishing the closure provisions was subject to notice and comment, and all that remains is to notify the public of the closure. Such procedures are contrary to the public interest because of the need to immediately implement this action to protect greater amberjack. Prior notice and opportunity for public comment would require time and would potentially allow the recreational sector to exceed the recreational ACL.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: March 17, 2017.

Jennifer M. Wallace,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 2017-05651 Filed 3-17-17; 4:15 pm]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 151211999-6343-02]

RIN 0648-XF256

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Trip Limit Increase for the Common Pool Fishery

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

ACTION: Temporary rule; inseason adjustment.

SUMMARY: This action increases the possession and trip limit for Gulf of Maine cod and haddock for Northeast multispecies common pool vessels for the remainder of the 2016 fishing year.

The most recent catch data indicate that the common pool is not expected to fully harvest its annual quota for these stocks at the current trip limits. Increasing the possession and trip limits is intended to provide the common pool fishery with additional fishing opportunities through the end of the fishing year.

DATES: The possession and trip limit increase is effective March 16, 2017, through April 30, 2017.

FOR FURTHER INFORMATION CONTACT: Spencer Talmage, Fishery Management Specialist, 978-281-9232.

SUPPLEMENTARY INFORMATION: The regulations at § 648.86(o) authorize the Regional Administrator to adjust the possession and trip limits for common pool vessels in order to help prevent the overharvest or underharvest of the common pool quotas.

Based on information reported through February 18, 2017, the common pool fishery has caught approximately 42 and 25 percent of its annual quotas for Gulf of Maine (GOM) cod and GOM haddock, respectively. At the current rate of fishing, the common pool fishery is not projected to fully harvest its annual quota for either stock by the end of the 2016 fishing year. A moderate increase in the possession and trip limits for both stocks will provide additional opportunities with little risk of exceeding the common pool sub-ACL of either stock.

To allow the common pool fishery to catch more of its quota for this GOM cod and haddock, effective March 16, 2017, the possession and trip limit of GOM cod and GOM haddock are increased, as summarized in Table 1 below. Common pool groundfish vessels that have declared their trip through the vessel monitoring system (VMS) or interactive voice response system, and crossed the VMS demarcation line prior to March 16, 2017, may land at the new possession and trip limits for that trip.

TABLE 1—NEW POSSESSION/TRIP LIMITS

Stock	Permit type	Current possession/trip limits	New possession/trip limits
GOM cod	Day-At-Sea (DAS)	25 lb (11.34 kg) per DAS, up to 100 lb (45.36 kg) per trip.	100 lb (45.36 kg) per trip.
	Handgear A	25 lb (11.34 kg) per trip	100 lb (45.36 kg) per trip.
	Handgear B	25 lb (11.34 kg) per trip	unchanged.
	Small Vessel Category	25 lb (11.34 kg) per trip, within combined 300 lb trip limit for GOM cod, haddock, and yellowtail flounder.	unchanged.
GOM haddock ...		200 lb (90.72 kg) per DAS, up to 600 lb (272.16 kg) per trip.	500 lb (226.80 kg) per DAS, up to 1,000 lb (453.59 kg) per trip.

Weekly quota monitoring reports for the common pool fishery can be found on our Web site at: <http://www.greateratlantic.fisheries.noaa.gov/ro/fso/MultiMonReports.htm>. We will continue to monitor common pool catch through vessel trip reports, dealer-reported landings, VMS catch reports, and other available information and, if necessary, we will make additional adjustments to common pool management measures.

Classification

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

The Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3) to waive prior notice and the opportunity for public comment and the 30-day delayed effectiveness period because it would be impracticable and contrary to the public interest.

The regulations at § 648.86(o) authorize the Regional Administrator to adjust the Northeast multispecies possession and trip limits for common pool vessels in order to help prevent the overharvest or underharvest of the pertinent common pool quotas. The catch data used as the basis for this action only recently became available. The available analysis indicates that the possession and trip limit increase for both GOM cod and GOM haddock will help to ensure that the fishery may achieve the optimum yield (OY) for these stocks. As a result, the time necessary to provide for prior notice and comment, and a 30-day delay in effectiveness, would prevent NMFS from implementing the necessary possession and trip limit adjustment in a timely manner, which could prevent the fishery from achieving the OY, and cause negative economic impacts to the common pool fishery.

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

Dated: March 16, 2017.

Emily H. Menashes,

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

[FR Doc. 2017-05550 Filed 3-16-17; 4:15 pm]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 161020985-7181-02]

RIN 0648-XF296

Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; modification of closure.

SUMMARY: NMFS is opening directed fishing for northern rockfish in the Bering Sea and Aleutian Islands Management Area (BSAI). This action is necessary to fully use the 2016 total allowable catch (TAC) of northern rockfish in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 16, 2017, through 2400 hrs, A.l.t., December 31, 2017. Comments must be received at the following address no later than 4:30 p.m., A.l.t., April 5, 2017.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2016-0140, by either of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2016-0140, 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 by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter

"N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT:

Steve Whitney, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

Pursuant to the final 2017 and 2018 harvest specifications for groundfish in the BSAI (82 FR 11826, February 27, 2017), NMFS closed the directed fishery for northern rockfish under § 679.20(d)(1)(iii).

As of March 14, 2017, NMFS has determined that approximately 4,000 metric tons of northern rockfish initial TAC remains unharvested in the BSAI. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully utilize the 2017 TAC of northern rockfish in the BSAI, NMFS is terminating the previous closure and is opening directed fishing for northern rockfish in the BSAI. This will enhance the socioeconomic well-being of harvesters in this area. The Administrator, Alaska Region (Regional Administrator) considered the following factors in reaching this decision: (1) The current catch of northern rockfish in the BSAI and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels in participating in this fishery.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and § 679.25(c)(1)(ii) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of northern rockfish in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent,

relevant data only became available as of March 14, 2017.

The acting AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow the fishery for

northern rockfish in the BSAI to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until April 5, 2017.

This action is required by §§ 679.20 and 679.25 and is exempt from review under Executive Order 12866.

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

Dated: March 16, 2017.

Emily H. Menashes,

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

[FR Doc. 2017-05536 Filed 3-16-17; 4:15 pm]

BILLING CODE 3510-22-P

Proposed Rules

Federal Register

Vol. 82, No. 53

Tuesday, March 21, 2017

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Doc. No. AMS–SC–16–0105; SC16–930–5 PR]

Tart Cherries Grown in the States of Michigan, et al.; Free and Restricted Percentages for the 2016–17 Crop Year for Tart Cherries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the Cherry Industry Administrative Board (Board) to establish free and restricted percentages for the 2016–17 crop year under the marketing order for tart cherries grown in the states of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin (order). The Board locally administers the marketing order and is comprised of producers and handlers of tart cherries operating within the production area, and a public member. This action would establish the proportion of tart cherries from the 2016 crop which may be handled in commercial outlets at 71 percent free and 29 percent restricted. These percentages should stabilize marketing conditions by adjusting supply to meet market demand and help improve grower returns.

DATES: Comments must be received by April 20, 2017.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: <http://www.regulations.gov>. All comments should reference the document number and the date and page number of this issue of the **Federal**

Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this proposal will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT:

Jennie M. Varela, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 291–8614, or Email: Jennie.Varela@ams.usda.gov or Christian.Nissen@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: Richard.Lower@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement and Order No. 930, both as amended (7 CFR part 930), regulating the handling of tart cherries produced in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin, hereinafter referred to as the “order.” The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.”

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 12866, 13563, and 13175.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order provisions now in effect, free and restricted percentages may be established for tart cherries handled during the crop year. This proposed rule would establish free and restricted percentages for tart cherries for the 2016–17 crop year, beginning July 1, 2016, through June 30, 2017.

The Act provides that administrative proceedings must be exhausted before

parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA’s ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposed rule invites comments on the establishment of free and restricted percentages for the 2016–17 crop year. This proposal would establish the proportion of tart cherries from the 2016 crop which may be handled in commercial outlets at 71 percent free and 29 percent restricted. This proposal should stabilize marketing conditions by adjusting supply to meet market demand and help improve grower returns. The proposed carry-out and the final percentages were recommended by the Board at a meeting on September 8, 2016.

Section 930.51(a) of the order provides authority to regulate volume by designating free and restricted percentages for any tart cherries acquired by handlers in a given crop year. Section 930.50 prescribes procedures for computing an optimum supply based on sales history and for calculating these free and restricted percentages. Free percentage volume may be shipped to any market, while restricted percentage volume must be held by handlers in a primary or secondary reserve, or be diverted or used for exempt purposes as prescribed in §§ 930.159 and 930.162 of the regulations. Exempt purposes include, in part, the development of new products, sales into new markets, the development of export markets, and charitable contributions. Sections 930.55 through 930.57 prescribe procedures for inventory reserve. For cherries held in reserve, handlers would be responsible for storage and would retain title of the tart cherries.

Under § 930.52, only those districts with an annual average production over the prior three years of at least six million pounds are subject to regulation, and any district producing a crop which is less than 50 percent of its annual average of the previous five years is exempt. The regulated districts for the 2016–2017 crop year would be: District 1—Northern Michigan; District 2—Central Michigan; District 3—Southern Michigan; District 4—New York; District 7—Utah; District 8—Washington; and District 9—Wisconsin. Districts 5 and 6 (Oregon and Pennsylvania, respectively) would not be regulated for the 2016–17 season.

Demand for tart cherries and tart cherry products tends to be relatively stable from year to year. Conversely, annual tart cherry production can vary greatly. In addition, tart cherries are processed and can be stored and carried over from crop year to crop year, further impacting supply. As a result, supply and demand for tart cherries are rarely in balance.

Because demand for tart cherries is inelastic, total sales volume is not very responsive to changes in price. However, prices are very sensitive to changes in supply. As such, an oversupply of cherries would have a sharp negative effect on prices, driving down grower returns. The Board, aware of this economic relationship, focuses on using the volume control provisions in the order to balance supply and demand to stabilize industry returns.

Pursuant to § 930.50 of the order, the Board meets on or about July 1 to review sales data, inventory data, current crop forecasts and market conditions for the upcoming season and, if necessary, to recommend preliminary free and restricted percentages if anticipated supply would exceed demand. After harvest is complete, but no later than September 15, the Board meets again to update its calculations using actual production data, consider any necessary adjustments to the preliminary percentages, and determine if final free and restricted percentages should be recommended to the Secretary.

The Board uses sales history, inventory, and production data to determine whether there is a surplus, and if so, how much volume should be restricted to maintain optimum supply. The optimum supply represents the desirable volume of tart cherries that should be available for sale in the coming crop year. Optimum supply is defined as the average free sales of the prior three years plus desirable carry-out inventory. Desirable carry-out is the amount of fruit needed by the industry to be carried into the succeeding crop

year to meet market demand until the new crop is available. Desirable carry-out is set by the Board after considering market circumstances and needs. Section 930.151(b) specifies that desirable carry-out can range from 0 to a maximum of 100 million pounds.

In addition, USDA's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" (<http://www.ams.usda.gov/publications/content/1982-guidelines-fruit-vegetable-marketing-orders>) specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. This requirement is codified in § 930.50(g) of the order, which specifies that in years when restricted percentages are established, the Board shall make available tonnage equivalent to an additional 10 percent of the average sales of the prior three years for market expansion (market growth factor).

After the Board determines optimum supply, desirable carry-out, and market growth factor, it must examine the current year's available volume to determine whether there is an oversupply situation. Available volume includes carry-in inventory (any inventory available at the beginning of the season) along with that season's production. If production is greater than the optimum supply minus carry-in, the difference is considered surplus. This surplus tonnage is divided by the sum of production in the regulated districts to reach a restricted percentage. This percentage must be held in reserve or used for approved diversion activities, such as exports.

The Board met on June 23, 2016, and computed an optimum supply of 287 million pounds for the 2016–17 crop year using the average of free sales for the three previous seasons and a desirable carry-out of 57 million pounds. The Board determined three months of sales would be a good estimate for what was needed at the end of the season, as there is a three-month gap between the calculation of carry-out at the end of one season and the availability of fruit from the next season. The recommended carry-out of 57 million pounds is approximately a quarter of average annual sales.

The Board then subtracted the estimated carry-in of 81.3 million pounds from the optimum supply to calculate the production needed from the 2016–17 crop to meet optimum supply. This number, 205.7 million pounds, was subtracted from the Board's estimated 2016–17 production of 351.3 million pounds to calculate a surplus of 145.6 million pounds of tart

cherries. The Board also complied with the market growth factor requirement by adding 23 million pounds (average sales for prior three years of 230 million times 10 percent) to the free supply. The surplus minus the market growth factor was then divided by the expected production in the regulated districts (348 million pounds) to reach a preliminary restricted percentage of 35 percent for the 2016–17 crop year.

The Board then discussed whether this calculation would provide sufficient supply to grow sales while being able to supply orders that are already scheduled, including filling remaining orders from a USDA purchase made the previous season. The Board, after considering anticipated supply needs for the 2016–17 season, decided to make an economic adjustment of 22 million pounds to increase the available supply of tart cherries. This economic adjustment further reduced the preliminary surplus to 100.6 million pounds. After these adjustments, the preliminary restricted percentage was recalculated as 29 percent (100.6 million pounds divided by 348 million pounds).

The Board met again on September 8, 2016, to consider final volume regulation percentages for the 2016–17 season. The final percentages are based on the Board's reported production figures and the supply and demand information available in September. The total production for the 2016–17 season was 341 million pounds, 10 million pounds below the Board's June estimate. In addition, growers diverted 26 million pounds in the orchard, leaving 315 million pounds available to market, 310 million pounds of which are in the restricted districts. Using the actual production numbers, and accounting for the recommended desirable carry-out and economic adjustment, as well as the market growth factor, the restricted percentage was recalculated.

The Board subtracted the carry-in figure used in June of 81.3 million pounds from the optimum supply of 287 million pounds to determine 205.7 million pounds of 2016–17 production would be necessary to reach optimum supply. The Board subtracted the 205.7 million pounds from the actual production of 341.3 million pounds, resulting in a surplus of 135.6 million pounds of tart cherries. The surplus was then reduced by subtracting the economic adjustment of 22 million pounds and the market growth factor of 23 million pounds, resulting in an adjusted surplus of 90.6 million pounds. The Board then divided this final surplus by the available production of 310 million pounds in the regulated

districts (336.1 million pounds minus 26.4 million pounds of in-orchard diversion) to calculate a restricted percentage of 29 percent with a corresponding free percentage of 71 percent for the 2016–17 crop year, as outlined in the following table:

	Millions of pounds
Final Calculations:	
(1) Average sales of the prior three years	230.0
(2) Plus desirable carry-out	57.0
(3) Optimum supply calculated by the Board	287.0
(4) Carry-in as of July 1, 2016	81.3
(5) Adjusted optimum supply (item 3 minus item 4)	205.7
(6) Board reported production	341.3
(7) Surplus (item 6 minus item 5)	135.6
(8) Total economic adjustments	22.0
(9) Market growth factor ...	23.0
(10) Adjusted Surplus (item 7 minus items 8 and 9)	90.6
(11) Supply in regulated districts	336.1
(12) In-Orchard Diversion	26.4
(13) Production minus in orchard diversion	309.7
	Percent
Final Percentages:	
Restricted (item 10 divided by item 13 × 100)	29
Free (100 minus restricted percentage)	71

The primary purpose of setting restricted percentages is an attempt to bring supply and demand into balance. If the primary market is oversupplied with cherries, grower prices decline substantially. Restricted percentages have benefited grower returns and helped stabilize the market as compared to those seasons prior to the implementation of the order. The Board believes the available information indicates that a restricted percentage should be established for the 2016–17 crop year to avoid oversupplying the market with tart cherries. Consequently, based on its discussion of this issue and the result of the above calculations, the Board recommended final percentages of 71 percent free and 29 percent restricted by a vote of 16 in favor, 2 opposed, and 2 abstentions.

Though production came in below the Board's June estimate, the initial restriction percentage remained the same due to the substantial in-orchard diversion. During the discussion of the proposed restriction, several members supported the proposed percentages as

there was no change from the preliminary 29 percent restriction recommended in June. They believed deviating from the percentages announced in June would be disruptive to the industry, as processors have already made agreements with growers.

Another member noted when there was a crop failure in 2012, there was not enough reserve to maintain sales and warned against being unprepared in the future. The member also noted that in the last four years, even with volume regulation and an increase in imported products, overall domestic sales have increased since 2013, including modest growth in both juice and piefill.

Some members opposed to the proposed restriction expressed concern regarding competition from imported tart cherry juice concentrate. In particular, they were concerned that the additional volume from imports is not accounted for in the Optimum Supply Formula, thus not capturing overall supply and demand.

Others were of the opinion that the Board's recent actions to expand the use of diversion credits in new markets or through grower diversion were allowing the industry to remain competitive without making additional adjustments to supply. Another member countered that not all handlers are helped by new market diversion credits and cannot sell all of their product under a restriction.

When asked how much of the market currently being served by imports could be supplied by the domestic handlers, some members stated they could utilize the full adjusted calculated surplus of 90.6 million pounds. Others noted that trying to compete for those markets by matching the price of imported concentrate would drop grower returns to an unsustainable level.

One member summarized that, although there is a carrying cost for storing restricted fruit, and the industry appears to be at a trade disadvantage, the Board should account for those factors all the while focusing on continuing to grow sales. Though there was much discussion regarding the market impact of imports, there was no motion made by any Board member to make a further economic adjustment to the calculation based on imported product.

After reviewing the available data, and considering the concerns expressed, the Board determined that a 29 percent restriction with a carry-out volume of 57 million pounds would meet sales needs and establish some reserves without oversupplying the market. Thus, the Board recommended establishing final percentages of 71 percent free and 29 percent restricted. The Board could

meet and recommend the release of additional volume during the crop year if conditions so warranted.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 600 producers of tart cherries in the regulated area and approximately 40 handlers of tart cherries who are subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$750,000 and small agricultural service firms have been defined as those whose annual receipts are less than \$7,500,000 (13 CFR 121.201).

According to the National Agricultural Statistics Service (NASS) and Board data, the average annual grower price for tart cherries during the 2015–16 season was approximately \$0.347 per pound. With total utilization at 251.1 million pounds, the total 2015–16 crop value is estimated at \$87 million. Dividing the crop value by the estimated number of producers (600) yields an estimated average annual receipt per producer of \$145,000. This is well below the SBA threshold for small producers. In 2015, The Food Institute estimated a free on board (f.o.b.) price of \$0.96 per pound for frozen tart cherries, which make up the majority of processed tart cherries. Multiplying the f.o.b price by total utilization of 251.1 million pounds results in an estimated handler-level tart cherry value of \$241 million. Dividing this figure by the number of handlers (40) yields an estimated average annual handler receipts of \$6 million, which is below the SBA threshold for small agricultural service firms. Assuming a normal distribution, the majority of producers and handlers of tart cherries may be classified as small entities.

The tart cherry industry in the United States is characterized by wide, annual

fluctuations in production. According to NASS, the pounds of tart cherry production for the years 2012 through 2015 were 85 million, 291 million, 301 million, and 251 million, respectively. Because of these fluctuations, supply and demand for tart cherries are rarely equal.

Demand for tart cherries is inelastic, meaning changes in price have a minimal effect on total sales volume. However, prices are very sensitive to changes in supply, and grower prices vary widely in response to the large swings in annual supply, with prices ranging from a low of 7.3 cents per pound in 1987 to a high of 59.4 cents per pound in 2012.

Because of this relationship between supply and price, oversupplying the market with tart cherries would have a sharp negative effect on prices, driving down grower returns. The Board, aware of this economic relationship, focuses on using the volume control authority in the order to align supply with demand and stabilize industry returns. This authority allows the industry to set free and restricted percentages as a way to bring supply and demand into balance. Free percentage cherries can be marketed by handlers to any outlet, while restricted percentage volume must be held by handlers in reserve, diverted or used for exempted purposes.

This proposal would control the supply of tart cherries by establishing percentages of 71 percent free and 29 percent restricted for the 2016–17 crop year. These percentages should stabilize marketing conditions by adjusting supply to meet market demand and help improve grower returns. The proposal would regulate tart cherries handled in Michigan, New York, Utah, Washington, and Wisconsin. The authority for this action is provided for in §§ 930.50, 930.51(a) and 930.52 of the order. The Board recommended this action at a meeting on September 8, 2016.

This proposal would result in some fruit being diverted from the primary domestic markets. However, as mentioned earlier, the USDA's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" (<http://www.ams.usda.gov/publications/content/1982-guidelines-fruit-vegetable-marketing-orders>) specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. The quantity that would be available under this proposal is greater than 110 percent of the average quantity shipped in the prior three years.

In addition, there are secondary uses available for restricted fruit, including

the development of new products, sales into new markets, the development of export markets, and being placed in reserve. While these alternatives may provide different levels of return than the sales to primary markets, they play an important role for the industry. The areas of new products, new markets, and the development of export markets utilize restricted fruit to develop and expand the markets for tart cherries. In 2015–16, these activities accounted for over 27 million pounds in sales, 12 million of which were exports.

Placing tart cherries into reserves is also a key part of balancing supply and demand. Although handlers bear the handling and storage costs for fruit in reserve, reserves stored in large crop years are used to supplement supplies in short crop years. The reserves allow the industry to mitigate the impact of oversupply in large crop years, while allowing the industry to maintain supply to markets in years when production falls below demand. Further, storage and handling costs are more than offset by the increase in price when moving from a large crop to a short crop year.

In addition, the Board recommended an increased carry-out of 57 million pounds and made a demand adjustment of 22 million pounds in order to make the regulation less restrictive. Even with the recommended restriction, over 300 million pounds of fruit would be available to the domestic market. Consequently, it is not anticipated that this proposal would unduly burden growers or handlers.

While this proposal could result in some additional costs to the industry, these costs are more than outweighed by the benefits. The purpose of setting restricted percentages is to attempt to bring supply and demand into balance. If the primary market (domestic) is oversupplied with cherries, grower prices decline substantially. Without volume control, the primary market would likely be oversupplied, resulting in lower grower prices.

The three districts in Michigan, along with the districts in New York, Utah, Washington, and Wisconsin, are the restricted areas for this crop year with a combined total production of 310 million pounds. A 29 percent restriction means 220 million pounds would be available to be shipped to primary markets from these five states. The 220 million pounds from the restricted districts, 5 million pounds from the unrestricted districts (Oregon and Pennsylvania), and the 81 million pound carry-in inventory would make a total of 306 million pounds available as free tonnage for the primary markets.

This is similar to the 305 million pounds of free tonnage made available last year. This would be enough to cover the 251 million pounds of total utilization in 2015–2016, while providing substantial carry-out. Further, the Board could meet and recommend the release of additional volume during the crop year if conditions so warranted.

Prior to the implementation of the order, grower prices often did not cover the cost of production. The most recent costs of production determined by representatives of Michigan State University are an estimated \$0.33 per pound. To assess the impact that volume control has on the prices growers receive for their product, an econometric model has been developed. Based on the model, the use of volume control would have a positive impact on grower returns for this crop year. With volume control, grower prices are estimated to be approximately \$0.06 per pound higher than without restrictions. In addition, absent volume control, the industry could start to build large amounts of unwanted inventories. These inventories would have a depressing effect on grower prices.

Retail demand is assumed to be highly inelastic, which indicates that changes in price do not result in significant changes in the quantity demanded. Consumer prices largely do not reflect fluctuations in cherry supplies. Therefore, this proposal should have little or no effect on consumer prices and should not result in a reduction in retail sales.

The free and restricted percentages established by this proposal would provide the market with optimum supply and apply uniformly to all regulated handlers in the industry, regardless of size. As the restriction represents a percentage of a handler's volume, the costs, when applicable, are proportionate and should not place an extra burden on small entities as compared to large entities.

The stabilizing effects of this proposal would benefit all handlers by helping them maintain and expand markets, despite seasonal supply fluctuations. Likewise, price stability positively impacts all growers and handlers by allowing them to better anticipate the revenues their tart cherries would generate. Growers and handlers, regardless of size, would benefit from the stabilizing effects of this restriction. In addition, the increased carry-out should provide processors enough supply to meet market needs going into the next season.

The Board considered alternatives in its preliminary restriction discussions that affected this recommended action.

Regarding demand, the Board began with the actual sales average of 230 million pounds. However, the Board noted that some previously contracted sales would be due for delivery in the coming season. In order to avoid undersupplying the market, the Board determined that the calculation of the optimum supply should include an additional adjustment for that purpose. After discussion, an adjustment of an additional 22 million pounds was made the 2016–17 available supply of tart cherries as it was determined that this amount would best meet the industry's sales needs. Thus, the other alternative levels were rejected.

Regarding the carry-out value, the Board considered a range of alternatives. One member suggested the Board begin with 57 million pounds, approximately a quarter of average annual sales. Other members suggested alternatives as high as 70 million pounds. However, some members were concerned about leaving too much fruit on the market at the end of the season and depressing prices going into the next year. The Board determined three months of sales would be a good estimate for what was needed at the end of the season, as there is a three-month gap between the calculation of carry-out at the end of one season and the availability of fruit from the next season. Thus, the other alternatives were rejected.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0177, Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This proposal would not impose any additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

In addition, the Board's meeting was widely publicized throughout the tart cherry industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the June 23, 2016, and September 8, 2016, meetings were public meetings and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this proposal on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because this proposed rule would need to be in place as soon as possible since handlers are already shipping tart cherries from the 2016–17 crop. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR part 930 is proposed to be amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

- 1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

- 2. Section 930.151 is revised to read as follows:

§ 930.151 Desirable carry-out inventory.

For the 2016 crop year, the desirable carry-out inventory, for the purposes of determining an optimum supply volume, will be 57 million pounds.

- 3. Revise § 930.256 to read as follows:

§ 930.256 Free and restricted percentages for the 2016–17 crop year.

The percentages for tart cherries handled by handlers during the crop year beginning on July 1, 2016, which shall be free and restricted, respectively, are designated as follows: Free percentage, 71 percent and restricted percentage, 29 percent.

Dated: March 15, 2017.

Bruce Summers,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2017–05484 Filed 3–20–17; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 945

[Doc. No. AMS–SC–16–0111; SC17–945–1 PR]

Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the Idaho-Eastern Oregon Potato Committee (Committee) to decrease the assessment rate established for the 2017–2018 and subsequent fiscal periods from \$0.0025 to \$0.002 per hundredweight of potatoes handled. The Committee locally administers the marketing order which regulates the handling of potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon. Assessments upon potato handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins August 1 and ends July 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by April 20, 2017.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or internet: <http://www.regulations.gov>. Comments should reference the document number and the date and

page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT:

Barry Broadbent, Senior Marketing Specialist, or Gary D. Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326-2724, Fax: (503) 326-7440, or Email: Barry.Broadbent@ams.usda.gov or GaryD.Olson@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or Email: Richard.Lower@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement No. 98 and Order No. 945, both as amended (7 CFR part 945), regulating the handling of Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 12866, 13563, and 13175.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Idaho-Eastern Oregon potato handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable potatoes beginning August 1, 2017, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the

order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposed rule would decrease the assessment rate established for the Committee for the 2017-2018 and subsequent fiscal periods from \$0.0025 to \$0.002 per hundredweight of potatoes.

The Idaho-Eastern Oregon potato marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to cover the expenses of administering the program. The members of the Committee are producers and handlers of Idaho-Eastern Oregon potatoes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2014-2015 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on November 9, 2016, to consider the Committee's projected 2017-2018 financial requirements, the size of the Committee's operating reserve, and the order's continuing assessment rate. The Committee unanimously recommended an assessment rate of \$0.002 per hundredweight of potatoes for the 2017-2018 fiscal period. The assessment rate of \$0.002 is \$0.0005 lower than the rate currently in effect. The assessment rate decrease is necessary to reduce the funds held in reserve to less than approximately one fiscal period's budgeted expenses, the maximum level allowed by the order.

The Committee adopted a budget of \$119,075 for the 2016-2017 fiscal period. It expects to recommend a similar level of budgeted expenditures for the 2017-2018 fiscal period at its next scheduled meeting in June 2017. The Committee expects its budget for major expenditures for the 2017-2018 fiscal period to be close to the budgeted amounts for the 2016-2017 fiscal period. These expenditures include \$68,638 for administrative expenses, \$35,437 for travel/office expenses, and \$15,000 for marketing order contingency.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Idaho-Eastern Oregon potatoes. Potato shipments for 2017-2018 are estimated at 32 million hundredweight which should provide \$64,000 in assessment income at the proposed assessment rate. Income derived from handler assessments, along with other income, interest earned, and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses. Funds in the reserve (projected to be \$158,275 on July 31, 2017) would be reduced to comply with the maximum permitted by the order of approximately one fiscal period's expenses.

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2017-2018 budget, and those for subsequent fiscal periods, would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has

considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 450 producers of potatoes in the production area and approximately 32 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$7,500,000.

During the 2015–2016 fiscal period, the most recent full year of statistics available, 33,606,000 hundredweight of Idaho-Eastern Oregon potatoes were inspected under the order and sold into the fresh market. Based on information provided by the National Agricultural Statistics Service, the average producer price for the 2015 Idaho potato crop (the most recent full marketing year recorded) was \$7.00 per hundredweight. Multiplying \$7.00 by the shipment quantity of 33,606,000 hundredweight yields an annual crop revenue estimate of \$235,242,000. The average annual fresh potato revenue for each of the 450 producers is therefore calculated to be \$522,760 (\$235,242,000 divided by 450), which is less than the Small Business Administration threshold of \$750,000. Consequently, on average, a majority of the Idaho-Eastern Oregon potato producers may be classified as small entities.

In addition, based on information reported by USDA's Market News Service, the average free-on-board (f.o.b.) shipping point price for the 2015 Idaho potato crop was \$7.47 per hundredweight. Multiplying \$7.47 by the shipment quantity of 33,606,000 hundredweight yields an annual crop revenue estimate of \$251,036,820. The average annual fresh potato revenue for each of the 32 handlers is therefore calculated to be \$7,844,900 (\$251,036,820 divided by 32), which is slightly more than the Small Business Administration threshold of \$7,500,000. Given the likelihood that there may be several large handlers, some of the

Idaho-Eastern Oregon potato handlers may be classified as small entities.

This proposed rule would decrease the assessment rate established for the Committee and collected from handlers for the 2017–2018 and subsequent fiscal periods from \$0.0025 to \$0.002 per hundredweight of potatoes. The Committee unanimously recommended an assessment rate of \$0.002 per hundredweight of potatoes for the 2017–2018 fiscal period. The assessment rate of \$0.002 per hundredweight is \$0.0005 lower than the rate for the 2016–2017 fiscal period. The quantity of assessable potatoes for the 2017–2018 fiscal period is estimated at 32 million hundredweight. Thus, the \$0.002 rate should provide \$64,000 in assessment income. Income derived from handler assessments, along with other income, interest earned, and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses.

The Committee adopted a budget of \$119,075 for the 2016–2017 fiscal period and expects to recommend a similar amount in budgeted expenditures for the 2017–2018 fiscal period at its next scheduled meeting in June 2017. The major budgeted expenditures for the 2016–2017 year include \$68,638 for administrative expenses, \$35,437 for travel/office expenses, and \$15,000 for marketing order contingency. Budgeted expenses for these items in 2015–2016 were \$64,901, \$37,340, and \$15,000, respectively.

The lower assessment rate is necessary to reduce the reserve balance to less than approximately one fiscal period's budgeted expenses. The reserve balance on July 31, 2017, is projected to be \$158,275. Assessment income for the 2017–2018 fiscal period is estimated at \$64,000, while expenses are estimated to be \$119,075. The Committee anticipates compensating for the reduced assessment revenue with \$5,100 from miscellaneous income, \$100 from interest income, and \$49,875 from its reserve fund. The reserve fund is projected to be under the maximum authorized level at the end of the 2017–2018 fiscal period.

The Committee discussed alternatives to this proposed change, including suspending assessments for one year, recommending other assessment rate levels, and leaving the current rate in place. Prior to arriving at this assessment rate recommendation, the Committee considered information from the Board's Executive Committee on the cost savings resulting from recent administrative changes in the Committee office and the level of anticipated Committee expenses moving

forward. The Committee debated between suspending assessments for one year and recommending the assessment rate be lowered to \$0.002 per hundredweight of potatoes. Based on the market and shipping quantities, the Committee recommended the rate of \$0.002 per hundredweight. The Committee believes this assessment rate, in combination with other income, interest earned, and funds utilized from the Committee's financial reserve, would provide sufficient funds to meet its expenses.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the producer price for the 2017 crop could range between \$6.00 and \$9.00 per hundredweight of potatoes. Therefore, the estimated assessment revenue for the 2017–2018 fiscal period as a percentage of total producer revenue could range between 0.022 and 0.033 percent.

This action would decrease the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate would reduce the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the Idaho-Eastern Oregon potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the November 9, 2016, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178 (Generic Vegetable and Specialty Crops). No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large Idaho-Eastern Oregon potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce

information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this action.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2017–2018 fiscal period begins on August 1, 2017, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable potatoes handled during such fiscal period; (2) the proposed rule would decrease the assessment rate for assessable potatoes beginning with the 2017–2018 fiscal period; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 945

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 945 is proposed to be amended as follows:

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

■ 1. The authority citation for 7 CFR part 945 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 945.249 is revised to read as follows:

§ 945.249 Assessment rate.

On and after August 1, 2017, an assessment rate of \$0.002 per hundredweight is established for Idaho–Eastern Oregon potatoes.

Dated: March 15, 2017.

Bruce Summers,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2017–05482 Filed 3–20–17; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0194; Directorate Identifier 2017–CE–006–AD]

RIN 2120–AA64

Airworthiness Directives; PILATUS AIRCRAFT LTD. Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for PILATUS AIRCRAFT LTD. Model PC–12/47E airplanes. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as an error within the flight management system caused by installing Primus APEX software Build 10 or 10.9, which could cause deviation from the correctly calculated barometric vertical navigation nominal glide path. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by May 5, 2017.

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

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **Fax:** (202) 493–2251.

- **Mail:** U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

- **Hand Delivery:** U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact PILATUS AIRCRAFT LTD., Customer Support

PC–12, CH–6371 Stans, Switzerland; phone: +41 41 619 33 33; fax: +41 41 619 73 11; email: SupportPC12@pilatus-aircraft.com; Internet: www.pilatus-aircraft.com. You may review this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA–2017–0194; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT:

Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: doug.rudolph@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA–2017–0194; Directorate Identifier 2017–CE–006–AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No. 2017–0024, dated February 13, 2017 (referred to after this as “the MCAI”), to

correct an unsafe condition for PILATUS AIRCRAFT LTD. Model PC-12/47E airplanes and was based on mandatory continuing airworthiness information originated by an aviation authority of another country. The MCAI states:

An occurrence was reported of a split between the vertical guidance data and the flight director steering commands during a Vertical Glide Path (VGP) approach. Subsequent investigation identified an error within the Flight Management System (FMS) that was introduced into Primus APEX software (S/W) Build 10 and S/W Build 10.9. This condition, if not corrected, could lead to loss of control of the aeroplane.

To address this potential unsafe condition, Pilatus issued Temporary Revision (TR) No. 38 to the PC-12/47E Pilot's Operating Handbook, (POH) Report No: 02277 (hereafter referred to as "POH TR 38" in this AD), limiting VGP Approach mode sourced on baro Vertical Navigation (VNAV) to visual meteorological conditions (VMC) only, and providing procedures applicable in case of VGP deviation occurring during baro VNAV approaches.

For the reason described above, this AD requires amendment of the applicable Aircraft Flight Manual (AFM).

You may examine the MCAI on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2017-0194.

Related Service Information Under 14 CFR Part 51

PILATUS AIRCRAFT LTD. has issued Temporary Revision No. 38 to PC-12/47E Pilot's Operating Handbook, Report No: 02277, Section 2—Limitations, dated February 8, 2017. The service information describes procedures for limiting the use of the autopilot and flight director to day visual meteorological conditions (VMC) during barometric vertical navigation (baro VNAV) during a vertical glide path approach (VGP). This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section of this NPRM.

FAA's Determination and Requirements of This Proposed AD

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

develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD will affect 350 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is \$85 per work-hour.

Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be \$29,750, or \$85 per product.

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 above, I certify this proposed regulation:

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),
- (3) Will not affect intrastate aviation in Alaska, and
- (4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

PILATUS AIRCRAFT LTD.: Docket No. FAA-2017-0194; Directorate Identifier 2017-CE-006-AD.

(a) Comments Due Date

We must receive comments by May 5, 2017.

(b) Affected ADs

None.

(c) Applicability

This AD applies to PILATUS AIRCRAFT LTD. Model PC-12/47E airplanes, all serial numbers, that:

- (1) have Primus APEX Software Build 10 with Honeywell part number (P/N) EB60000487-0110 or Primus APEX Software Build 10.9 with Honeywell P/N EB60000487-0112 installed; and
- (2) are certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 34: Navigation.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as an error within the flight management system caused by installing Primus APEX software Build 10 or 10.9, which could cause deviation from the correctly calculated barometric vertical navigation nominal guide path. We are issuing this AD to prevent the pilot from following incorrect data from the flight management system, which could result in loss of control.

(f) Actions and Compliance

Unless already done, within 30 days after the effective date of this AD, insert Temporary Revision No. 38 to PC-12/47E Pilot's Operating Handbook, Report No: 02277, Section 2—Limitations, dated February 8, 2017, into PILATUS Airplane Flight Manual 02277, Section 2—Limitations.

Note 1 to paragraph (f) of this AD: For airplanes affected by this AD, the Pilot's

Operating Handbook and the Airplane Flight Manual are the same document with the Report No.: 02277.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4059; fax: (816) 329-4090; email: doug.rudolph@faa.gov. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product*: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(h) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No. 2017-0024, dated February 13, 2017, for related information. You may examine the MCAI on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2017-0194. For service information related to this AD, contact PILATUS AIRCRAFT LTD., Customer Support PC-12, CH-6371 Stans, Switzerland; phone: +41 41 619 33 33; fax: +41 41 619 73 11; email: SupportPC12@pilatus-aircraft.com; Internet: www.pilatus-aircraft.com. You may review this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329-4148.

Issued in Kansas City, Missouri, on March 7, 2017.

Pat Mullen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2017-05160 Filed 3-20-17; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1301 and 1311

[Docket No. DEA-445N]

Program To Hire Special Assistant United States Attorneys in Targeted Federal Judicial Districts Utilizing Diversion Control Fee Account Funds

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Drug Enforcement Administration (DEA) is proposing a rule that would expand and enhance the enforcement component of the Diversion Control Program (DCP) as previously outlined in the December 30, 1996, **Federal Register** document "Registration and Reregistration Application Fees," hereinafter referred to as the 1996 Rule. The 1996 Rule specified six types of investigations involving the diversion of controlled substances, which could be pursued by the DCP utilizing funding from the Diversion Control Fee Account (DCFA). Those investigations included the theft or robbery of pharmaceutical controlled substances, the acquisition of pharmaceutical controlled substances through fraud or deceit, and other illegal diversion activities. The 1996 Rule also authorized the continued use and expansion by the DCP of Tactical Diversion Squads (TDSs), defined as, "enforcement teams consisting of Federal, state, and local law enforcement personnel fully dedicated to the investigation and prosecution of persons involved in the diversion of controlled substances."

DATES: Electronic comments must be submitted, and written comments must be postmarked, on or before April 20, 2017. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

ADDRESSES: To ensure proper handling of comments, please reference "Docket No. DEA-445N" on all correspondence, including any attachments.

The Drug Enforcement Administration encourages that all comments be submitted through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the Web page or to attach a file for lengthier comments. Please go to <http://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon completion of your submission you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on *Regulations.gov*. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. Paper comments that duplicate an electronic submission are not necessary and are discouraged. Should you wish to mail a paper comment *in lieu of* an electronic

comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DRW, 8701 Morrisette Drive, Springfield, Virginia 22152.

FOR FURTHER INFORMATION CONTACT: Michael J. Lewis, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrisette Drive, Springfield, Virginia 22152; Telephone: (202) 598-6812.

SUPPLEMENTARY INFORMATION: This proposed rule would expand on the already-recognized investigative activities funded by the DCFA and allow for the hiring of attorneys in support of these activities. The attorneys, hired by DEA and paid with funds from the DCFA, will be detailed to the Department of Justice (DOJ) as Special Assistant United States Attorneys (SAUSAs), and will assist in the investigation and prosecution of those diversion crimes outlined in the 1996 Rule, and related civil actions. DCFA-funded SAUSAs in the program would be exclusively engaged in duties which provide investigative and prosecutorial support to federal criminal and related civil diversion investigations conducted by the DEA and its partnering law enforcement agencies. The investigations, and the companion support provided by the attorneys detailed as SAUSAs in this program, will adhere to the guidelines for the use of DCFA funding found in Title 21, United States Code, 821, 822, and 886a; the 1996 Rule, 76 FR 39318, July 6, 2011; and 77 FR 15234, March 15, 2012.

In addition, the proposed rule would authorize the SAUSAs hired by DEA and detailed to DOJ to prosecute crimes that are derivative or ancillary criminal violations to the diversion crimes outlined in the 1996 Rule. Examples of these ancillary or derivative crimes would include money laundering or other financial crimes involving the proceeds of diversion activity; firearms and crimes of violence related to or caused by diversion activity; use of a communication facility to commit diversion crimes; and the forfeiture of assets which facilitate or are derived from diversion activity.

In addition to protecting the public, the proposed rule will enhance the protections provided to the DEA registrant community by the DCP by ensuring that those engaged in criminal and related civil violations affecting the DEA registrant population are apprehended, and, equally as important, prosecuted. The proposed rule will ensure that illegal activities that

endanger the safety of registrants and their employees (burglary and robbery of registered locations); threatens the credibility and financial stability of registrants and their employees (prescription forgery, fraud, and theft); and damages the public perception and reputation of the registrant community (prescribing or dispensing outside the course of medical practice and other offenses committed by registrants) will be fully addressed through robust investigation and prosecution.

The proposed rule is a continuation of the concepts outlined in "Controlled Substances and List 1 Chemical Registration and Reregistration Fees," 77 FR 15234 (Mar. 15, 2012), hereinafter referred to as the 2012 Rule. The 2012 Rule provides that "it is essential to utilize a diverse skilled workforce and constantly review and modify all aspects of the DCP to help successfully execute the drug trafficking disruption goals of the National Drug Control Strategy and effectively prevent, detect, and eliminate the diversion of controlled substances and listed chemicals into the illicit market while ensuring a sufficient supply of these substances for legitimate medical purposes." It is in furtherance of that constant review—and modification when necessary—that this rule is proposed.

This proposed rule does not request an increase in Registration and Reregistration Fees.

Posting of Public Comments

Please note that all comments received in response to this docket are considered part of the public record. They will, unless reasonable cause is given, be made available by the Drug Enforcement Administration for public inspection online at <http://www.regulations.gov>. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. The Freedom of Information Act (FOIA) applies to all comments received. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be made publicly available, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also place the personal identifying information you do not want to be made publicly available in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be made

publicly available, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment.

Comments containing personal identifying information and confidential business information identified as directed above will generally be made publicly available in redacted form. If a comment has so much confidential business information or personal identifying information that it cannot be effectively redacted, all or part of that comment may not be made publicly available. Comments posted to <http://www.regulations.gov> may include any personal identifying information (such as name, address, and phone number) or confidential business information included in the text of your electronic submission that is not identified as directed above as confidential.

Legal Authority/Diversion Control Fee Account

Through the enactment of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended (CSA), Congress has established a closed system of distribution making it unlawful to handle any controlled substance or listed chemical except in a manner authorized by the CSA. In order to maintain this closed system of distribution, the CSA imposes registration requirements on some handlers of controlled substances and list I chemicals.¹ 21 U.S.C. 822 and 957; 21 CFR 1301.13 and 1309.25. Under the CSA, the DEA is authorized to charge reasonable fees relating to the registration and control of the manufacture, distribution, dispensing, import, and export of controlled substances and listed chemicals.² 21 U.S.C. 821 and 958(f). However, the DEA must set fees at a level that ensures the recovery of the full costs of operating the various aspects of its diversion control program as outlined in 21 U.S.C. 886a. This is known as the Diversion Control Fee Account (DCFA). The diversion control program consists of the controlled substance and chemical diversion control activities of

¹ Pursuant to the CSA, certain entities are exempted from registration, from paying the registration fee entirely, or are exempted from the requirement of a separate registration for activities performed as a coincident activity under a registered business activity.

² The Attorney General delegated authorities under the CSA (found in titles II and III of the Act) to the Administrator of the DEA, who in turn re delegated many of these authorities to the Assistant Administrator of the DEA Diversion Control Division. 28 CFR 0.100 *et seq.*

the DEA which are related to the registration and control of the manufacture, distribution, dispensing, importation, and exportation of controlled substances and listed chemicals.³ 21 U.S.C. 886a(2). The DCFA is then utilized by the DEA in strict compliance with 21 U.S.C. 821, 822, and 886a; the 1996 Rule; 76 FR 39318, July 6, 2011; the 2012 Rule; as well as all applicable laws, regulations, and DEA policy to establish and implement the DEA registration process; to provide regulatory oversight of DEA registrants; and to prevent, detect, and investigate diversion from the legal channels prescribed by law into illegal channels that violate the CSA.

The Tactical Diversion Squad Program

As part of the DCP, and pursuant to 21 U.S.C. 821 and 886a, and the 1996 Rule, DEA has created Tactical Diversion Squad (TDS) units staffed by DEA Special Agents, Diversion Investigators, Task Force Officers (TFOs)⁴ and Intelligence Analysts to work collaboratively to investigate the criminal and related civil aspects of the illegal diversion of controlled substances. These illegal practices are outlined in the 1996 Rule and include prescribing or dispensing of controlled substances outside the course of practice, the theft of controlled substances, pharmacy burglary and robbery, prescription forgery and fraud, distribution of diverted controlled substances, and other violations of Federal law related to the diversion of

³ The Diversion Control Division is the strategic focus area within the Administration that carries out the mandates of the CSA to ensure that adequate supplies of controlled substances and listed chemicals are available to meet legitimate domestic medical, scientific, industrial, and export needs. The Diversion Control Division carries out the mission of the DEA to prevent, detect, and eliminate the diversion of these substances into the illicit drug market. Activities in support of the Diversion Control Division and its mission include: Determination of program priorities; field management oversight; coordination of major investigations; drafting and promulgating regulations; the design and proposal of national legislation; advice and leadership on State legislation/regulatory initiatives; oversight of the importation and exportation of tableting and encapsulating machines, controlled substances, and listed chemicals; establishment of national drug production quotas; activities related to drug scheduling and compliance with international treaty obligations; the design and execution of diplomatic missions; computerized monitoring and tracking of the distribution of certain controlled substances; planning and allocation of program resources; and liaison efforts with industry and their representative associations as well as to the DEA's regulatory and law enforcement counterparts at the federal, State, tribal, and local levels.

⁴ A TFO is a sworn officer of a state or local law enforcement agency seconded to DEA and credentialed by DEA as a Federal law enforcement officer.

controlled substances. In response to growing drug-related threats, particularly the threats posed by opioid abuse, the DEA has continued to grow the TDS program. Currently, the DEA has staffed 79 TDS groups across the United States to attack the illegal diversion and trafficking of pharmaceuticals.

Of particular note, state and local law enforcement agencies have invested 283 of their officers to work as TFOs with the TDS Squads across the United States. These TFOs represent the growing understanding in the law enforcement community of the threat posed by the diversion of pharmaceutical drugs into our society. The TFOs represent a tremendous return on investment for the DCFA as the salaries for these officers are borne by their respective departments, with the DCFA reimbursing the departments for overtime expenses and providing the TFOs with vehicle expenses, travel expenses, and investigative expenses. These groups have been extremely effective in attacking the prescription drug diversion and abuse problem when allied with our critical prosecution partners within the various United States Attorney's Offices. As the TDS program continues to grow, it is critical that more resources, such as SAUSAs, are available to prosecute these cases when necessary.

The DEA's Special Assistant United States Attorney Pilot Program

The United States is currently in the midst of an epidemic of opioid abuse and overdose death. Drug overdose has overtaken deaths from firearms and automobile accidents as the leading cause of accidental or unintentional injury death in the United States.⁵ In 2014, according to the Centers for Disease Control, opioid overdoses killed 28,000 people in the United States, with more than half of those deaths caused by prescription opioids. Drug overdose death increased by 11.4% from 2014 to 2015 alone (52,404 deaths to 47,055 deaths).⁶ Since 1999, the amount of opioid pain medicine prescribed in the United States has quadrupled, with a corresponding rise in the number of deaths from prescription opioids. In addition to the direct harm caused by the abuse of opioid drugs diverted from legitimate use, it is clear that the use and abuse of prescription opioids is a gateway to the use of other illegal substances. For example, more than

80% of heroin users in the United States used prescription drugs as a gateway to their eventual use of heroin.

Additionally, in a 2012 study by the Substance Abuse and Mental Health Services Administration (SAMHSA) of emergency room visits for drug related overdose in young adults aged 18 to 25, more than 11% were admitted for misuse/abuse of benzodiazepines; more than were admitted for use of heroin (9.9%), cocaine (8.8%), or methamphetamine (5.6%).⁷

As indicated above, to answer this drug abuse epidemic, DEA has dedicated increasing resources to the DCP through the expansion of the TDS program, which has resulted in dramatic program growth over the past decade. In 2006, DEA had five TDS groups in operation with only 70 Special Agents dedicated to diversion investigations and funded by the DCFA. By 2016, the number of TDS groups had grown to 79, with 340 Special Agents dedicated to diversion investigations.

The prosecution of those responsible for, and engaged in, criminal and related civil diversion activity is integral to public safety. As the number of personnel dedicated to diversion investigations has increased, the arrests and potential defendants identified for prosecution have also increased. Should prosecutions not keep pace with these increased activities, the reduction of the diversion of controlled substances cannot be accomplished. To help ensure that the increased investment of DCFA resources into the investigation of diversion activity outlined in the 1996 Rule are fully realized with prosecution efforts, the DEA, in cooperation with the Executive Office for United States Attorneys (EOUSA)⁸ and the United States Attorneys' Offices, proposes to institute a program to hire attorneys with the requisite experience and education to serve as Special Assistant United States Attorneys (SAUSAs) in targeted federal judicial districts. Pursuant to 21 U.S.C. 821 and 886a, the 1996 Rule, and the 2012 Rule, the hiring, training, and activities of these attorneys will be funded by the DCFA. Once hired, these attorneys will be provided with additional specialized training under this program for prosecuting crimes resulting from DCFA-funded investigations. The criteria utilized in determining the

appropriate geographic placement of detailed SAUSAs will be based on an examination of several factors in each district, including prescription drug abuse rates; drug overdose death rates; an analysis of opioid prescribing and ordering; input from other Federal, state, and local officials; the number of DCFA-funded DEA personnel in the district; and the input from the United States Attorney, the Diversion Control Division, and the DEA Special Agent in Charge for each judicial district.

DEA proposes that the attorneys hired as a part of this program will be directly employed by DEA, and funded through the DCFA. Once hired, they would be detailed to DOJ and receive authorization to serve as SAUSAs from EOUSA, the United States Attorney, and the U.S. District Court in the district of hire to serve in the capacity of a SAUSA. In this role, the SAUSAs would be permitted to represent the United States in criminal and civil proceedings before the courts and apply for various legal orders. All of the anticipated activities will relate to, and result from, those investigations conducted pursuant to the 1996 Rule.

While the use of DEA attorneys detailed as SAUSAs and funded through the DCFA is a new concept, the use of attorneys detailed as SAUSAs to complement the capabilities of the United States Attorneys' Offices is not. Applicable Department of Justice policy states the following regarding SAUSAs employed by other agencies:

Attorneys employed in other departments or agencies of the federal government may be appointed as Special Assistants to United States Attorneys, without compensation other than that paid by their own agency, to assist in the trial or presentation of cases when their services and assistance are needed. Such appointments, and appointments of Assistant United States Attorneys from one United States Attorney's office to another, may be made by the United States Attorney requiring their services.⁹

In many areas, SAUSAs have been designated from state and local prosecutors' offices to allow a greater volume of specific types of cases (firearms cases primarily) to be presented in federal court than would otherwise be possible with the resources allocated to the United States Attorneys' Office. Likewise, funds from the Federal High Intensity Drug Trafficking Area (HIDTA) grant program have been utilized to hire attorneys to serve as SAUSAs that specifically provide prosecutorial and legal services to

⁵ Centers for Disease Control 2014 Deaths, Final Data Report.

⁶ Centers for Disease Control, Increases in Drug and Opioid-Involved Overdose Deaths—United States, 2010–2015.

⁷ Substance Abuse and Mental Health Services Administration December 2012 Report entitled Admissions Reporting Benzodiazepine and Narcotic Pain Reliever Abuse at Treatment Entry.

⁸ The Executive Office for United States Attorneys (EOUSA) is the Department of Justice component that provides administrative and policy oversight to the 94 Offices of the United States Attorney.

⁹ U.S. Dep't of Justice, United States Attorneys' Manual, § 3–2.300 (1998), available at <https://www.justice.gov/usam/usam-3-2000-united-states-attorneys-ausas-special-assistants-and-agac>.

narcotics task forces funded by the HIDTA program. Both of these programs have been highly effective and serve as good models for the proposed use of DCFA-funded SAUSAs to prosecute diversion-related offenses.

The goal of this proposed effort is to ensure the effective and efficient use of DCFA resources dedicated to the TDS program by providing resources to help ensure that criminal and related civil cases with sufficient evidence are prosecuted in a timely manner. All DCFA-funded SAUSAs in the program would be utilized exclusively to support DCFA-funded investigations conducted by the DEA and its partnering law enforcement agencies. The types of investigations in which the SAUSAs will assist, and the crimes they will prosecute will stem from the types of investigations identified in the 1996 Rule, which states: “The targets and types of investigations conducted by the DCP pursuant to 21 U.S.C. 821 are identified below.

(1) Registrants and their agents or employees suspected of diverting controlled substances from legitimate channels;

(2) Persons who engage in the smuggling, theft, robbery and/or trafficking of pharmaceutical controlled substances, including, where appropriate, identifying and immobilizing their sources of supply, whether domestic or foreign, through enforcement of the controls relating to the manufacture, distribution, import, export, and dispensing of controlled substances;

(3) Persons, both registered and nonregistered, who conduct controlled substances activities for which they do not have the required DOA or state authorization;

(4) Persons who obtain pharmaceutical controlled substances from registrants through fraud, deceit, or circumvention of the controls on manufacturing, distribution, or dispensing, *i.e.* fraudulent use of another person’s DEA registration number to obtain controlled substances, doctor shoppers, prescription forgers, etc.;

(5) The trafficking by non-registrants in controlled substances which are fraudulently promoted as legitimate therapies (such as “herbal remedies” sold “under the counter” which actually contain a controlled substance);

(6) Persons who use their DEA registrations to assist in the diversion or misuse of controlled substances for other than medical purposes, such as health care fraud, self-abuse, trading controlled substances for non-medical purposes, etc.” 61 FR 68629.

During the course of the investigations described in paragraphs 1 through 6 of the 1996 Rule, additional criminal activity may be uncovered. To the extent this additional criminal activity is committed by an individual or group of individuals whose primary criminal activity is described in paragraphs 1 through 6 of the 1996 Rule, and the additional criminal activity is derivative of, or ancillary to, the illegal activity described in those paragraphs, the investigations have included this additional criminal activity, and these crimes will be prosecuted by the SAUSAs described in this proposed rule. Examples of this type of additional criminal activity would include weapons offenses or crimes of violence in support of diversion offenses; money laundering, structuring or other financial violation to support diversion offenses, or utilizing monies derived from diversion offenses; the use of a telecommunication device in support of diversion offenses; and the forfeiture of assets derived from, or facilitating, diversion offenses.

Cost of the SAUSA Program

The DEA proposes to initially hire 20 attorneys utilizing funding from the DCFA to implement the program. The initial 20 attorneys would be selected to serve in a minimum of 12 and maximum of 20 federal judicial districts at an estimated annual cost of \$3.8 million.¹⁰ With an annual, Congressionally-approved budget of more than \$371,000,000.00 (Fiscal Year 2016), the expenditures related to the SAUSA program would comprise only 1% of the annual DCFA budget. As a result of the low cost in comparison to the overall DCFA budget, as well as the reprioritization of other DCFA expenditures, this project is not expected to result in an increase to the registration fee schedule. If finalized, this program would be continually evaluated by the DEA to ensure that DCFA funding is spent in accordance with guidelines for the use of DCFA funding found in 21 U.S.C. 821, 822, and 886a; the 1996 Rule; 76 FR 39318, July 6, 2011; and the 2012 Rule. DEA would also continuously evaluate the program to ensure that the project is successful in securing the criminal and civil prosecutions necessary to justify

¹⁰ The cost estimate for the 20 positions is based on the U.S. Office of Personnel Management 2016 General Schedule (GS) Locality Pay Table for “Washington-Baltimore-Arlington, DC-MD-VA-WV-PA” at the GS-15 Step 5 level of \$145,162. The “Washington-Baltimore-Arlington, DC-MD-VA-WV-PA” is used to be conservative. Including an estimated 30% for benefits, the estimated cost per position is \$188,711 per year, or \$3,774,212 (\$3.8 million) per year for all 20 positions.

the continued expenditure of DCFA funding.

Regulatory Analyses

Executive Orders 12866 and 13563

This proposed rule was developed in accordance with the principles of Executive Orders 12866 and 13563. As described previously, the estimated annual cost of \$3.8 million is less than 1% of the annual DCFA budget and sufficient funding exists in the DCFA budget to allow for this program due to the reprioritization of other budgetary items within the DCP. This program will result in a net zero economic effect and no impact on registration fees. Therefore, the DEA does not anticipate that this rulemaking will have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.

This proposed rule is not a “significant regulatory action” under Executive Order 12866 Section 3(f).

Executive Order 12988

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13132

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

Executive Order 13175

This proposed rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities between the Federal Government and Indian tribes.

Unfunded Mandates Reform Act

This proposed rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed

necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532.

Regulatory Flexibility Act

The Administrator, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA), has reviewed this proposed rule and by approving it certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. There are nearly 1.7 million DEA registrations, of which, a large majority either are held by small entities or are those employed by small entities. As discussed above, the DEA estimates the estimated annual cost of \$3.8 million is offset by reprioritization of other DCFA expenditures, resulting in a net zero economic effect and no impact on registration fees for any registrants. Therefore, the DEA estimates that the rule will not, if promulgated, have a significant effect on a substantial number of these small entities.

Paperwork Reduction Act of 1995

This action does not impose a new collection of information requirement under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521

Dated: March 11, 2017.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2017–05396 Filed 3–20–17; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2017–0168]

RIN 1625–AA08

Special Local Regulation; Corsica River, Queen Anne's County, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish special local regulations for certain waters of the Corsica River. This action is necessary to provide for the safety of life on the navigable waters located in Queen Anne's County, MD during a rowing event on April 22, 2017. If necessary, due to inclement weather, the event will be rescheduled to April 23, 2017. This proposed rulemaking would prohibit persons and vessels from entering the regulated area unless authorized by the Captain of the

Port Maryland-National Capital Region or the Coast Guard Patrol Commander. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before April 20, 2017.

ADDRESSES: You may submit comments identified by docket number USCG–2017–0168 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Mr. Ronald Houck, U.S. Coast Guard Sector Maryland-National Capital Region; telephone 410–576–2674, email Ronald.L.Houck@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
E.O. Executive order
FR Federal Register
NPRM Notice of proposed rulemaking
Pub. L. Public Law
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

On February 16, 2017, The Gunston School of Centreville, MD notified the Coast Guard that it will be conducting a rowing regatta from 8 a.m. until 2 p.m. on April 22, 2017, and if necessary, due to inclement weather, from 8 a.m. until 2 p.m. on April 23, 2017. The high school rowing event consists of approximately 30 participants competing on a designated 1500-meter distance course in the Corsica River that starts at Rocky Point and finishes at Jacobs Nose near Centreville, MD. Hazards from the rowing competition include participants operating within and adjacent to the designated navigation channel and interfering with vessels intending to operate within that channel, as well as rowing within approaches to local public and private marinas and boat facilities. The COTP Maryland-National Capital Region has determined that potential hazards associated with the rowing event would be a safety concern for anyone intending to participate in this event or for vessels that operate within specified waters of the Corsica River in Queen Anne's County, MD.

The purpose of this rulemaking is to protect event participants, spectators and transiting vessels on specified waters of the Corsica River before, during, and after the scheduled event.

The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1233, which authorize the Coast Guard to establish and define special local regulations.

III. Discussion of Proposed Rule

The COTP Maryland-National Capital Region proposes to establish special local regulations from 7:30 a.m. until 2:30 p.m. on April 22, 2017, and if necessary, due to inclement weather, from 7:30 a.m. until 2:30 p.m. on April 23, 2017. The regulated area would include all navigable waters of the Corsica River, from shoreline to shoreline, within an area bounded on the east by a line drawn from latitude 39°04'32" N., longitude 076°05'20" W., thence south to latitude 39°04'07" N., longitude 076°05'20" W., and bounded on the west by a line drawn from latitude 39°04'59" N., longitude 076°06'30" W., thence south to latitude 39°04'44" N., longitude 076°06'30" W., located near Centreville, MD. The duration of the regulated area is intended to ensure the safety of event participants and vessels within the specified navigable waters before, during, and after the scheduled 8 a.m. until 2 p.m. rowing competition. Except for The Gunston Invitational participants, no vessel or person would be permitted to enter the regulated area without obtaining permission from the COTP Maryland-National Capital Region or the Coast Guard Patrol Commander. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

E.O.s 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. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a “significant regulatory action,” under E.O. 12866. Accordingly,

the NPRM has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size and duration of the regulated area, which would impact a small designated area of the Corsica River for 7 hours. The Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the status of the regulated area. Moreover, the rule would allow vessel operators to request permission to enter the regulated area for the purpose of safely transiting the regulated area if deemed safe to do so by the Coast Guard Patrol Commander.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves implementation of regulations within 33 CFR part 100 applicable to organized marine events on the navigable waters of the United States

that may negatively impact the safety of waterway users and shore side activities within the event area. This category of marine event water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, canoe and sail board racing. Normally such actions are categorically excluded from further review under paragraph 34(h) of Figure 2–1 of Commandant Instruction M16475.ID. A preliminary environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online

docket at <http://www.regulations.gov> and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

- 2. Add § 100.35–T05–0168 to read as follows:

§ 100.501–T05–0168 Special Local Regulation; Corsica River, Queen Anne's County, MD.

(a) *Definitions.* (1) *Captain of the Port Maryland-National Capital Region* means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(2) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Maryland-National Capital Region.

(3) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(4) *Participant* means all persons and vessels participating in The Gunston Invitational event under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Maryland-National Capital Region.

(b) *Regulated area.* The following location is a regulated area: All navigable waters of the Corsica River, from shoreline to shoreline, within an area bounded on the east by a line drawn from latitude 39°04'32" N., longitude 076°05'20" W., thence south to latitude 39°04'07" N., longitude 076°05'20" W., and bounded on the west by a line drawn from latitude 39°04'59" N., longitude 076°06'30" W., thence south to latitude 39°04'44" N., longitude 076°06'30" W., located near Centreville,

MD. All coordinates reference Datum NAD 1983.

(c) *Special local regulations.* (1) The Coast Guard Patrol Commander may forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area shall immediately comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both. The Coast Guard Patrol Commander may terminate the event, or the operation of any support vessel participating in the event, at any time it is deemed necessary for the protection of life or property.

(2) Except for participants and vessels already at berth, all persons and vessels within the regulated area at the time it is implemented shall depart the regulated area.

(3) Persons and vessels desiring to transit, moor, or anchor within the regulated area must obtain authorization from Captain of the Port Maryland-National Capital Region or Coast Guard Patrol Commander. Prior to the enforcement period, vessel operators may request permission to transit, moor, or anchor within the regulated area from Captain of the Port Maryland-National Capital Region at telephone number 410–576–2693 or on Marine Band Radio, VHF–FM channel 16 (156.8 MHz). During the enforcement period, persons or vessel operators may request permission to transit, moor, or anchor within the regulated area from the Coast Guard Patrol Commander on Marine Band Radio, VHF–FM channel 16 (156.8 MHz).

(4) The Coast Guard may be assisted with marine event patrol and enforcement of the regulated area by other Federal, State, and local agencies. The Coast Guard Patrol Commander and official patrol vessels enforcing this regulated area can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz) and channel 22A (157.1 MHz).

(5) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF–FM marine band radio announcing specific event date and times.

(d) *Enforcement period.* This section will be enforced from 7:30 a.m. until 2:30 p.m. on April 22, 2017, and if necessary, due to inclement weather, from 7:30 a.m. until 2:30 p.m. on April 23, 2017.

Dated: March 15, 2017.

Lonnie P. Harrison, Jr.,

Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.

[FR Doc. 2017–05544 Filed 3–20–17; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2017–0034; FRL–9958–93–Region 9]

Approval of California Air Plan Revisions, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). This revision concerns emissions of oxides of nitrogen (NO_x) and particulate matter (PM) from boilers, steam generators, and process heaters. We are proposing to approve revisions to a local rule to regulate these emission sources under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by April 20, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2017–0034 at <http://www.regulations.gov>, or via email to Andrew Steckel, Rulemaking Office Chief at Steckel.Andrew@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For

additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT:
Nicole Law, EPA Region IX, (415) 947 4126, Law.Nicole@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, “we,” “us” and “our” refer to the EPA.

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I. The State’s Submittal

A. What rule did the State submit?

Table 1 lists the rule addressed by this proposal with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULE

Local agency	Rule number	Rule title	Amended	Submitted
SJVUAPCD	4307	Boilers, Steam Generators, and Process Heaters- 2.0 MMBtu/hr to 5.0 MMBtu/hr.	04/21/16	08/22/16

On September 27, 2016, the EPA determined that the submittal for SJVUAPCD Rule 4307 met the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of this rule?

We approved an earlier version of Rule 4307 into the SIP on February 12, 2015 (80 FR 7803). The SJVUAPCD adopted revisions to the SIP-approved version on April 21, 2016 and CARB submitted them to us on August 22, 2016.

C. What is the purpose of the submitted rule revision?

NO_x helps produce ground-level ozone, smog and PM, which harm human health and the environment. PM, including PM equal to or less than 2.5 microns in diameter (PM_{2.5}) and PM equal to or less than 10 microns in diameter (PM₁₀), contributes to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires states to submit regulations that control NO_x and PM emissions. Rule 4307 contains emission limitations for NO_x and PM. It has been revised to require tree nut pasteurizers to be fired using Public Utility Commission quality natural gas or Liquefied Petroleum Gas (LPG). The EPA’s technical support document (TSD) has more information about this rule.

II. The EPA’s Evaluation and Action

A. How is the EPA evaluating the rule?

SIP rules must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

Generally, SIP rules must require Reasonably Available Control Technology (RACT) for each major source of NO_x in ozone nonattainment areas classified as moderate or above (see CAA sections 182(b)(2) and 182(f)). The SJVUAPCD regulates an ozone nonattainment area classified as extreme nonattainment for the 8-hour 1997 and 2008 ozone standards (40 CFR 81.305). Therefore, this rule must implement RACT. Additionally, SIP rules must implement Best Available Control Measures (BACM), including Best Available Control Technology (BACT), in serious PM_{2.5} nonattainment areas (see CAA section 189(b)(1)(B)). The SJVUAPCD regulates a PM_{2.5} nonattainment area classified as serious nonattainment for the 24-hour PM_{2.5} standard (40 CFR 81.305). A BACM and BACT evaluation is generally performed in the context of a broader plan.

Guidance and policy documents that we use to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. “State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,” 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).

2. “Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,” EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).

3. “Guidance Document for Correcting Common VOC & Other Rule Deficiencies,” EPA Region 9, August 21, 2001 (the Little Bluebook).

4. “State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,” (the NO_x Supplement), 57 FR 55620, November 25, 1992.

5. “Alternative Control Techniques Document- NO_x Emissions from Industrial/ Commercial/Institutional (ICI) Boilers” (EPA-453/R-94-022-1994/03, March 1994).

6. “Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters,” (CARB, July 18, 1991).

B. Does the rule meet the evaluation criteria?

We believe this rule is consistent with CAA requirements and relevant guidance regarding enforceability, RACT, and SIP revisions. The rule is expanding the exemption for tree-nut pasteurizers to include those fueled on LPG. However, the increased emissions from these sources will be negligible. The TSD has more information on our evaluation.

C. EPA Recommendations to Further Improve the Rule

The TSD describes additional rule revisions that we recommend for the next time the local agency modifies the rule.

D. Public Comment and Proposed Action

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rule because we

believe it fulfills all relevant requirements. We will accept comments from the public on this proposal until April 20, 2017. If we take final action to approve the submitted rule, our final action will incorporate this rule into the federally enforceable SIP.

III. Incorporation by Reference

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

IV. Statutory and Executive Order Reviews

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

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

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

Dated: January 13, 2017.

Alexis Strauss,
Regional Administrator, Region IX.

[FR Doc. 2017-05056 Filed 3-20-17; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2017-0043; FRL-9958-99-Region 9]

Approval and Promulgation of Implementation Plans; California; California Mobile Source Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the California State Implementation Plan (SIP) consisting of California Air Resources Board regulations establishing standards and other requirements relating to the control of emissions from new on-road

and new and in-use off-road vehicles and engines. The EPA is proposing to approve these regulations because the regulations meet the applicable requirements of the Clean Air Act. Approval of the regulations as part of the California SIP would make them federally enforceable.

DATES: Any comments on this proposal must arrive by April 20, 2017.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2017-0043 at <http://www.regulations.gov>, or via email to John Ungvarsky, Planning Office at Ungvarsky.john@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: John Ungvarsky, EPA Region IX, (415) 972-3963, Ungvarsky.john@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, "we," "us" and "our" refer to the EPA. This proposal addresses California Air Resources Board regulations establishing standards and other requirements relating to the control of emissions from new on-road and new and in-use off-road vehicles and engines. In the Rules and Regulations section of this **Federal Register**, we are approving these regulations in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in

subsequent action based on this proposed rule. Please note that if we receive adverse comment on a particular rule, we may adopt as final those/the rule(s) that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: January 18, 2017.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 2017-05058 Filed 3-20-17; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2016-0550; FRL-9957-55-Region 6]

Approval and Promulgation of Implementation Plans; Texas; El Paso Carbon Monoxide Limited Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve the required second carbon monoxide (CO) maintenance plan as a revision to the Texas State Implementation Plan (SIP). The El Paso, Texas CO maintenance area (El Paso Area) has been demonstrating consistent air quality monitoring at or below 85% of the CO National Ambient Air Quality Standard (NAAQS or standard). Because of this, the State of Texas, through its designee, submitted the required second maintenance plan for the El Paso Area as a Limited Maintenance Plan (LMP).

DATES: Written comments should be received on or before April 20, 2017.

ADDRESSES: Submit your comments, identified by EPA-R06-OAR-2016-0550, at <http://www.regulations.gov> or via email to riley.jeffrey@epa.gov. For additional information on how to submit comments see the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Jeffrey Riley, 214-665-8542, riley.jeffrey@epa.gov.

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, the EPA is approving the State's SIP submittal as a direct rule without prior proposal because the Agency views this as noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action no further activity is contemplated. If the EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: March 13, 2017.

Samuel Coleman,

Acting Regional Administrator, Region 6.

[FR Doc. 2017-05378 Filed 3-20-17; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2011-0695; FRL-9957-42-Region 6]

Approval and Promulgation of Implementation Plans; New Mexico; Albuquerque/Bernalillo County; Inspection and Maintenance Program Error Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or Act), the Environmental Protection Agency (EPA) is proposing to approve an error correction to a previously approved diesel inspection and maintenance (I/M) program provision in Albuquerque/Bernalillo County's State Implementation Plan (SIP). This action is based on our determination that at the time EPA approved the diesel I/M Program the State did not have the legal authority to expand its program to require the testing of 1998 and newer diesel motor vehicles greater than 1,000 and less than 10,001 pounds.

DATES: Written comments should be received on or before April 20, 2017.

ADDRESSES: Submit your comments, identified by EPA-R06-OAR-2011-

0695, at <http://www.regulations.gov> or via email to walser.john@epa.gov. For additional information on how to submit comments see the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. John Walser, (214) 665-7128, walser.john@epa.gov.

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, the EPA is approving the State's SIP submittal as a direct rule without prior proposal because the Agency views this as noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action no further activity is contemplated. If the EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: March 13, 2017.

Samuel Coleman,

Acting Regional Administrator, Region 6.

[FR Doc. 2017-05377 Filed 3-20-17; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171, 172, 173, 174, 177, 178, 179, and 180

[Docket No. PHMSA-2016-0077 (HM-251D)]

RIN 2137-AF24

Hazardous Materials: Volatility of Unrefined Petroleum Products and Class 3 Materials

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Advance notice of proposed rulemaking (ANPRM); Extension of comment period.

SUMMARY: PHMSA is extending the comment period for an advance notice of proposed rulemaking that was published in the **Federal Register** on

January 18, 2017. In response to stakeholder requests, the comment period will be extended for an additional 60 days, from March 20, 2017 to May 19, 2017.

DATES: Comments must be received on or before May 19, 2017. To the extent possible, PHMSA will consider late-filed comments during the next stage of the rulemaking process.

ADDRESSES: You may submit comments identified by Docket No. PHMSA–2016–0077 by any of the following methods:

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

- *Fax:* 1–202–493–2251.

- *Mail:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue SE., Washington, DC 20590.

- *Hand Delivery:* To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: All submissions must include the agency name and docket number for this rulemaking at the beginning of the comment. Note that all comments received will be posted without change to the docket management system, including any personal information provided.

Docket: For access to the dockets to read background documents or comments received, go to <http://www.regulations.gov>, or DOT's Docket Operations Office (see **ADDRESSES**).

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at www.dot.gov/privacy.

FOR FURTHER INFORMATION CONTACT: Lad Falat, Director, Engineering and Research, (202) 366–4545, Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey

Avenue SE., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On January 18, 2017, PHMSA published an advance notice of proposed rulemaking (ANPRM) titled, “Hazardous Materials: Volatility of Unrefined Petroleum Products and Class 3 Materials,” addressing the volatility of unrefined petroleum products and potentially all Class 3 flammable liquids transported by means other than pipeline. See (82 FR 5499). The ANPRM informed stakeholders of a possible change to the Hazardous Materials Regulations based on a petition for rulemaking submitted by the Attorney General of the State of New York regarding vapor pressure limits for crude oil.

The ANPRM posed 39 questions on a wide variety of topics ranging from sampling and testing, proper classification, and numerous characteristics of crude oil relevant to its unique hazards. Specifically, PHMSA sought comments on whether there should be national vapor pressure standards for petroleum products and/or other Class 3 hazardous materials and, if so, recommendations for such thresholds. It was the intent of the ANPRM to obtain the views of those affected by the North Dakota Industrial Commission (NDIC) Order, as well as those who are likely to be impacted by the changes proposed in the petition P–1669 (as discussed in detail in the January 18, 2017 ANPRM), including those who are likely to benefit from, be adversely affected by, or potentially be subject to additional regulation.

PHMSA sought comment on the ANPRM to assist in:

1. Determining the best metric or combination of metrics (vapor pressure or other metric) for measuring and controlling fire and explosion risk in crude oil transport;
2. Quantifying the improvement in safety if any, due to risk reduction from implementation of vapor pressure thresholds at varying levels;
3. Identifying offerors' compliance strategies and market impacts with Reid Vapor Pressure (RVP) standards at varying levels of stringency, and estimating their economic costs and environmental impacts;
4. Identifying other regulations and industry practices, such as volatile

organic compound emissions standards imposed through the Clean Air Act, or State regulations, or pipeline operator RVP standards, potentially affecting compliance strategies and costs, and safety benefits;

5. Evaluating the extent to which use of DOT Specification 117 tank cars mitigates the risk of transporting crude oil;

6. Comparing compliance costs of mitigation strategies with risk reduction from adoption of the petition; and

7. Balancing the benefits and costs in setting the level of the chosen metric.

II. Comment Period Extension

PHMSA received an initial request from the American Petroleum Institute (API) to extend the comment period for the ANPRM by 30 days. API indicated in their request that industry needs extra time to obtain information on experiences with classification, testing, sampling, and packaging of unrefined petroleum products. Because of the number of questions posted, the technical nature of the questions, and the potentially broad implications to operations throughout the supply chain, API believes the opportunity for a thorough review before responding to PHMSA is crucial for any future rulemaking. Subsequent to the API request, PHMSA has received additional requests from other entities to extend the comment period. For instance, the North Dakota Petroleum Council also requests an extension; however, they have requested a 60-day extension.

PHMSA provided an initial 60-day comment period to the ANPRM. However, due to our desire to collect meaningful input from a number of potentially affected stakeholders and to the demand by various entities, we agree with the requests to extend the comment period to allow further time for public input. Given the number and variety of requests, PHMSA is extending the comment period by 60 days.

Issued in Washington, DC on March 15, 2017, under authority delegated in 49 CFR 1.97.

William S. Schoonover,

Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2017–05488 Filed 3–20–17; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register

Vol. 82, No. 53

Tuesday, March 21, 2017

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-475-818]

Certain Pasta From Italy: Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On September 13, 2016, the Department of Commerce (the Department) initiated a changed circumstances review of the antidumping duty order on certain pasta from Italy in order to determine whether Francesco Tamma S.p.A (Tamma) is the successor-in-interest to Tamma Industrie Alimentari S.r.l. (TIAC), the company affiliated with Delverde, S.r.l. (Delverde), which was excluded from the order on pasta from Italy. We preliminarily determine that Tamma is not the successor-in-interest to TIAC. We invite interested parties to comment on these preliminary results.

DATES: Effective March 21, 2017.

FOR FURTHER INFORMATION CONTACT: Joy Zhang, Office III, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-1168.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 1996, the Department published in the **Federal Register** the antidumping duty order on pasta from Italy, which included Delverde and its affiliate TIAC¹ (collectively, Delverde/TIAC).² Pursuant to a decision by the

Court of International Trade, on remand, the Department determined that Delverde/TIAC had a *de minimis* dumping margin and should be excluded from the order on pasta from Italy (hereinafter referred to as the *Pasta Order*).³

In 2014, the Department conducted a changed circumstances review (CCR) of Delverde Industrie Alimentari S.p.A. (Delverde S.p.A.) and found that Delverde S.p.A. was not the successor-in-interest to Delverde based on aspects of the bankruptcy of Delverde, changes in management, changes in supplier relationships, and changes in production facilities.⁴ Thus, the Department found that Delverde S.p.A. was not entitled to the exclusion from the *Pasta Order* that was originally granted to Delverde, a defunct entity.⁵

On July 29, 2016, American Italian Pasta Company, Dakota Growers Pasta Company, and New World Pasta Company (Petitioners) filed a request for the Department to initiate a CCR of Tamma to determine whether Tamma is the successor-in-interest to TIAC, the company excluded from the *Pasta Order* that was previously affiliated with the now defunct Delverde.⁶ On September 13, 2016, we initiated a CCR with respect to Tamma.⁷

On September 13, 2016, the Department requested information from Tamma, which, after an extension, was submitted on October 12, 2016 (hereinafter referred to as the Initial Response). On November 14, 2016, the

Than Fair Value: Certain Pasta from Italy, 61 FR 38547 (July 24, 1996) (*Pasta Order*).

³ See *Notice of Amendment of Final Determination of Sales at Less Than Fair Value Pursuant to Court Decision and Revocation in Part: Certain Pasta from Italy*, 66 FR 65889 (December 21, 2001).

⁴ See *Certain Pasta from Italy: Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review*, 79 FR 28481 (May 16, 2014); unchanged in *Certain Pasta from Italy: Notice of Final Results of Antidumping Duty Changed Circumstances Review*, 79 FR 76339 (September 19, 2014) and accompanying Issues and Decision Memorandum (*Delverde CCR*).

⁵ See *Delverde CCR*.

⁶ See Petitioners' letter titled, "Request for 2015-2016 Administrative Reviews of the Antidumping Duty Order on Certain Pasta from Italy," dated July 29, 2016. This letter requests an administrative review and changed circumstances review of Tamma. On August 11, 2016, Petitioners refiled this review request to clarify the specific company names requested for review.

⁷ See *Certain Pasta from Italy: Initiation of Changed Circumstances Review*, 81 FR 62864 (September 13, 2016) (*Initiation Notice*).

Department requested additional information from Tamma, which was provided on December 9, 2016 (hereinafter referred to as Supplemental Response).

Scope of the Order

Imports covered by this order are shipments of certain non-egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions. The merchandise subject to this order is currently classifiable under items 1901.90.90.95 and 1902.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise subject to the Order is dispositive.

For a full description of the scope, see the memorandum titled, "Preliminary Results of Changed Circumstances Review, Regarding Successor-In-Interest Analysis: Certain Pasta from Italy," dated concurrently with and hereby adopted by this notice.⁸ The Preliminary Results of Changed Circumstances Review memorandum is a business proprietary document of which the public version is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>, and it is available to all parties in the Central Records Unit, room B8024, of the main Department of Commerce building. In addition, a complete public version of the Preliminary Results of Changed Circumstances Review memorandum

⁸ See Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, titled "Preliminary Results of Changed Circumstances Review Regarding Successor-In-Interest Analysis: Certain Pasta from Italy," dated concurrently with this notice (Preliminary Results of Changed Circumstances Review memorandum).

¹ On July 27, 2016, TIAC changed its corporate name to Francesco Tamma S.p.A. (Tamma). See Tamma's letter "Certain Pasta from Italy: Changed Circumstances Review Response of Francesco Tamma S.p.A." dated October 12, 2016.

² See *Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less*

can be accessed directly on the internet at <http://enforcement.trade.gov/frn/index.html>. The signed Preliminary Results of Changed Circumstances Review memorandum and the electronic version of the Preliminary Results of Changed Circumstances Review memorandum are identical in content.

Methodology

In accordance with section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), we are conducting this CCR based upon the information contained in the submissions of Tamma.⁹ For a full description of the methodology underlying our conclusions, see the Preliminary Results of Changed Circumstances Review memorandum.

Preliminary Results of Changed Circumstances Review

Based on record evidence, we preliminarily determine that Tamma is not the successor-in-interest to TIAC, the company in the Delverde/TIAC entity, which was excluded from the *Pasta Order*. Specifically, we preliminarily determine that the current management of Tamma is materially dissimilar to the management of TIAC before Delverde's bankruptcy in 2005. We also preliminarily determine that the ownership and management structure of Tamma is materially dissimilar to the management of TIAC, due to the acquisition of TIAC's stock by Satel S.r.L. (Satel) in 2016. In addition, we find that Tamma did not demonstrate that its operations, with respect to the subject merchandise, were materially similar to the operations of TIAC when it comes to supplier relationships and customer base. Thus, we preliminarily determine that Tamma does not operate as the same business entity as TIAC with respect to the subject merchandise. A list of topics discussed in the Preliminary Results of Changed Circumstances Review memorandum appears in the Appendix to this notice.

Consequently, we preliminarily determine that Tamma should not be given the same antidumping duty treatment as the Delverde/TIAC entity. This determination will apply to all entries of the subject merchandise entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this changed circumstances review.¹⁰ If we

reach the same conclusion in the final results, the cash deposit for Tamma will be 15.45 percent, the all-others rate established in the antidumping duty investigation, as modified by the *Section 129 Determination*.¹¹

Public Comment

Pursuant to 19 CFR 351.309(c), interested parties may submit cases briefs not later than 10 days after the date of publication of this notice via ACCESS. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs. Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically filed document must be received successfully in its entirety by ACCESS, no later than 5:00 p.m. Eastern Time within 10 days after the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in case briefs.

Consistent with 19 CFR 351.216(e), we will issue the final results of this changed circumstances review no later than 270 days after the date on which this review was initiated, or within 45 days after the publication of the preliminary results if all parties in this review agree to our preliminary results.

We are issuing and publishing this determination and notice in accordance with sections 751(b) and 777(i)(1) of the Act and 19 CFR 351.216 and 351.221.

Dated: March 15, 2017.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Changed Circumstances Review Memorandum

- I. Background
- II. Scope of the Order
- III. Successor-In-Interest Determination
 1. Management

¹¹ See *Implementation of Determinations Pursuant to Section 129 of the Uruguay Round Agreements Act*, 81 FR 37180 (June 9, 2016) (*Section 129 Determination*).

2. Production Facilities
3. Supplier Relationship
4. Customer Base

[FR Doc. 2017–05530 Filed 3–20–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–899]

Certain Artist Canvas From the People's Republic of China: Continuation of the Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (“Department”) and the International Trade Commission (“ITC”) in their five year (“sunset”) reviews that revocation of the antidumping duty (“AD”) order on certain artist canvas from the People's Republic of China (“PRC”) would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing a notice of continuation of the AD order on certain artist canvas from the PRC.

DATES: Effective March 21, 2017.

FOR FURTHER INFORMATION CONTACT: Paul Stolz; AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: 202–482–4474.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 2006, the Department published the AD order on certain artist canvas from the PRC.¹ On October 3, 2016, the Department initiated the second sunset review of the AD order on certain artist canvas from the PRC, pursuant to section 751(c) of the Tariff Act of 1930, as amended (“Act”).² As a result of its review, the Department determined that revocation of the AD order on certain artist canvas from the PRC would likely lead to a continuation or recurrence of dumping and, therefore, notified the ITC of the magnitude of the margins likely to prevail should the order be revoked.³ On February 22,

⁹ See Tamma Initial Response, dated October 12, 2016, and Supplemental Response, dated December 9, 2016.

¹⁰ See *Granular Polytetrafluoroethylene Resin from Italy: Final Results of Changed Circumstances Review*, 68 FR 25327 (May 12, 2003). See also *Delverde CCR*.

¹ See *Notice of Antidumping Duty Order: Certain Artist Canvas from the People's Republic of China*, 71 FR 31154 (June 1, 2006).

² See *Initiation of Five-Year (“Sunset”) Review*, 81 FR 67967 (October 3, 2016).

³ See *Artist Canvas from the People's Republic of China: Final Results of the Expedited Second*

2017, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the AD order on certain artist canvas from the PRC would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.⁴

Scope of the Order

The products covered by this order are artist canvases regardless of dimension and/or size, whether assembled or unassembled, that have been primed/coated, whether or not made from cotton, whether or not archival, whether bleached or unbleached, and whether or not containing an ink receptive top coat. Priming/coating includes the application of a solution, designed to promote the adherence of artist materials, such as paint or ink, to the fabric. Artist canvases (*i.e.*, pre-stretched canvases, canvas panels, canvas pads, canvas rolls (including bulk rolls that have been primed), printable canvases, floor cloths, and placemats) are tightly woven prepared painting and/or printing surfaces. Artist canvas and stretcher strips (whether or not made of wood and whether or not assembled) included within a kit or set are covered by this proceeding.

Artist canvases subject to this order are currently classifiable under subheadings 5901.90.20.00, 5901.90.40.00, 5903.90.2500, 5903.90.2000, 5903.90.1000, 5907.00.8090, 5907.00.8010, and 5907.00.6000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Specifically excluded from the scope of this order are tracing cloths, "paint by number" or "or "paint-it-yourself" artist canvases with a copyrighted preprinted outline, pattern, or design, whether or not included in a painting set or kit.⁵ Also excluded are stretcher strips, whether or not made from wood, so long as they are not incorporated into artist canvases or sold as part of an artist canvas kit or set. While the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Additionally, we have determined that canvas woven and primed in India,

but cut, stretched and framed in the PRC and exported from the PRC, are not subject to the order covering artist canvas from the PRC. *See Notice of Scope Rulings*, 75 FR 14138 (March 24, 2010).

Continuation of the Order

As a result of these determinations by the Department and the ITC that revocation of the AD order on certain artist canvas from the PRC would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the AD order on certain artist canvas from the PRC. U.S. Customs and Border Protection will continue to collect AD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the order will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of the order not later than 30 days prior to the fifth anniversary of the effective date of this continuation.

This five-year (sunset) review and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: March 13, 2017.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2017-05532 Filed 3-20-17; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-863]

Honey From the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review; 2015-2016

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (the Department) is partially rescinding the administrative review of the antidumping duty order on honey from the People's Republic of China (PRC) with respect to Shayang Xianghe Food Co., Ltd. (Shayang Xianghe) for December 1, 2015, through November 30, 2016.

DATES: Effective March 21, 2017.

FOR FURTHER INFORMATION CONTACT:

Carrie Bethea or Kabir Archuleta, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-1491 or (202) 482-2593, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 13, 2017, based on a timely request for review on behalf of the American Honey Producers Association and Sioux Honey Association (collectively, petitioners),¹ the Department published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on honey from the PRC covering the period December 1, 2015, through November 30, 2016.²

The review covers two companies: Shanghai Sunbeauty Trading Co., Ltd. and Shayang Xianghe. On February 28, 2017, petitioners timely withdrew their request for an administrative review of Shayang Xianghe.³ No other party requested an administrative review of this company.

Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review in whole or in part, if the party that requested the review withdraws its request within 90 days of the date of publication of the notice of initiation of the requested review. In this case, petitioners timely withdrew their request of Shayang Xianghe by the 90-day deadline, and there are no other outstanding requests for an administrative review of the antidumping duty order with respect to this company. As a result, pursuant to 19 CFR 351.213(d)(1), we are rescinding the administrative review of honey from the PRC for the period December 1, 2015, through November 30, 2016, in part, with respect to Shayang Xianghe.

Assessment Instructions

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. For the company for

¹ See Letter to the Secretary from Petitioners, entitled, "Honey from the People's Republic of China—Request for Administrative Review; 2015-2016," dated January 3, 2017.

² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 10457 (February 13, 2017).

³ See Letter to the Secretary from Petitioners, entitled, "Honey from the People's Republic of China—Petitioners' Withdrawal of Request for 2015/2016 Administrative Review, in Part," dated February 28, 2017.

Sunset Review of the Antidumping Duty Order, 82 FR 8723 (January 30, 2017).

⁴ See USITC Publication *Artists' Canvas from China*, (Inv. No. 731-TA-1091 (Second Review)), USITC Publication 4674, March 2017), and *Artist Canvas from China*, 82 FR 13011 (March 8, 2017).

⁵ Artist canvases with a non-copyrighted preprinted outline, pattern, or design are included in the scope, whether or not included in a painting set or kit.

which this review is rescinded, Shayang Xianghe, 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). The Department intends to issue appropriate assessment instructions to CBP 15 days after the publication of this notice in the **Federal Register**, if appropriate.

Notifications

This notice serves as a final 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 could result in the Department's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. 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 terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: March 15, 2017.

Gary Taverman,

Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2017-05531 Filed 3-20-17; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XF280

Mid-Atlantic Fishery Management Council (MAFMC); Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Highly Migratory Species (HMS) and Law Enforcement Committees of the Mid-Atlantic Fishery Management Council (Council) will hold a joint meeting.

DATES: The meeting will be held on Thursday, April 6, 2017, beginning at 9 a.m. For agenda details, see

SUPPLEMENTARY INFORMATION.

ADDRESSES: The meeting will be held via webinar with a telephone-only connection option. Details will be posted at <http://www.mafmc.org/council-events/2017/joint-hms-law-enforcement-committee-meeting-webinar>.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674-2331 or on their Web site at www.mafmc.org.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526-5255.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to address permitting and catch reporting requirements/compliance in HMS-permitted fisheries.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526-5251, at least 5 days prior to the meeting date.

Dated: March 16, 2017.

Tracey L. Thompson,

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

[FR Doc. 2017-05537 Filed 3-20-17; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XF288

Permits; Foreign Fishing

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

ACTION: Notice of application for permit; request for comments.

SUMMARY: NMFS publishes for public review and comment information regarding a permit application for transshipment of Atlantic herring by

Canadian vessels, submitted under provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This action is necessary for NMFS to make a determination that the permit application can be approved.

DATES: Written comments must be received by April 4, 2017.

ADDRESSES: Written comments on this action, identified by RIN 0648-XF288, should be sent to Kent Laborde in the NMFS Office for International Affairs and Seafood Inspection at 1315 East-West Highway, Silver Spring, MD 20910 or by email at kent.laborde@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Kent Laborde at (301) 427-8364 or by email at kent.laborde@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 204(d) of the Magnuson-Stevens Act (16 U.S.C. 1824(d)) authorizes the Secretary of Commerce (Secretary) to issue a transshipment permit authorizing a vessel other than a vessel of the United States to engage in fishing consisting solely of transporting fish or fish products at sea from a point within the United States Exclusive Economic Zone (EEZ) or, with the concurrence of a state, within the boundaries of that state, to a point outside the United States. In addition, Public Law 104-297, section 105(e), directs the Secretary to issue section 204(d) permits to up to 14 Canadian transport vessels that are not equipped for fish harvesting or processing, for the transshipment of Atlantic herring harvested by United States fishermen and to be used solely in sardine processing. Transshipment must occur from within the boundaries of the State of Maine or within the portion of the EEZ east of the line 69 degrees 30 minutes west and within 12 nautical miles from Maine's seaward boundary.

Section 204(d)(3)(D) of the Magnuson-Stevens Act provides that an application may not be approved until the Secretary determines that "no owner or operator of a vessel of the United States which has adequate capacity to perform the transportation for which the application is submitted has indicated . . . an interest in performing the transportation at fair and reasonable rates." NMFS is publishing this notice as part of its effort to make such a determination with respect to the application described below.

Summary of Application

NMFS received an application requesting authorization for four Canadian transport vessels to receive

transfers of herring from United States purse seine vessels, stop seines, and weirs for the purpose of transporting the herring to Canada for sardine processing. The transshipment operations will occur within the boundaries of the State of Maine or within the portion of the EEZ east of the line 69°30' W. longitude and within 12 nautical miles from Maine's seaward boundary.

Dated: March 15, 2017.

John Henderschedt,

Director, Office for International Affairs and Seafood Inspection, National Marine Fisheries Service.

[FR Doc. 2017-05493 Filed 3-20-17; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

National Telecommunications and Information Administration

[Docket No.: PTO-P-2017-0003]

Public Meeting on Consumer Messaging in Connection With Online Transactions Involving Copyrighted Works

AGENCY: United States Patent and Trademark Office, Department of Commerce; National Telecommunications and Information Administration, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Department of Commerce's Internet Policy Task Force (Task Force) will host a public meeting at the United States Patent and Trademark Office (USPTO) facility in Alexandria, Virginia, on April 18, 2017, to discuss how best to communicate to consumers regarding license terms and restrictions in connection with online transactions involving copyrighted works. This follows up on one of the recommendations that the Task Force presented in its January 2016 *White Paper on Remixes, First Sale, and Statutory Damages*.

DATES: The public meeting will be held on April 18, 2017, from 1:00 p.m. to 5:00 p.m., Eastern Standard Time. Registration will begin at 12:30 p.m.

ADDRESSES: The public meeting will be held at the United States Patent and Trademark Office, Global Intellectual Property Academy (GIPA), Madison Building (East), Second Floor, 600 Dulany Street, Alexandria, VA 22314. All major entrances to the building are accessible to people with disabilities.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meeting, contact Nadine Herbert or Linda Quigley, Office of Policy and International Affairs, United States Patent and Trademark Office, Madison Building, 600 Dulany Street, Alexandria, VA 22314; telephone (571) 272-9300; email Nadine.Herbert@uspto.gov or Linda.Quigley@uspto.gov. Please direct all media inquiries to the Office of the Chief Communications Officer, USPTO, at (571) 272-8400.

SUPPLEMENTARY INFORMATION:

Background

A. Ongoing Government Engagement Relating to Copyright in the Digital Economy

The Department of Commerce established the Internet Policy Task Force (Task Force) in 2010 to identify leading public policy and operational issues impacting the U.S. private sector's ability to realize the potential for economic growth and job creation through the Internet. The Task Force has released two reports addressing copyright issues and the Internet, based on extensive stakeholder consultation and public input.

The Task Force's July 2013 report, *Copyright Policy, Creativity, and Innovation in the Digital Economy* (Green Paper),¹ was a comprehensive overview of copyright policy in the digital environment. In October 2013, the USPTO and NTIA published a request for public comments² relating to three areas of work flowing out of the Green Paper, including: (1) The legal framework for the creation of remixes;³ (2) the relevance and scope of the first sale doctrine in the digital environment;⁴ and (3) the appropriate calibration of statutory damages in the contexts of individual file-sharers and secondary liability for mass online services.⁵ Following the release of the Green Paper, stakeholders provided input on these policy issues through two rounds of written comments, a

public meeting, and four roundtables held around the country.⁶

In its 2016 *White Paper on Remixes, First Sale, and Statutory Damages*⁷ (White Paper), the Task Force addressed these three issues. As to the first sale doctrine, based on a weighing of benefits and risks, the Task Force determined that amending the law to extend the doctrine to digital transmissions of copyrighted works was not advisable at the time.

However, the Task Force did recommend non-legislative action to address certain concerns expressed by a number of stakeholders about the online marketplace for copyrighted works. These related to consumers' understanding of what they have purchased when they pay for copies of works delivered online.⁸ The Task Force concluded that consumers would benefit from more information on the nature of these transactions, including whether they are paying for temporary access to content or for ownership of a copy, in order to instill greater confidence and enhance participation in the online marketplace.⁹ The Task Force therefore recommended the creation of a multistakeholder process to establish best practices to improve consumers' understanding of license terms and restrictions in connection with online transactions involving creative works.

B. The Proposed Focus of This Meeting

In the White Paper, the Task Force concluded that when consumers download copies of works (such as eBooks, music, and motion pictures), they do not appear to have a clear understanding of what they can legally do with those copies. This is due in part to the length and opacity of most End User License Agreements (EULAs).¹⁰

Other factors that may contribute to consumer confusion include the labeling of the "buy" button, and the lack of clear and conspicuous information regarding the ownership status of copies obtained by means of digital transmissions. Commenters noted that it is common for online

⁶ More information can be found at <https://www.uspto.gov/learning-and-resources/ip-policy/copyright/white-paper-remixes-first-sale-and-statutory-damages>.

⁷ The White Paper is available at <http://www.uspto.gov/sites/default/files/documents/copyrightwhitepaper.pdf>.

⁸ White Paper, pp. 55-58.

⁹ White Paper, p. 68.

¹⁰ For purposes of this discussion, a EULA is a contract between a licensor and purchaser, establishing the scope of the purchaser's rights to use an acquired download of copyrighted content. EULAs are often available only in digital form, presented as a click-through where the user is required to accept or reject the terms.

¹ The Green Paper is available at <http://www.uspto.gov/sites/default/files/news/publications/copyrightgreenpaper.pdf>.

² Request for Comments on Department of Commerce Green Paper, Copyright Policy, Creativity, and Innovation in the Digital Economy, 78 FR 61337-61341, available at https://www.ntia.doc.gov/files/ntia/publications/ntia_pto_rfc_10032013.pdf.

³ For a definition of remixes, please see the Green Paper, fn. 1 above, at p.28.

⁴ For information about the first sale doctrine, please see the Green Paper, *id.* at p.35.

⁵ For information about statutory damages, please see the Green Paper, *id.* at p.51.

services to feature a “buy” button that a consumer must click on in order to obtain digital content, and they offered differing views as to what consumers believe they have obtained when they click on such a button.

The goal of this meeting is to explore issues and facilitate a discussion on how best to ensure that license terms related to copyright are clearly and effectively communicated to potential consumers in the online environment. We will not address whether the first sale doctrine should be applicable to digital transmissions, which the White Paper discussed at length (see *Background* Section above), or what license terms should or should not be imposed, but will focus on non-legislative solutions, which may include voluntary best practices.

One discussion topic will focus on what copyright-related terms and conditions are important to communicate to consumers in the online environment. Some examples of possible terms include: Ownership (*i.e.*, whether ownership is transferred); use restrictions (*e.g.*, restrictions for noncommercial purposes; geographical limitations; limits to a certain number of viewings or devices); and/or transfer conditions (*e.g.*, restrictions on resale or other distribution).

Another discussion topic will focus on identifying best practices for how to inform consumers about the intellectual property rights associated with the content they are accessing or acquiring, and what activities they are permitted to engage in without implicating those rights. Questions to be addressed may include:

- What term or terms can clearly communicate what consumers are paying for?
- What term or terms should not be used (*e.g.*, “buy,” “own,” or “purchase”) in a digital transaction that is not a sale?
- Would a standardized form of notice, placed in or accessed from a conspicuous location on an e-commerce Web site or app be helpful?
- Would standard icons or symbols be helpful in communicating the terms, and what might those look like?
- Are there consumer messaging models from other fields (*e.g.*, in the consumer privacy context) that can provide useful lessons or examples in this area?

Finally, participants should be prepared to discuss whether additional work should be done to identify best practices in this area, and if so, in what forum and how.

Public Meeting

On April 18, 2017, the Task Force will hold a public meeting to hear views on these issues, including on the process going forward. We seek participation and comment from interested stakeholders, including in particular online services that offer digital transmissions of works to consumers, as well as creators, right holders, consumers, marketing professionals, user interface designers, public interest groups, and academics.

The agenda for the public meeting will be available no later than the week prior to the meeting, and the meeting will be webcast and transcribed. The agenda and webcast information will be available on the Internet Policy Task Force Web site, <http://www.ntia.doc.gov/internetpolicytaskforce>, and the USPTO's Web site, <https://www.uspto.gov/learning-and-resources/ip-policy/copyright/internet-policy-task-force>.

The meeting will be open to members of the public to attend, space permitting, on a first-come, first-served basis. Registration is required and will be available on site on the day of the meeting, space permitting. Persons who have pre-registered (and received confirmation) will have seating held until 15 minutes before the program begins. Pre-registration for the meeting is available at: <http://www.cvent.com/d/fvqhvj/4W>.

The meeting will be physically accessible to people with disabilities. Individuals requiring accommodation, such as sign language interpretation, real-time captioning of the webcast or other ancillary aids, should communicate their needs to Nadine Herbert, Office of Policy and International Affairs, United States Patent and Trademark Office, Madison Building, 600 Dulany Street, Alexandria, VA 22314; telephone (571) 272-9300, at least seven (7) business days prior to the meeting. Attendees should arrive at least one-half hour prior to the start of the meeting, and must present valid government-issued photo identification upon arrival. Members of the public will have an opportunity to make comments at the meeting.

Dated: March 16, 2017.

Michelle K. Lee,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2017-05511 Filed 3-20-17; 8:45 am]

BILLING CODE 3510-16-P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare a Supplemental Environmental Impact Statement for Land-Water Interface and Service Pier Extension at Naval Base Kitsap Bangor, Washington; Correction

AGENCY: Department of the Navy, DoD.

ACTION: Notice; correction.

SUMMARY: The Department of the Navy (Navy) published in the **Federal Register** on March 13, 2017, a Notice of Intent (NOI) to prepare a Supplemental Environmental Impact Statement (EIS) for Land-Water Interface (LWI) and Service Pier Extension (SPE) at Naval Base Kitsap Bangor, Washington. The NOI referenced an incorrect project Web site address.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Kler, LWI/SPE Supplemental EIS Project Manager, 360-396-0927.

Correction

In the **Federal Register** of March 13, 2017 (82 FR 13437), in the third column, correct the **FOR FURTHER INFORMATION CONTACT** caption to read:

FOR FURTHER INFORMATION CONTACT: Naval Facilities Engineering Command Northwest, 1101 Tautog Circle, Silverdale, Washington 98315-1101, Attn: Ms. Kimberly Kler, LWI/SPE Supplemental EIS Project Manager, 360-396-0927, or project Web site: <http://www.nbkeis.com/lwi>.

Dated: March 15, 2017.

A. M. Nichols,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2017-05527 Filed 3-20-17; 8:45 am]

BILLING CODE 3810-FF-P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Notice

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of the Government in the Sunshine Act (5 U.S.C. 552b), and the Defense Nuclear Facilities Safety Board's (Board) regulations implementing the Government in the Sunshine Act, notice is hereby given of the Board's closed meeting described below.

DATES: 10:00 a.m.-11:00 a.m., March 23, 2017.

ADDRESSES: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Katherine Herrera, Deputy 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: The meeting will be closed to the public. No participation from the public will be considered during the meeting.

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 exemption to close a meeting described in 5 U.S.C. 552b(c)(3) and 10 CFR 1704.4(c). 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. 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 Web site 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.

Dated: March 16, 2017.

Sean Sullivan,
Chairman.

[FR Doc. 2017-05622 Filed 3-17-17; 11:15 am]

BILLING CODE 3670-01-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2017-ICCD-0036]

Agency Information Collection Activities; Comment Request; Study of an Information Strategy To Increase Enrollment in Postsecondary Education

AGENCY: Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before May 22, 2017.

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-2017-ICCD-0036. 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, 400 Maryland Avenue SW., LBJ, Room 224-84, Washington, DC 20202-4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Melanie Ali, 202-245-8345.

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: Study of An Information Strategy to Increase Enrollment in Postsecondary Education.

OMB Control Number: 1850-NEW.

Type of Review: A new information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 14,180.

Total Estimated Number of Annual Burden Hours: 647.

Abstract: This demonstration study will evaluate the use of a promising messaging strategy designed to help TRIO Educational Opportunity Center (EOC) grantees meet the program's goal of increasing college enrollment. EOCs are hosted at postsecondary institutions or nonprofit organizations and generally serve low-income individuals who are 19 years and older—most of whom are potential first-generation college-goers. The study will evaluate whether systematic text messaging can enhance EOCs' counseling services and lead to increased Free Application for Student Aid (FAFSA) completion and postsecondary education enrollment rates. Across 20 EOCs, approximately 6,000 adults will be randomly assigned to receive EOCs' typical services or to receive EOCs' typical services plus the text messaging.

Dated: March 16, 2017.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2017-05558 Filed 3-20-17; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Environmental Management Advisory Board Meeting

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting 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, April 4, 2017, 9 a.m.–5 p.m.

ADDRESSES: Department of Energy Information Center, Building 1916-T1, 1 Science.gov Way, Oak Ridge, Tennessee 37831.

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 Topics:

- EM Program Update
- EM Knowledge Management
- Excess Facilities Discussion
- Infrastructure Opportunities Discussion

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 Web site: <http://energy.gov/em/services/communication-engagement/environmental-management-advisory-board-emab>.

Issued at Washington, DC March 15, 2017.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2017-05516 Filed 3-20-17; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC14-78-004.

Applicants: NRG Energy, Inc., NRG Yield, Inc.

Description: Request for Reauthorization and Extension of Blanket Authorization of NRG Energy, Inc., et al.

Filed Date: 3/13/17.

Accession Number: 20170313-5370.

Comments Due: 5 p.m. ET 4/3/17.

Docket Numbers: EC17-90-000.

Applicants: AEP Generation Resources Inc., Dynegy Conesville, LLC, Dynegy Zimmer, LLC.

Description: Joint Application of AEP Generation Resources Inc., et al. for Authorization of Disposition of Jurisdictional Assets under Section 203 and Requests for Confidential Treatment, Shortened Comment Period and Expedited Approval.

Filed Date: 3/10/17.

Accession Number: 20170310-5300.

Comments Due: 5 p.m. ET 4/24/17.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER17-1037-001.

Applicants: Innovative Solar 37, LLC.

Description: Tariff Amendment: Amendment to 1 to be effective 4/26/2017.

Filed Date: 3/15/17.

Accession Number: 20170315-5119.

Comments Due: 5 p.m. ET 4/5/17.

Docket Numbers: ER17-1176-000.

Applicants: Midcontinent Independent System Operator, Inc., Ameren Illinois Company.

Description: § 205(d) Rate Filing: 2017-03-14 SA 2686 Amended Ameren-SIPC Wholesale Connection Agreements to be effective 2/9/2017.

Filed Date: 3/14/17.

Accession Number: 20170314-5134.

Comments Due: 5 p.m. ET 4/4/17.

Docket Numbers: ER17-1184-000.

Applicants: Puget Sound Energy, Inc.

Description: Initial rate filing: DBINTC NITSA, NOA, and IA to be effective 3/1/2017.

Filed Date: 3/15/17.

Accession Number: 20170315-5092.

Comments Due: 5 p.m. ET 4/5/17.

Docket Numbers: ER17-1185-000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Notice of Cancellation of Service

Agreement No. 3562 to be effective 12/9/2016.

Filed Date: 3/15/17.

Accession Number: 20170315-5099.

Comments Due: 5 p.m. ET 4/5/17.

Docket Numbers: ER17-1189-000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Notice of Cancellation of Service Agreement No. 3777, Queue No. Y1-003 to be effective 3/26/2017.

Filed Date: 3/15/17.

Accession Number: 20170315-5118.

Comments Due: 5 p.m. ET 4/5/17.

Docket Numbers: ER17-1190-000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Notice of Cancellation of Service Agreement No. 4546, Queue No. AB1-115 to be effective 4/8/2017.

Filed Date: 3/15/17.

Accession Number: 20170315-5122.

Comments Due: 5 p.m. ET 4/5/17.

Take notice that the Commission received the following PURPA 210(m)(3) filings:

Docket Numbers: QM17-3-000.

Applicants: East Kentucky Power Cooperative, Inc.

Description: Application to terminate QF purchase obligation of East Kentucky Power Cooperative, Inc.

Filed Date: 3/13/17.

Accession Number: 20170313-5366.

Comments Due: 5 p.m. ET 4/10/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: March 15, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017-05546 Filed 3-20-17; 8:45 am]

BILLING CODE 6717-01-P

FEDERAL COMMUNICATIONS COMMISSION**[OMB 3060–0805]****Information Collection Being Reviewed by the Federal Communications Commission****AGENCY:** Federal Communications Commission.**ACTION:** Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before May 22, 2017. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email PRA@fcc.gov and to Nicole.Ongele@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of

1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–0805.

Title: 700 MHz Eligibility; Regional Planning Requirements; and 4.9 GHz Guidelines (47 CFR 90.523, 90.527, and 90.1211).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit; not-for-profit institutions; state, local or tribal government.

Number of Respondents and Responses: 1,172 respondents; 1,172 responses.

Estimated Time Per Response: 1 hour—628 hours.

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

Obligation to Respond: Required to obtain or retain benefits (47 CFR 90.523) and voluntary (47 CFR 90.527 and 90.1211). Statutory authority for this information collection is contained in 47 U.S.C. 337.

Total Annual Burden: 35,756 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: Section 90.523 requires that nongovernmental organizations that provide services which protect the safety of life or property obtain a written statement from an authorizing state or local government entity to support the nongovernmental organization's application for assignment of 700 MHz frequencies. Section 90.527 requires 700 MHz regional planning regions to submit an initial plan for use of the 700 MHz general use spectrum in the consolidated narrowband segment 769–

775 MHz and 799–805 MHz. Regional planning committees may modify plans by written request, which must contain the full text of the modification and certification that the modification was successfully coordinated with adjacent regions. Regional planning promotes a fair and open process in developing allocation assignments by requiring input from eligible entities in the allocation decisions and the application technical review/approval process. Entities that seek inclusion in the plan to obtain future licenses are considered third party respondents. Section 90.1211 authorizes the fifty-five 700 MHz regional planning committees to develop and submit on a voluntary basis a plan on guidelines for coordination procedures to facilitate the shared use of the 4940–4990 MHz (4.9 GHz) band. The Commission has stayed this requirement indefinitely. Applicants are granted a geographic area license for the entire fifty MHz of 4.9 GHz spectrum over a geographical area defined by the boundaries of their jurisdiction—city, county or state. Accordingly, licensees are required to coordinate their operations in the shared band to avoid interference, a common practice when joint operations are conducted.

Commission staff will use the information to assign licenses, determine regional spectrum requirements and to develop technical standards. The information will also be used to determine whether prospective licensees operate in compliance with the Commission's rules. Without such information, the Commission could not accommodate regional requirements or provide for the efficient use of the available frequencies. This information collection includes rules to govern the operation and licensing of the 700 MHz and 4.9 GHz bands rules and regulation to ensure that licensees continue to fulfill their statutory responsibilities in accordance with the Communications Act of 1934, as amended. Such information will continue to be used to verify that applicants are legally and technically qualified to hold licenses, and to determine compliance with Commission rules.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2017–05473 Filed 3–20–17; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION**[OMB 3060–xxxx]****Information Collection Being Reviewed by the Federal Communications Commission****AGENCY:** Federal Communications Commission.**ACTION:** Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before May 22, 2017. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email PRA@fcc.gov and to Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–xxxx.

Title: First Amendment to Nationwide Programmatic Agreement for the Collocation of Wireless Antennas.

Form Number: Not applicable.

Type of Review: New collection.

Respondents: Business or other for-profit entities, not-for-profit institutions, and State, local, or Tribal governments.

Number of Respondents and

Responses: 71 respondents; 765 responses.

Estimated Time per Response: 1 hour–5 hours.

Frequency of Response: Third party disclosure reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in Sections 1, 2, 4(i), 7, 301, 303, 309, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 157, 301, 303, 309, 332, and Section 106 of the National Historic Preservation Act of 1966, 54 U.S.C. 306108.

Total Annual Burden: 2,869 hours.

Total Annual Cost: \$82,285.

Privacy Impact Assessment: There are no impacts under the Privacy Act.

Nature and Extent of Confidentiality: No known confidentiality between third parties.

Needs and Uses: The Commission will submit this information collection for approval after the comment period to obtain the full three year clearance from the Office of Management and Budget (OMB). The Commission is requesting OMB approval for new disclosure requirements pertaining to the *First Amendment to Nationwide Programmatic Agreement for the Collocation of Wireless Antennas* (First Amendment) to address the review of deployments of small wireless antennas and associated equipment under Section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C. 306108 (formerly codified at 16 U.S.C. 470f). The FCC, the Advisory Council on Historic Preservation (Council), and the National Conference of State Historic Preservation Officers (NCSHPO) agreed to amend the *Nationwide Programmatic Agreement for the Collocation of Wireless Antennas* (Collocation Agreement) to account for the limited potential of small wireless antennas and associated equipment, including Distributed Antenna Systems (DAS) and small cell facilities, to affect historic properties. The Collocation Agreement addresses historic preservation review for collocations on existing towers, buildings, and other non-tower structures. Under the Collocation Agreement, most antenna collocations on existing structures are excluded from Section 106 historic

preservation review, with a few exceptions defined to address potentially problematic situations. On August 3, 2016, the Commission's Wireless Telecommunications Bureau, ACHP, and NCSHPO finalized and executed the First Amendment to the Collocation Agreement, to tailor the Section 106 process for small wireless deployments by excluding deployments that have minimal potential for adverse effects on historic properties.

The following are the information collection requirements in connection with the amended provisions of Appendix B of Part 1 of the Commission's rules (47 CFR pt.1, App. B):

- Stipulation VII.C of the amended Collocation Agreement provides that proposals to mount a small antenna on a traffic control structure (*i.e.*, traffic light) or on a light pole, lamp post or other structure whose primary purpose is to provide public lighting, where the structure is located inside or within 250 feet of the boundary of a historic district, are generally subject to review through the Section 106 process. These proposed collocations will be excluded from such review on a case-by-case basis, if (1) the collocation licensee or the owner of the structure has not received written or electronic notification that the FCC is in receipt of a complaint from a member of the public, an Indian Tribe, a SHPO or the Council, that the collocation has an adverse effect on one or more historic properties; and (2) the structure is not historic (not a designated National Historic Landmark or a property listed in or eligible for listing in the National Register of Historic Places) or considered a contributing or compatible element within the historic district, under certain procedures. These procedures require that applicant must request in writing that the SHPO concur with the applicant's determination that the structure is not a contributing or compatible element within the historic district, and the applicant's written request must specify the traffic control structure, light pole, or lamp post on which the applicant proposes to collocate and explain why the structure is not a contributing element based on the age and type of structure, as well as other relevant factors. The SHPO has thirty days from its receipt of such written notice to inform the applicant whether it disagrees with the applicant's determination that the structure is not a contributing or compatible element within the historic district. If within the thirty-day period, the SHPO informs the applicant that the structure is a contributing element or compatible

element within the historic district or that the applicant has not provided sufficient information for a determination, the applicant may not deploy its facilities on that structure without completing the Section 106 review process. If, within the thirty day period, the SHPO either informs the applicant that the structure is not a contributing or compatible element within the historic district, or the SHPO fails to respond to the applicant within the thirty-day period, the applicant has no further Section 106 review obligations, provided that the collocation meets the certain volumetric and ground disturbance provisions.

The First Amendment to the Collocation Agreement establishes new exclusions from the Section 106 review process for physically small deployments like DAS and small cells, fulfilling a directive in the Commission's *Infrastructure Report and Order*, 80 FR 1238, Jan. 8, 2015, to further streamline review of these installations. These new exclusions will reduce the cost, time, and burden associated with deploying small facilities in many settings, and provide opportunities to increase densification at low cost and with very little impact on historic properties. Facilitating these deployments thus directly advances efforts to roll out 5G service in communities across the country.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

[FR Doc. 2017-05471 Filed 3-20-17; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-0773]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper

performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before May 22, 2017. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email PRA@fcc.gov and to Nicole.Ongele@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418-2991.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060-0773.

Title: Sections 2.803 and 2.803(c)(2), Marketing of RF Devices Prior to Equipment Authorization.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents and Responses: 10,000 respondents and 10,000 responses.

Estimated Time per Response: 0.5 hours.

Frequency of Response: One-time reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. Sections 154(i), 302, 303, 303(r), and 307.

Total Annual Burden: 5,000 hours.

Total Annual Cost: No Cost.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: The Commission will submit this information collection to the Office of Management and Budget (OMB) after this 60 day comment period in order to obtain the full three-year clearance from them.

The Commission has established rules for the marketing of radio frequency (RF) devices prior to equipment authorization under guidelines in 47 CFR Section 2.803. The general guidelines in Section 2.803 prohibit the marketing or sale of such equipment prior to a demonstration of compliance with the applicable equipment authorization and technical requirements in the case of a device subject to verification or Declaration of Conformity without special notification. Section 2.803(c)(2) permits limited marketing activities prior to equipment authorization, for devices that could be authorized under the current rules; could be authorized under waivers of such rules that are in effect at the time of marketing; or could be authorized under rules that have been adopted by the Commission but that have not yet become effective. These devices may be not operated unless permitted by section 2.805.

The following general guidelines apply for third party notifications:

(a) A RF device may be advertised and displayed at a trade show or exhibition prior to a demonstration of compliance with the applicable technical standards and compliance with the applicable equipment authorization procedure provided the advertising and display is accompanied by a conspicuous notice

specified in *Section 2.803(c)(2)(iii)(A) or Section 2.803(c)(2)(iii)(B)*.

(b) An offer for sale solely to business, commercial, industrial, scientific, or medical users of an RF device in the conceptual, developmental, design or pre-production stage prior to demonstration of compliance with the equipment authorization regulations may be permitted provided that the prospective buyer is advised in writing at the time of the offer for sale that the equipment is subject to FCC rules and that the equipment will comply with the appropriate rules before delivery to the buyer or centers of distribution.

(c) Equipment sold as evaluation kit may be sold to specific users with notice specified in *Section 2.803(c)(2)(iv)(B)*.

The information to be disclosed about marketing of the RF device is intended:

(1) To ensure the compliance of the proposed equipment with Commission rules; and

(2) To assist industry efforts to introduce new products to the marketplace more promptly.

The information disclosure applies to a variety of RF devices that:

(1) Is pending equipment authorization or verification of compliance;

(2) May be manufactured in the future;

(3) May be sold as kits; and

(4) Operates under varying technical standards.

The information disclosed is essential to ensuring that interference to radio communications is controlled.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2017-05469 Filed 3-20-17; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

AGENCY: Federal Election Commission.

DATE AND TIME: Thursday, March 23, 2017 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This Meeting Will Be Open To the Public.

ITEMS TO BE DISCUSSED:

Draft Advisory Opinion 2016-23:
Socialist Workers Party

Draft Supplemental Notice of
Disposition on REG 2014-06
(Candidate Debates)

Audit Division Recommendation
Memorandum on the Colorado
Republican Committee (CRC) (A13-
12)

Proposed Final Audit Report on Kind
for Congress Committee (A15-02)

Proposed Final Audit Report on the
Kansas Democratic Party (A13-08)

2017 Chief FOIA Officer Report

FEC Email Management Policy

REG 2014-10: Implementing the
Consolidated and Further Continuing
Appropriations Act, 2015

REG 2016-03: Political Party Rules

Management and Administrative
Matters

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dayna C. Brown, Secretary and Clerk, at (202) 694-1040, at least 72 hours prior to the meeting date.

PERSON TO CONTACT FOR INFORMATION:

Judith Ingram, Press Officer, Telephone: (202) 694-1220.

Dayna C. Brown,

Secretary and Clerk of the Commission.

[FR Doc. 2017-05589 Filed 3-17-17; 11:15 am]

BILLING CODE 6715-01-P

FEDERAL TRADE COMMISSION

Granting of Requests for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination—on the dates indicated—of the waiting period provided by law and the premerger notification rules. The listing for each transaction includes the transaction number and the parties to the transaction. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

EARLY TERMINATIONS GRANTED

[February 1, 2017 through February 28, 2017]

02/01/2017		
20170560	G	Gartner, Inc.; CEB Inc.; Gartner, Inc.
02/02/2017		
20170620	G	MPLX LP; Marathon Petroleum Corporation; MPLX LP.
02/03/2017		
20161360	G	John Swire & Sons Limited; The Coca-Cola Company; John Swire & Sons Limited.
20170598	G	Merck & Co., Inc.; Illumina, Inc.; Merck & Co., Inc.
20170601	G	Elliott Associates, L.P.; NRG Energy, Inc.; Elliott Associates, L.P.
20170602	G	Elliott International Limited; NRG Energy, Inc.; Elliott International Limited.
20170603	G	Bluescape Energy Recapitalization and Restructuring Fund III; NRG Energy, Inc.; Bluescape Energy Recapitalization and Restructuring Fund III.
20170617	G	Bristol-Myers Squibb Company; Illumina, Inc.; Bristol-Myers Squibb Company.
20170623	G	Lindsay Goldberg IV L.P.; U.S. Steel Canada Inc.; Lindsay Goldberg IV L.P.
20170627	G	KKR Energy Income and Growth Fund I L.P.; SM Energy Company; KKR Energy Income and Growth Fund I L.P.
20170628	G	Platform Partners, LLC; George Parsons and Janet Strohmeier; Platform Partners, LLC.

EARLY TERMINATIONS GRANTED—Continued

[February 1, 2017 through February 28, 2017]

20170632	G	CD Clean Energy and Infrastructure V JV, LLC; First Solar, Inc.; CD Clean Energy and Infrastructure V JV, LLC.
20170641	G	YAFEI YUAN; Valeant Pharmaceuticals International, Inc.; YAFEI YUAN.
20170642	G	SAS Rue La Boetie; UniCredit S.p.A.; SAS Rue La Boetie.
20170646	G	DIF Infrastructure IV Cooperatief U.A.; SunEdison, Inc.; DIF Infrastructure IV Cooperatief U.A.
20170647	G	ABRY Partners VIII, L.P.; Integrity Tracking, LLC; ABRY Partners VIII, L.P.
20170654	G	AEA Investors Fund VI LP; Andrew Singer; AEA Investors Fund VI LP.
20170676	G	Textron Inc.; Arctic Cat Inc.; Textron Inc.

02/06/2017

20170509	G	GTCR Fund VIII AIV, L.P.; ConverEx Holdings, LLC; GTCR Fund VIII AIV, L.P.
20170546	G	ConverEx Holdings, LLC; DFT Holdings LLC; ConverEx Holdings, LLC.
20170648	G	Noble Energy, Inc.; Clayton Williams Energy, Inc.; Noble Energy, Inc.
20170651	G	Riverstone Global Energy and Power Fund VI, L.P.; Plains All American Pipeline, L.P.; Riverstone Global Energy and Power Fund VI, L.P.
20170652	G	Kinder Morgan, Inc.; Plains All American Pipeline, L.P.; Kinder Morgan, Inc.
20170655	G	Valepar S.A.; The Mosaic Company; Valepar S.A.
20170656	G	Sanchez Energy Corporation; Anadarko Petroleum Corporation; Sanchez Energy Corporation.
20170657	G	Blackstone Energy Partners II Q L.P.; Anadarko Petroleum Corporation; Blackstone Energy Partners II Q L.P.
20170671	G	Plains All American Pipeline, L.P.; Concho Resources Inc.; Plains All American Pipeline, L.P.
20170672	G	Plains All American Pipeline, L.P.; Energy Spectrum Partners VI LP; Plains All American Pipeline, L.P.

02/07/2017

20170569	G	Virtus Investment Partners, Inc.; Lightyear Fund III AIV-2, L.P.; Virtus Investment Partners, Inc. 20170619 G Canada Pension Plan Investment Board; ODSA Topco Limited; Canada Pension Plan Investment Board 20170678 G Baron Albert Frere; FPCI Astorg V; Baron Albert Frere.
20170679	G	Desmarais Family Residuary Trust; FPCI Astorg V; Desmarais Family Residuary Trust.

02/08/2017

20170582	G	Sun Pharmaceutical Industries Ltd.; Novartis AG; Sun Pharmaceutical Industries Ltd.
20170616	G	MPLX LP; Enbridge Energy Partners LP; MPLX LP.
20170629	G	Allergan plc; Assembly Biosciences, Inc.; Allergan plc.

02/10/2017

20170593	G	Hewlett Packard Enterprise Company; SimpliVity Corporation; Hewlett Packard Enterprise Company.
20170604	G	Terumo Corporation; WerfenLife Ventures, S.L.; Terumo Corporation.
20170612	G	Thermo Fisher Scientific Inc.; Finesse Solutions, Inc.; Thermo Fisher Scientific Inc.
20170662	G	Stichting Administratiekantoor Lauwerecht; Hi-Pro Feeds L.P.; Stichting Administratiekantoor Lauwerecht.
20170663	G	Blackstone Power & Natural Resources Holdco, L.P.; Valley Electric Association, Inc.; Blackstone Power & Natural Resources Holdco, L.P.
20170674	G	Accenture plc; John E. Luth; Accenture plc.
20170686	G	Toyota Industries Corporation; William A Bastian II; Toyota Industries Corporation.
20170690	G	Platinum Equity Capital Partners IV, L.P.; ILG Holdings, LLC; Platinum Equity Capital Partners IV, L.P.
20170706	G	Motherhood Sumi Systems Limited; PKC Group Oyj; Motherhood Sumi Systems Limited.

02/13/2017

20170691	G	WEC Energy Group, Inc.; Plains All American Pipeline, L.P.; WEC Energy Group, Inc.
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02/14/2017

20170664	G	Welsh Carson Anderson & Stowe XII, L.P.; Secom Co., Ltd.; Welsh Carson Anderson & Stowe XII, L.P.
20170666	G	The Heritage Group; Steven M. Keith; The Heritage Group.
20170694	G	Cisco Systems, Inc.; AppDynamics, Inc.; Cisco Systems, Inc.

02/15/2017

20170675	G	Varex Imaging Corporation; PerkinElmer, Inc.; Varex Imaging Corporation.
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02/16/2017

20170638	G	DCM VI, L.P.; Social Finance, Inc.; DCM VI, L.P.
20170683	G	Salient Solutions, LLC; Triple-I Holdings, LLC; Salient Solutions, LLC.
20170698	G	TIDI Products Holdings, LLC; Ernest M. Posey; TIDI Products Holdings, LLC.

02/17/2017

20170684	G	JANA Offshore Partners, Ltd.; Bristol-Myers Squibb Company; JANA Offshore Partners, Ltd.
20170685	G	JANA Nirvana Offshore Fund, Ltd.; Bristol-Myers Squibb Company; JANA Nirvana Offshore Fund, Ltd.
20170707	G	Littlejohn Fund V, L.P.; Graham Partners III, L.P.; Littlejohn Fund V, L.P.
20170712	G	The Resolute Fund III, L.P.; Robert J. Mitzman; The Resolute Fund III, L.P.

EARLY TERMINATIONS GRANTED—Continued

[February 1, 2017 through February 28, 2017]

20170713	G	Sentinel Capital Partners V, L.P.; CAbi Holding Co. LLC; Sentinel Capital Partners V, L.P. 20170714 G Pentagon Federal Credit Union; Valor Federal Credit Union; Pentagon Federal Credit Union 20170715 G CIE Automotive S.A.; Estate of David A. Segal; CIE Automotive S.A.
20170727	G	Veeco Instruments Inc.; Ultratech, Inc.; Veeco Instruments Inc.
20170732	G	Harvey C. Jones; NVIDIA Corporation; Harvey C. Jones.

02/21/2017

20170489	G	Kristian Jebsen; NewCo; Kristian Jebsen.
20170625	G	DataBridge Holdings LLC; Signal Peak Technology Ventures, L.P.; DataBridge Holdings LLC.
20170716	G	Validus Holdings, Ltd.; Archer-Daniels-Midland Company; Validus Holdings, Ltd.
20170730	G	Harvest Partners VII, L.P.; CI (MHE) Holdings, LLC; Harvest Partners VII, L.P.

02/22/2017

20170640	G	Corvex Master Fund LP; Alice Schwartz; Corvex Master Fund LP.
20170687	G	Haldor Foundation; International Flavors & Fragrances Inc.; Haldor Foundation.
20170693	G	Zurich Insurance Group Ltd; Cover-More Group Limited; Zurich Insurance Group Ltd.

02/23/2017

20170673	G	Green Dot Corporation; Empowerment Ventures, LLC; Green Dot Corporation.
20170688	G	Paul C. Hilal; CSX Corporation; Paul C. Hilal.

02/24/2017

20170660	G	Educational Testing Service; Questar Assessment, Inc.; Educational Testing Service.
20170708	G	Ascential plc; Michael E. Kassan; Ascential plc.
20170728	G	Ingenic Semiconductor Co., Ltd.; Beijing OmniVision Technologies, Co. Ltd.; Ingenic Semiconductor Co., Ltd.
20170739	G	RPC Group Plc; Letica Corporation; RPC Group Plc.
20170753	G	Hainan Cihang Foundation; SkyBridge Capital II, LLC; Hainan Cihang Foundation.

02/27/2017

20170680	G	Targa Resources Corp.; DCPF VI Oil and Gas Coinvestment Fund LP; Targa Resources Corp.
20170681	G	Targa Resources Corp.; Kayne Anderson Energy Fund VI, L.P.; Targa Resources Corp.
20170682	G	Targa Resources Corp.; Denham Commodity Partners Fund VI LP; Targa Resources Corp.
20170742	G	The Resolute Fund III, L.P.; DB Parent, Inc.; The Resolute Fund III, L.P.
20170744	G	Precision Parent, LLC; PGPC-Signicast-2 LLC; Precision Parent, LLC.
20170745	G	Hexagon AB; STG III, L.P.; Hexagon AB.
20170750	G	Keysight Technologies, Inc.; Ixia; Keysight Technologies, Inc.
20170754	G	Golden Gate Capital Opportunity Fund, L.P.; GTCR Fund XI/B LP; Golden Gate Capital Opportunity Fund, L.P.

02/28/2017

20170752	G	Energy Transfer Equity, L.P.; EnCap Flatrock Midstream Fund II, L.P.; Energy Transfer Equity, L.P.
20170757	G	LS Power Equity Partners III, L.P.; FirstEnergy Corp.; LS Power Equity Partners III, L.P.

FOR FURTHER INFORMATION CONTACT:

Theresa Kingsberry, Program Support Specialist, Federal Trade Commission Premerger Notification Office, Bureau of Competition, Room CC-5301, Washington, DC 20024, (202) 326-3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2017-05529 Filed 3-20-17; 8:45 am]

BILLING CODE 6750-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS-10326, and CMS-10452]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the

PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by May 22, 2017.

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’ Web site address at <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html>.

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@cms.hhs.gov.

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William Parham at 410–786–4669.

SUPPLEMENTARY INFORMATION:

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–10326 Electronic Submission of Medicare Graduate Medical Education (GME) Affiliation Agreements

CMS–10452 CMS Enterprise Identity Management

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:* Electronic Submission of Medicare Graduate Medical Education (GME) Affiliation Agreements; *Use:* Sections 1886(h)(4)(F) and 1886(d)(5)(B)(v) of the Act establish limits on the number of allopathic and osteopathic FTE residents that hospitals may count for purposes of calculating direct GME payments and the indirect medical education (IME) adjustment. In addition, under the authority granted by section 1886(h)(4)(H)(ii) of the Act, the Secretary issued regulations on May 12, 1998 (63 FR 26358) to allow institutions that are members of the same Medicare GME affiliated group to elect to apply their direct GME and IME FTE resident caps based on the aggregate cap of all hospitals that are part of a Medicare GME affiliation group. Under those regulations, specified at § 413.79(f) for direct GME and at § 412.105(f)(1)(vi) for IME, hospitals that are part of the same Medicare GME affiliated group are permitted to adjust each hospital’s caps to reflect the rotation of residents among affiliated hospitals during an academic year. Under § 413.75(b), a Medicare GME affiliated group may be formed by two or more hospitals if: (1) The hospitals are located in the same urban or rural area or in a contiguous area and have a shared rotational arrangement as specified at § 413.79(f)(2); (2) the hospitals are not located in the same or in a contiguous area, but have a shared rotational arrangement and they are jointly listed as the sponsor, primary clinical site, or major participating institution for one or more programs as these terms are used in the most recent publication of the Graduate Medical Education Directory, or as the sponsor or is listed under “affiliations and outside rotations” for one or more programs in Opportunities, Directory of Osteopathic Post-Doctoral Education Programs; or (3) effective beginning July 1, 2003, two or more hospitals are under common ownership and have a shared rotational arrangement under

§ 413.79(f)(2). *Form Number:* CMS–10326 (OMB control number: 0938–1111); *Frequency:* Annually; *Affected Public:* Private sector—Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 125; *Total Annual Responses:* 125; *Total Annual Hours:* 166. (For policy questions regarding this collection contact Renate Dombrowski at 410–786–4645.)

2. Type of Information Collection

Request: Extension of a currently approved collection; *Title of Information Collection:* CMS Enterprise Identity Management; *Use:* HIPAA regulations require covered entities to verify the identity of the person requesting Personal Health Information (PHI) and the person’s authority to have access to that information. Per the HIPAA Security Rule, covered entities, regardless of their size, are required under Section 164.312(a)(2)(i) to “assign a unique name and/or number for identifying and tracking user identity.” A ‘user’ is defined in Section 164.304 as a “person or entity with authorized access”. Accordingly, the Security Rule requires covered entities to assign a unique name and/or number to each employee or workforce member who uses a system that receives, maintains or transmits electronic PHI, so that system access and activity can be identified and tracked by user. This pertains to workforce members within health plans, group health plans, small or large provider offices, clearinghouses and beneficiaries. Federal law requires that CMS take precautions to minimize the security risk to the Federal information system. FIPS PUB 201–1 Para 1.2: “Homeland Security Presidential Directive 12 (HSPD 12), signed by the President on August 27, 2004, established the requirements for a common identification standard for the identification of credentials issued by Federal Departments and agencies to Federal employees and contractors (including contractor employees) for gaining physical access to Federally controlled facilities and logical access to Federally controlled information systems. HSPD 12 directs the department of Commerce to develop a Federal Information Processing Standards (FIPS) publication to define such a common identification credential.” *Form Number:* CMS–10452 (OMB control number: 0938–1236); *Frequency:* Annually; *Affected Public:* Individuals and Households; *Number of Respondents:* 750,000; *Total Annual Responses:* 750,000; *Total Annual Hours:* 300,000. (For policy questions regarding this collection contact Robert Burger at 410–786–2125.)

Dated: March 16, 2017.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2017-05541 Filed 3-20-17; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS-10632]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: The necessity and utility of the proposed information collection for the proper performance of the agency's functions; the accuracy of the estimated burden; ways to enhance the quality, utility, and clarity of the information to be collected; and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by April 20, 2017.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395-5806 *OR*, Email: OIRA_submission@omb.eop.gov.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at Web site address at <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html>.
2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@cms.hhs.gov.
3. Call the Reports Clearance Office at (410) 786-1326.

FOR FURTHER INFORMATION CONTACT:

Reports Clearance Office at (410) 786-1326.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* Evaluating Coverage to Care (C2C); *Use:* CMS OMH has contracted with the RAND Corporation to evaluate From Coverage to Care (C2C). From the beginning of the Affordable Care Act's implementation, the Centers for Medicare & Medicaid Services, Office of Minority Health (CMS OMH) recognized that achieving better health and reduced health care costs would require individuals to take an active role in their health care and regularly use primary and preventive care services. To address this need, CMS OMH launched From Coverage to Care (C2C) in June 2014. C2C was designed to help consumers understand what it means to have health insurance coverage, how to find a provider, when and where to seek appropriate health

services, and why prevention and partnering with a provider is important for achieving optimal health. It was also designed to equip health care providers and stakeholders in the community who support consumers' connection to care with the tools needed to promote consumer engagement and to promote changes in the health care system that improve access to care. As part of C2C, CMS produced a range of consumer-oriented materials, both Web-based and in print. The most in-depth of the print materials is an eight-step booklet titled "A Roadmap to Better Care and a Healthier You." Based on the need for the information to be communicated in smaller, more digestible packets, booklets were developed to correspond to each of the eight steps. Four of the most popular pages of the Roadmap have been made available as single-page handouts for easier distribution. These materials are currently available in eight languages, including English, Spanish, Arabic, Chinese, Haitian Creole, Korean, Russian, and Vietnamese.

Since the national launch in 2014, CMS has disseminated C2C through speaking engagements, webinars, and meetings sponsored by CMS regional offices. CMS fills product orders and recently completed a redesign of the C2C Web site. C2C has grown to address emerging needs of consumers, as well as stakeholders or organizations that work with and support consumers, across the full continuum of health insurance and care: Plan selection, enrollment, finding a provider, and engaging in care over time.

RAND spent the past year designing and preparing for this evaluation to assess C2C's impact on consumer health insurance literacy and care utilization. This evaluation will also help CMS understand how C2C is spread within a community and disseminated to consumers, and in turn how best to maximize C2C's impact. The next three years will be dedicated to implementing the evaluation described in this submission. We are proposing four data collection activities: (1) A cross-sectional survey of organizations that have ordered and used the materials with consumers; (2) A cross-sectional survey of consumers, drawn from the Knowledge Networks panel, to measure the association between C2C and consumer knowledge and behavior; (3) semi-structured interviews with staff from a limited set of community organizations as part of a case study; and (4) focus groups of consumers as part of a case study. The case study will be conducted in a community where English is not the preferred language, and where C2C materials in another

language (e.g., Spanish, Arabic, Chinese, Haitian Creole, Korean, Russian, and Vietnamese) were used with consumers. *Form Number:* CMS-10632 (OMB control number: 0938—New); *Frequency:* Occasionally; *Affected Public:* Individuals or Households; *Number of Respondents:* 3,460; *Total Annual Responses:* 3,460; *Total Annual Hours:* 1,176. (For policy questions regarding this collection contact Ashley Peddicord-Austin at 410-786-0757).

Dated: March 16, 2017.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2017-05555 Filed 3-20-17; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS-40B, CMS-43, CMS-1763, CMS-10174, CMS-10215, CMS-R-285]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by May 22, 2017.

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' Web site address at <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html>.

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@cms.hhs.gov.

3. Call the Reports Clearance Office at (410) 786-1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office 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-40B Application for Enrollment in Medicare the Medical Insurance Program

CMS-43 Application for Hospital Insurance Benefits for Individuals with End Stage Renal Disease

CMS-1763 Request for Termination of Premium Hospital and Supplementary Medical Insurance

CMS-10174 Collection of Prescription Drug Event Data from Contracted Part D Providers for Payment

CMS-10215 Medicaid Payment for Prescription Drugs—Physicians and Hospital Outpatient Departments Collecting and Submitting Drug Identifying Information to State Medicaid Programs

CMS-R-285 Request for Retirement Benefit Information

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 without change of a currently approved collection; *Title of Information Collection:* Application for Enrollment in Medicare the Medical Insurance Program; *Use:* The CMS-40B form is used to establish entitlement to and enrollment in supplementary medical insurance for beneficiaries who already have Part A, but not Part B. The form solicits information that is used to determine enrollment for individuals who meet the requirements in section 1836 of the Social Security Act as well as the entitlement of the applicant or a spouse regarding a benefit or annuity paid by the Social Security Administration or the Office of Personnel Management for premium deduction purposes. The Social Security Administration will use the collected information to establish Part B enrollment. *Form Number:* CMS-40B (OMB control number: 0938-1230); *Frequency:* Once; *Affected Public:* Individuals or households; *Number of Respondents:* 200,000; *Total Annual Responses:* 200,000; *Total Annual Hours:* 50,000. (For policy questions regarding this collection contact Carla Patterson at 410-786-8911.)

2. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Application for Hospital Insurance Benefits for Individuals with End Stage Renal Disease; *Use:* The CMS-43 application is used (in conjunction with CMS-2728) to establish entitlement to, and enrollment in, Medicare Part A (and Part B) for individuals with end stage renal disease. The application is completed by a Social Security Administration (SSA) claims representative or field representative using information provided by the

individual during an interview. The CMS-43 application follows the questions and requirements used by SSA to determine Title II eligibility. This is done not only for consistency purposes, but because certain Title II and Title XVIII insured status and relationship requirements must be met in order to qualify for Medicare under the end stage renal disease provisions. *Form Number:* CMS-43 (OMB control number: 0938-0800); *Frequency:* Once; *Affected Public:* Individuals or households; *Number of Respondents:* 25,000; *Total Annual Responses:* 25,000; *Total Annual Hours:* 10,400. (For policy questions regarding this collection contact Carla Patterson at 410-786-8911.)

3. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Request for Termination of Premium Hospital and Supplementary Medical Insurance; *Use:* The CMS-1763 form provides us and the Social Security Administration (SSA) with the enrollee's request for termination of Part B, Part A or both Part B and A premium coverage. The form is completed by an SSA claims or field representative using information provided by the Medicare enrollee during an interview. The purpose of the form is to provide to the enrollee with a standardized format to request termination of Part B, Part A premium coverage or both, explain why the enrollee wishes to terminate such coverage, and to acknowledge that the ramifications of the decision are understood. *Form Number:* CMS-1763 (OMB control number: 0938-0025); *Frequency:* Once; *Affected Public:* Individuals or households; *Number of Respondents:* 101,000; *Total Annual Responses:* 101,000; *Total Annual Hours:* 16,867. (For policy questions regarding this collection contact Carla Patterson at 410-786-8911.)

4. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Collection of Prescription Drug Event Data from Contracted Part D Providers for Payment; *Use:* The collected information is used primarily for payment, but is also used for claim validation as well as for other legislated functions such as quality monitoring, program integrity, and oversight. *Form Number:* CMS-10174 (OMB control number: 0938-0982); *Frequency:* Monthly; *Affected Public:* Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 779; *Total Annual Responses:* 1,409,828,464; *Total Annual Hours:*

2,820. (For policy questions regarding this collection contact Ivan Iveljic at 410-786-3312.)

5. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Medicaid Payment for Prescription Drugs—Physicians and Hospital Outpatient Departments Collecting and Submitting Drug Identifying Information to State Medicaid Programs; *Use:* States are required to provide for the collection and submission of utilization data for certain physician-administered drugs in order to receive federal financial participation for these drugs. Physicians, serving as respondents to states, submit National Drug Code numbers and utilization information for “J” code physician-administered drugs so that the states will have sufficient information to collect drug rebate dollars. *Form Number:* CMS-10215 (OMB control number: 0938-1026); *Frequency:* Weekly; *Affected Public:* Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 20,000; *Total Annual Responses:* 3,910,000; *Total Annual Hours:* 16,227. (For policy questions regarding this collection contact Lisa Ferrandi at 410-786-5445.)

6. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Request for Retirement Benefit Information; *Use:* Section 1818(d)(5) of the Social Security Act provides that former state and local government employees (who are age 65 or older, have been entitled to Premium Part A for at least 7 years, and did not have the premium paid for by a state, a political subdivision of a state, or an agency or instrumentality of one or more states or political subdivisions) may have the Part A premium reduced to zero. These individuals must also have 10 years of employment with the state or local government employer or a combination of 10 years of employment with a state or local government employer and a non-government employer. The CMS-R-285 form is an essential part of the process of determining whether an individual qualifies for the premium reduction. The Social Security Administration will use this information to help determine whether a beneficiary meets the requirements for reduction of the Part A premium. *Form Number:* CMS-R-285 (OMB control number: 0938-0769); *Frequency:* Once; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 500; *Total Annual Responses:* 500; *Total Annual Hours:* 125. (For policy questions regarding this

collection contact Carla Patterson at 410-786-8911.)

Dated: March 16, 2017.

William N. Parham, III,
Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2017-05535 Filed 3-20-17; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2017-N-1066]

Agency Information Collection Activities; Proposed Collection; Comment Request; Annual Reporting for Custom Device Exemption

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. 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 of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection associated with the annual reporting for custom devices.

DATES: Submit either electronic or written comments on the collection of information by May 22, 2017.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:**
<https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact

information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA-2017-N-1066 for “Agency Information Collection Activities; Proposed Collection; Comment Request; Annual Reporting for Custom Device Exemption.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any

information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A63, 11601 Landsdown St., North Bethesda, MD 20852, 301-796-3794.

SUPPLEMENTARY INFORMATION: 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. “Collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA’s functions, including whether the information will have practical utility; (2) the accuracy of FDA’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on

respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Annual Reporting for Custom Device Exemption

OMB Control Number 0910-0767—Extension

The custom device exemption is set forth at section 520(b)(2)(B) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360j(b)(2)(B)). A custom device is in a narrow category of device that, by virtue of the rarity of the patient’s medical condition or physician’s special need the device is designed to treat, it would be impractical for the device to comply with premarket review regulations and performance standards.

The Food and Drug Administration Safety and Innovation Act (FDASIA) implemented changes to the custom device exemption contained in section 520(b) of the FD&C Act. The new provision amended the existing custom device exemption and introduced new concepts and procedures for custom devices, such as:

- Devices created or modified in order to comply with the order of an individual physician or dentist;
- the potential for multiple units of a device type (limited to no more than five units per year) qualifying for the custom device exemption; and
- annual reporting requirements by the manufacturer to FDA about devices manufactured and distributed under section 520(b) of the FD&C Act.

Under FDASIA, “devices” that qualify for the custom device exemption contained in section 520(b) of the FD&C Act were clarified to include no more than “five units per year of a particular device type” that otherwise meet all the requirements necessary to qualify for the custom device exemption.

In the **Federal Register** of September 24, 2014 (79 FR 57112), FDA announced the availability of the guidance entitled “Custom Device Exemption.” FDA has developed this document to provide guidance to industry and FDA staff about implementation of the custom device exemption contained in the Food, Drug, and Cosmetic Act (the FD&C Act). The intent of the guidance is to define terms used in the custom device exemption, explain how to interpret the “five units per year of a particular device type” language contained in the FD&C Act, describe information that FDA proposes manufacturers should submit in the custom device annual report, and provide recommendations on how to

submit an annual report for devices distributed under the custom device exemption.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN ¹

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Annual reporting for custom devices	33	1	33	40	1,320

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: March 13, 2017.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2017–05349 Filed 3–20–17; 8:45 am]

BILLING CODE 4164–01–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 (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Mental Health Services Research Conflicts.

Date: April 7, 2017.

Time: 12:00 p.m. to 1:30 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: Karen Gavin-Evans, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Boulevard, Room 6153, MSC 9606, Bethesda, MD 20892, 301–451–2356, gavinevanskm@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: March 15, 2017.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–05487 Filed 3–20–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Committee Establishment

Pursuant to the Federal Advisory Committee Act, as amended (5 U.S.C. App.), the Director, National Institutes of Health (NIH), announces the establishment of the Task Force on Research Specific to Pregnant Women and Lactating Women (Task Force) as required by section 2041 of the 21st Century Cures Act, Public Law 114–255.

The Task Force will provide advice and guidance to the Secretary, Department of Health and Human Services (Secretary), regarding Federal activities related to identifying and addressing gaps in knowledge and research regarding safe and effective therapies for pregnant women and lactating women, including the development of such therapies and the collaboration on and coordination of such activities. The Task Force will, not later than 18 months after the establishment, prepare and submit a report to the Secretary, the Committee on Health, Education, Labor and Pensions of the Senate, and the Committee on Energy and Commerce of the House of Representatives.

It is determined that the Task Force is in the public interest in connection with the performance of duties imposed on the NIH by statute, and that these duties can best be performed through the advice and counsel of this group.

Inquiries may be directed to Jennifer Spaeth, 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 spaethj@od.nih.gov.

Dated: March 15, 2017.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–05486 Filed 3–20–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Diabetes Mellitus Interagency Coordinating Committee Meeting

SUMMARY: The Diabetes Mellitus Interagency Coordinating Committee (DMICC) will hold a meeting on April 26–27, 2017. The topic for this meeting will be “Opportunities for Research Supported by the Special Statutory Funding Program for Type 1 Diabetes Research.” The meeting is open to the public. Non-federal individuals planning to attend the workshop should register by email to Charlemae Clarke, The Scientific Consulting Group, Inc. (cclarke@scgcorp.com; please put “Registration DMICC T1D Meeting” in the subject line) at least 7 days prior to the workshop.

DATES: The meeting will be held on April 26, 2017 from 8:00 a.m. to 5:45 p.m. and on April 27, 2017 from 8:00 a.m. to 3:00 p.m.

ADDRESSES: The meeting will be held in the Conference Room (terrace level) at 5635 Fishers Ln., Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: An agenda for the DMICC meeting will be available by contacting Charlemae Clarke, The Scientific Consulting Group, Inc. (cclarke@scgcorp.com; please put “Agenda Request for DMICC T1D Meeting” in the subject line). For further information concerning this meeting, contact Dr. B. Tibor Roberts, Executive Secretary of the Diabetes Mellitus Interagency Coordinating Committee, National Institute of Diabetes and

Digestive and Kidney Diseases, 31 Center Drive, Building 31A, Room 9A19, MSC 2560, Bethesda, MD 20892–2560, telephone: 301–496–6623; FAX: 301–480–6741; email: dmicc@mail.nih.gov.

SUPPLEMENTARY INFORMATION: The DMICC, chaired by the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK) comprising members of the Department of Health and Human Services and other federal agencies that support diabetes-related activities, facilitates cooperation, communication, and collaboration on diabetes among government entities. DMICC meetings, held several times a year, provide an opportunity for Committee members to learn about and discuss current and future diabetes programs in DMICC member organizations and to identify opportunities for collaboration. The April 26–27, 2017 DMICC meeting will focus on “Opportunities for Research Supported by the Special Statutory Funding Program for Type 1 Diabetes Research.”

Any interested person may file written comments with the Committee by forwarding their statement to the contact person listed on this notice. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person. Because of time constraints for the meeting, there will not be time on the agenda for oral comments from members of the public.

Members of the public who would like to receive email notification about future DMICC meetings should register for the listserv available on the DMICC Web site, www.diabetescommittee.gov.

Dated: March 6, 2017.

B. Tibor Roberts,

Executive Secretary, DMICC, Office of Scientific Program and Policy Analysis, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health.

[FR Doc. 2017–05492 Filed 3–20–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2006–24191]

Revision of Agency Information Collection Activity Under OMB Review: Transportation Worker Identification Credential (TWIC®) Program

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-Day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0047, abstracted below to OMB for review and approval of a revision of the currently approved collection under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice soliciting comments during a 60-day period of the following collection of information on October 24, 2016, at 81 FR 73126. The collection involves the submission of identifying and other information by individuals applying for a TWIC®, the expanded collection and use of biographic and biometric (e.g., fingerprints, iris scans, and/or photograph) information for other enrollment options, the removal of TWIC® Extended Expiration Date (EED) requirements, and a revision to the TWIC® standard enrollment fee. Also, the collection expands on the individuals in the field of transportation who may wish to apply for a TWIC® and undergo the associated security threat assessment.

DATES: Send your comments by April 20, 2017. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT:

Christina A. Walsh, TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011; telephone (571) 227–2062; email TSAPRA@tsa.dhs.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (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 valid OMB control number. The ICR documentation is available at <http://www.reginfo.gov>. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency’s estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Transportation Worker Identification Credential (TWIC®) Program.

Type of Request: Revision of a currently approved collection.

OMB Control Number: 1652–0047.

Form(s): TWIC® Disclosure and Certification Form, TWIC® Pre-Enrollment Application, TWIC® Enrollment Application, TWIC® Card Replacement Request, and TWIC® Customer Satisfaction Survey.

Affected Public: Individuals seeking or requiring unescorted access to secure areas within the TSA’s national and transportation security mission or facilities and vessels regulated by the Maritime Transportation Security Act (MTSA) of 2002 (Pub. L. 107–295; Nov. 25, 2002; sec. 102), other authorized individuals in the field of transportation, and all mariners holding U.S. Coast Guard-issued credentials or qualification documents.

Abstract: The data collected will be used for processing TWIC® enrollments as well as to allow expanded enrollment options for additional comparability or eligibility determinations for other programs. Individuals in the field of transportation who are authorized to apply for a TWIC® for use as part of other government programs, such as the Chemical Facility Anti-Terrorism (CFATS) program, may apply for a

TWIC® and undergo the associated security threat assessment. The data used to conduct a comprehensive security threat assessment includes: (1) A criminal history records check; (2) a check of intelligence databases; and (3) an immigration status check. TSA may also use the data to determine a TWIC® holder's eligibility to participate in TSA's expedited screening program for air travel, TSA Pre✓®, without requiring an additional background check.

At the enrollment center, applicants verify their biographic information and provide identity documentation, biometric information, and proof of immigration status (if required). This information allows TSA to complete a security threat assessment. During enrollment, TSA collects from applicants a \$125.25 fee for standard enrollment. (Effective October 1, 2016, TSA reduced the standard enrollment fee by \$2.75 in alignment to the FBI's fee update for fingerprint-based criminal history records checks.) If TSA determines that the applicant is eligible to receive a TWIC®, TSA issues and sends an activated TWIC® card to the address provided by the applicant or notifies the applicant that their TWIC® is ready for pick up and activation at an enrollment center. Once activated, this credential will be used for facility and vessel access control requirements to include card authentication, card validation, and identity verification. In the event of a lost, damaged or stolen credential, the cardholder may request a replacement card from an enrollment center for a \$60.00 fee. The one-time temporary Extended Expiration Date (EED) TWIC® renewal option and collection requirement is discontinued. TSA also conducts a survey to capture applicant and cardholder overall satisfaction with the enrollment and activation process. This optional customer satisfaction survey is provided at the end of enrollment and at the end of the activation processes.

Number of New TWIC® Enrollments: An estimated 519,710 annually.

Total Annual Hour Burden: An estimated 738,748 annually including enrollment, issuance, and appeal/waiver burden hours.

Enrollment Burden Hours: An estimated 592,574 annually.

Card Issuance Burden Hours: An estimated 121,619 annually.

Waiver/Appeal Burden Hours: An estimated 24,556 hours annually.

Number of Survey Respondents: An estimated 222,643 responses annually for TWIC® enrollment survey (181,898) and card activation/issuance survey (40,745).

Total Annual Survey Hour Burden: An estimated 9,351 hours annually, including 7,640 hours at enrollment and 1,711 hours at card issuance.

Dated: March 15, 2017.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2017-05534 Filed 3-20-17; 8:45 am]

BILLING CODE 9110-05-P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

New Agency Information Collection Activity Under OMB Review: Travel Request and Expense Report Form for TSA Contractors

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-day Notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the new Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on December 6, 2016, 81 FR 87947. The collection involves the submission of basic identifying and travel information for a contractor intending to conduct travel determined to be a reimbursable expense under a TSA contract.

DATES: Send your comments by April 20, 2017. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-6974.

FOR FURTHER INFORMATION CONTACT:

Christina A. Walsh, TSA PRA Officer, Office of Information Technology (OIT), TSA-11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598-6011; telephone (571) 227-2062; email TSAPRA@tsa.dhs.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (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 valid OMB control number. The ICR documentation is available at <http://www.reginfo.gov>. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Travel Request and Expense Report Form for TSA Contractors.

Type of Request: New collection.

OMB Control Number: Not yet assigned.

Form(s): TSA Form 308.

Affected Public: TSA Contractors.

Abstract: Pursuant to the Federal Travel Regulation (FTR), TSA has authority to implement statutory requirements and policies for travel by Federal civilian employees and others authorized to travel at government expense. *See* FTR, 41 CFR chapter 300. *See also* 5 U.S.C. 5707 (Travel, Transportation, and Subsistence).¹ Consistent with this authority, TSA created the Contractor Travel Request and Expense Report form. The form allows a TSA Contracting Officer Representative to preauthorize reimbursable travel for a contractor intending to conduct travel determined to be a reimbursable expense under the contract. Additionally, the form allows for post-travel verification of the invoiced-amount with the preauthorized costs. The data collected on the form

¹ Visit www.gsa.gov/federaltravelregulation for text and other information regarding the FTR. Under the FTR, a Federal traveler is a person who travels on a Government aircraft and who is either (1) a civilian employee in the Government service; (2) a member of the uniformed or foreign services of the United States Government; or (3) a contractor working under a contract with an executive agency. *See* 41 CFR 300-3.1.

includes basic identifying information for the individual traveling, such as full name of the traveler, travel date(s) and location(s), departure information, justification for travel, all costs associated with the travel, name and contract number for the vendor and signature of the requesting vendor. The data will be collected as necessary when travel-related expenses under a contract meet the stipulated requirements for reimbursable-travel.

Number of Respondents: 450.

Estimated Annual Burden Hours: An estimated 150 hours annually.

Dated: March 15, 2017.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2017-05540 Filed 3-20-17; 8:45 am]

BILLING CODE 9110-05-P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Health Standards for Diesel Particulate Matter Exposure in Underground Coal Mines

AGENCY: Office of the Secretary, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Mine Safety and Health Administration (MSHA) sponsored information collection request (ICR) titled, "Health Standards for Diesel Particulate Matter Exposure in Underground Coal Mines," to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before April 20, 2017.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201701-1219-001 (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202-693-4129, TTY 202-693-8064, (these are not toll-free numbers) or by email at DOL_PRA_PUBLIC@dol.gov.

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL-MSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202-395-5806 (this is not a toll-free number); or by email:

OIRA_submission@omb.eop.gov.

Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: DOL_PRA_PUBLIC@dol.gov.

FOR FURTHER INFORMATION: Contact Michel Smyth by telephone at 202-693-4129, TTY 202-693-8064, (these are not toll-free numbers) or by email at DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Health Standards for Diesel Particulate Matter Exposure in Underground Coal Mines information collection requirements codified in regulations 30 CFR 72.510(a) and (b) and 72.520(a) and (b). More specifically regulations section 72.510(b) requires an underground coal mine operator to keep a record for one year of having provided required training. Section 72.520(a) and (b) requires an underground coal mine operator to maintain an inventory of diesel powered equipment units together with a list of information about any unit's emission control or filtration system. The list must be updated within seven (7) calendar days of any change. Federal Mine Safety & Health Act of 1977 sections 101(a) and 103(h) authorize this information collection. See 30 U.S.C. 811(a) and 813(h).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1219-0124.

OMB authorization for an ICR cannot be for more than three (3) years without

renewal, and the current approval for this collection is scheduled to expire on March 31, 2017. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on November 4, 2016 (81 FR 76968).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1219-0124. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL-MSHA.

Title of Collection: Health Standards for Diesel Particulate Matter Exposure in Underground Coal Mines.

OMB Control Number: 1219-0124.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 220.

Total Estimated Number of Responses: 74,282.

Total Estimated Annual Time Burden: 936 hours.

Total Estimated Annual Other Costs Burden: \$13.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: March 13, 2017.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2017-05548 Filed 3-20-17; 8:45 am]

BILLING CODE 4510-43-P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Job Corps Health Questionnaire

AGENCY: Office of the Secretary, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) revision titled, "Job Corps Health Questionnaire," to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995. Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before April 20, 2017.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201703-1205-001 (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202-693-4129, TTY 202-693-8064, (these are not toll-free numbers) or sending an email to DOL_PRA_PUBLIC@dol.gov.

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL-ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202-395-5806 (this is not a toll-free number); or by email: OIRA_submission@omb.eop.gov. Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW.,

Washington, DC 20210; or by email: DOL_PRA_PUBLIC@dol.gov.

FOR FURTHER INFORMATION CONTACT:

Michel Smyth by telephone at 202-693-4129, TTY 202-693-8064, (these are not toll-free numbers) or sending an email to DOL_PRA_PUBLIC@dol.gov.

SUPPLEMENTARY INFORMATION: This ICR seeks approval under the PRA for revisions to the Job Corps Health Questionnaire (Form ETA-653) information collection. Information on the health status of a Job Corps applicant is obtained and entered on the Form during an interview with an admissions counselor as part of the admissions process. This information collection has been classified as a revision, because the ETA seeks to revise Form ETA-653 by clarifying the instructions and several questions. Workforce Innovation and Opportunity Act section 145 authorizes this information collection. See 29 U.S.C. 3195.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205-0033. The current approval is scheduled to expire on March 31, 2017; however, the DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on December 9, 2016 (81 FR 89151).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205-0033. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL-ETA.

Title of Collection: Job Corps Health Questionnaire.

OMB Control Number: 1205-0033.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 66,697.

Total Estimated Number of Responses: 66,697.

Total Estimated Annual Time Burden: 8,893 hours.

Total Estimated Annual Other Costs Burden: \$0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: March 14, 2017.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2017-05549 Filed 3-20-17; 8:45 am]

BILLING CODE 4510-FI-P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

Agenda

Time and Date: 9:30 a.m., Tuesday, March 28, 2017.

Place: NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

Status: The two items are open to the public.

Matters To Be Considered

56432 Aircraft Accident Report—Loss of Control at Takeoff, Air Methods Corporation, Airbus Helicopters AS350 B3e, N390LG, Frisco, Colorado, July 3, 2015.

56342 Highway Accident Report—Motorcoach Collision With Crash Attenuator in Gore Area, US Highway 101, San Jose, California, January 19, 2016.

Note: This meeting was previously announced in the **Federal Register** on Wednesday, March 1, 2017 (Vol. 82, No. 39, page 12248). The meeting was not held due to delayed U.S. Government operations in the Washington, DC area caused by inclement weather.

News Media Contact: Telephone: (202) 314-6100.

The press and public may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting specific accommodations should contact Rochelle McCallister at (202) 314-6305 or by email at Rochelle.McCallister@ntsb.gov by Wednesday, March 22, 2015.

The public may view the meeting via a live or archived webcast by accessing a link under "News & Events" on the NTSB home page at www.nts.gov.

Schedule updates, including weather-related cancellations, are also available at www.nts.gov.

For More Information Contact: Candi Bing at (202) 314-6403 or by email at bingc@ntsb.gov or LaSean McCray at (202) 314-6047 or by email at lsean.mccray@ntsb.gov.

For Media Information Contact: Eric Weiss at (202) 314-6100 or by email at eric.weiss@ntsb.gov for the San Jose, CA accident, and Terry Williams at (202) 314-6100 or by email at terry.williams@ntsb.gov for the Frisco, CO accident.

Dated: Friday, March 17, 2017.

LaSean R. McCray,

Assistant Federal Register Liaison Officer.

[FR Doc. 2017-05755 Filed 3-17-17; 4:15 pm]

BILLING CODE 7533-01-P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2017-133; CP2017-134; MC2017-95 and CP2017-135; MC2017-96 and CP2017-136; MC2017-97 and CP2017-137; CP2017-138; CP2017-139; CP2017-140]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing recent Postal Service filings for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* March 23, 2017 (Comment due date applies to Docket Nos. CP2017-133; CP2017-134; CP2017-138; CP2017-139); March 24, 2017 (Comment due date applies to

Docket Nos. MC2017-95 and CP2017-135; MC2017-96 and CP2017-136; MC2017-97 and CP2017-137; CP2017-140).

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
- II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's Web site (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable

statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s):* CP2017-133; *Filing Title:* Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* March 15, 2017; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Gregory Stanton; *Comments Due:* March 23, 2017.

2. *Docket No(s):* CP2017-134; *Filing Title:* Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* March 15, 2017; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Gregory Stanton; *Comments Due:* March 23, 2017.

3. *Docket No(s):* MC2017-95 and CP2017-135; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Contract 297 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* March 15, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative:* Nina Yeh; *Comments Due:* March 24, 2017.

4. *Docket No(s):* MC2017-96 and CP2017-136; *Filing Title:* Request of the United States Postal Service to Add First-Class Package Service Contract 74 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* March 15, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative:* Nina Yeh; *Comments Due:* March 24, 2017.

5. *Docket No(s):* MC2017-97 and CP2017-137; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Express, Priority Mail & First-Class Package Service Contract 15 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* March 15, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*; *Public Representative:* Erin

Mahagan; *Comments Due*: March 24, 2017.

6. *Docket No(s)*.: CP2017–138; *Filing Title*: Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 7 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date*: March 15, 2017; *Filing Authority*: 39 CFR 3015.5; *Public Representative*: Erin Mahagan; *Comments Due*: March 23, 2017.

7. *Docket No(s)*.: CP2017–139; *Filing Title*: Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date*: March 15, 2017; *Filing Authority*: 39 CFR 3015.5; *Public Representative*: Max E. Schnidman; *Comments Due*: March 23, 2017.

8. *Docket No(s)*.: CP2017–140; *Filing Title*: Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date*: March 15, 2017; *Filing Authority*: 39 CFR 3015.5; *Public Representative*: Max E. Schnidman; *Comments Due*: March 24, 2017.

This notice will be published in the **Federal Register**.

Stacy L. Ruble,
Secretary.

[FR Doc. 2017–05556 Filed 3–20–17; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80256; File Nos. SR–BatsBYX–2017–02; SR–BatsBZX–2017–08; SR–BatsEDGA–2017–03; SR–BatsEDGX–2017–08; SR–BOX–2017–07; SR–C2–2017–007; SR–CBOE–2017–012; SR–CHX–2017–03; SR–ISE–2017–08; SR–IEX–2017–04; SR–ISEGemini–2017–04; SR–ISEMercury–2017–03; SR–MIAX–2017–03; SR–PEARL–2017–04; SR–NASDAQ–2017–008; SR–BX–2017–007; SR–PHLX–2017–07; SR–NYSE–2017–01; SR–NYSEArca–2017–03; SR–NYSEArca–2017–04; SR–NYSEMKT–2017–02; SR–NSX–2017–03]

Self-Regulatory Organizations; Bats BYX Exchange Inc.; Bats BZX Exchange, Inc.; Bats EDGA Exchange, Inc.; Bats EDGX Exchange, Inc.; BOX Options Exchange LLC; C2 Options Exchange, Incorporated; Chicago Board Options Exchange, Incorporated; Chicago Stock Exchange, Inc.; International Securities Exchange, LLC; Investors Exchange LLC; ISE Gemini, LLC; ISE Mercury, LLC; Miami International Securities Exchange LLC; MIAX PEARL, LLC; The NASDAQ Stock Market LLC; NASDAQ BX, Inc.; NASDAQ PHLX, Inc.; New York Stock Exchange LLC; NYSE Arca, Inc.; NYSE MKT LLC; NYSE National, Inc.; Order Approving Proposed Rule Changes To Adopt Consolidated Audit Trail Compliance Rules

March 15, 2017.

I. Introduction

On January 17, 2017,¹ January 30, 2017,² January 31, 2017,³ February 1, 2017,⁴ and February 2, 2017,⁵ Bats BYX Exchange, Inc. (“Bats BYX”), Bats BZX Exchange, Inc. (“Bats BZX”), Bats EDGA Exchange, Inc. (“Bats EDGA”), Bats EDGX Exchange, Inc. (“Bats EDGX”), BOX Options Exchange LLC (“BOX”), C2 Options Exchange, Incorporated (“C2”), Chicago Board Options Exchange, Incorporated (“CBOE”), Chicago Stock Exchange, Inc. (“CHX”),

¹ The New York Stock Exchange LLC, NYSE Arca, Inc., and NYSE MKT LLC filed their proposed rule changes on January 17, 2017.

² Bats BYX Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, International Securities Exchange, LLC, Miami International Securities Exchange LLC, NASDAQ PHLX LLC and NYSE National Inc. filed their proposed rule changes on January 30, 2017.

³ BOX Options Exchange LLC and The NASDAQ Stock Market LLC filed their proposed rule changes on January 31, 2017.

⁴ Chicago Stock Exchange, Inc. and MIAX PEARL, LLC filed their proposed rule changes on February 1, 2017.

⁵ International Securities Exchange, LLC, ISE Gemini, LLC, ISE Mercury, LLC and NASDAQ BX, Inc. filed their proposed rule changes on February 2, 2017.

International Securities Exchange, LLC (“ISE”), ISE Gemini, LLC (“ISE Gemini”), ISE Mercury, LLC (“ISE Mercury”), Investors Exchange LLC (“IEX”), Miami International Securities Exchange LLC (“MIAX”), MIAX PEARL, LLC (“MIAX PEARL”), NASDAQ BX, Inc. (“BX”), NASDAQ PHLX LLC (“Phlx”), The NASDAQ Stock Market LLC (“NASDAQ”), the New York Stock Exchange LLC (“NYSE”), NYSE Arca, Inc. (“NYSE Arca”), NYSE MKT LLC (“NYSE MKT”), and NYSE National, Inc. (“NYSE National”) (f/k/a National Stock Exchange, Inc.)⁶ (collectively, “the Exchanges”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) and Rule 19b–4 thereunder,⁸ proposed rule changes to implement the compliance rules regarding the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”)(“CAT Compliance Rules” or “Rules”).⁹ On January 30, 2017, NYSE, NYSE Arca, and NYSE MKT each submitted amendments to their respective proposed rule filings.¹⁰ Those proposed rule changes were published for comment in the **Federal Register** on February 6, 2017.¹¹ The proposed rule changes submitted by Bats BYX, Bats BZX, Bats EDGX, BOX, CBOE, CHX, IEX, MIAX, MIAX PEARL, NYSE National, NASDAQ, and NASDAQ PHLX were published for comment in the **Federal Register** on February 8, 2017.¹² The proposed rule

⁶ NYSE National filed SR–NSX–2017–03 as the National Stock Exchange, Inc.

⁷ 15 U.S.C. 78s(b)(1).

⁸ 17 CFR 240.19b–4.

⁹ The proposed CAT Compliance Rules of C2 and MIAX PEARL incorporate by reference the proposed CAT Compliance Rules of CBOE and MIAX, respectively. C2 and MIAX PEARL have requested exemptions from the rule filing requirements of Section 19(b) of the Exchange Act for changes to their proposed CAT Compliance Rules that are effected solely by virtue of changes to the proposed CBOE and MIAX CAT Compliance Rules. See Letter from Laura G. Dickman, Lead Counsel, CBOE, to Brent J. Fields, Secretary, Commission, dated January 30, 2017; Letter from Deborah L. Carroll, Associate General Counsel, MIAX PEARL, to Brent J. Fields, Secretary, Commission, dated February 17, 2017.

¹⁰ These amendments replaced the original proposed rule changes in their entirety prior to publication of these proposed rule changes for notice and comment.

¹¹ See Securities Exchange Act Release Nos. 79907 (January 31, 2017), 82 FR 9413 (“NYSE Notice”); 79911 (January 31, 2017), 82 FR 9435 (“NYSE MKT Notice”); 79909 (January 31, 2017) 82 FR 9464 (“NYSE Arca Notice 1”); 79908 (January 31, 2017), 82 FR 9450 (“NYSE Arca Notice 2”).

¹² See Securities Exchange Act Release Nos. 79944 (February 2, 2017), 82 FR 9846 (“Bats BYX Notice”); 79927 (February 2, 2017), 82 FR 9874 (February 8, 2017) (“Bats BZX Notice”); 79962 (February 3, 2017), 82 FR 10047 (“Bats EDGA

changes submitted by BX, C2, Bats EDGA, ISE, ISE Gemini, and ISE Mercury were published for comment in the **Federal Register** on February 9, 2017.¹³ On March 7, 2017, BX, ISE, ISE Gemini, ISE Mercury, NASDAQ and PHLX each filed an amendment to its respective proposed rule change.¹⁴ The Commission received 3 comments in response to the proposed rule changes.¹⁵ On March 15, the Participants¹⁶ submitted a response to the comment letters.¹⁷ This order approves the proposed rule changes.¹⁸

II. Background

On September 30, 2014, Bats BYX, Bats BZX, Bats EDGA, Bats EDGX, BOX, C2, CBOE, CHX, Financial Industry Regulatory Authority, Inc. (“FINRA”), ISE, IEX, ISE Gemini, ISE Mercury, MIAx, MIAx PEARL, BX, PHLX, NASDAQ, NYSE, NYSE MKT, NYSE Arca, and NYSE National (collectively, the “Participants”) filed with the Commission, pursuant to Section 11A of the Exchange Act¹⁹ and Rule 608 of Regulation NMS thereunder,²⁰ the CAT

Notice”); 79949 (February 2, 2017), 82 FR 9765 (“Bats EDGX Notice”); 79932 (February 2, 2017), 82 FR 9819 (“BOX Notice”); 79950 (February 2, 2017), 82 FR 9916 (“CBOE Notice”); 79948 (February 2, 2017), 82 FR 9904 (“CHX Notice”); 79934 (February 2, 2017), 82 FR 9891 (“IEX Notice”); 79937 (February 2, 2017), 82 FR 9790 (“MIAx Notice”); 79938 (February 2, 2017), 82 FR 9929 (“MIAx PEARL Notice”); 79933 (February 2, 2017), 82 FR 9942 (“NYSE National”); 79935 (February 2, 2017), 82 FR 9831 (“NASDAQ Notice”); 79945 (February 2, 2017), 82 FR 9778 (“Phlx Notice”).

¹³ See Securities Exchange Act Release Nos. 79960 (February 3, 2017), 82 FR 10159 (“BX Notice”); 79953 (February 3, 2017), 82 FR 9819 (“C2 Notice”); 79967 (February 3, 2017), 82 FR 10105 (“ISE Notice”); 79965 (February 3, 2017), 82 FR 10147 (“ISE Gemini Notice”); 79963 (February 3, 2017), 82 FR 10130 (“ISE Mercury Notice”).

¹⁴ These amendments modified Section 2 of the Form 19b-4s submitted by BX, ISE, ISE Gemini, ISE Mercury, NASDAQ, and Phlx to state that on February 24, 2017, the exchanges obtained the necessary approval from their Board of Directors for the proposed rule changes. These amendments do not affect the substance of the filings and therefore are not subject to notice and comment.

¹⁵ See letters from William H. Herbert, Managing Director, Financial Information Forum, dated March 1, 2017 (“FIF Letter”); Bonnie Wachtel, Wachtel & Co Inc., dated March 2, 2017 (“Wachtel Letter”); and Manisha Kimmel, Chief Regulatory Officer, Wealth Management, Thomson Reuters, dated March 2, 2017 (“Thomson Reuters Letter”). These comment letters were submitted in response to to SR-FINRA-2017-003, however the comments therein are applicable to all the CAT Compliance Rules, and therefore are discussed in this Order.

¹⁶ See *infra* Section II.

¹⁷ See Letter from Participants to Brent J. Fields, Secretary, Commission, dated March 15, 2017 (“Participants’ Response Letter”).

¹⁸ The Commission notes that for purposes of this Order, unless otherwise specified, capitalized terms used in this Order are defined as set forth in the Notices or in the CAT NMS Plan.

¹⁹ 15 U.S.C. 78k-1.

²⁰ 17 CFR 242.608.

NMS Plan.²¹ The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act.²² The Plan was published for comment in the **Federal Register** on May 17, 2016,²³ and approved by the Commission, as modified, on November 15, 2016.²⁴

The Plan is designed to create, implement and maintain a consolidated audit trail (“CAT”) that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. Each Participant is required to enforce compliance by its Industry Members, as applicable, with the provisions of the Plan, by adopting a Compliance Rule applicable to their Industry Members.²⁵ The Exchanges’ proposed rules set forth Compliance Rules implementing provisions of the CAT NMS Plan that are applicable to their members.²⁶

III. Description of the Proposed Rule Changes

The proposed CAT Compliance Rules include twelve rules covering the following areas: (1) Definitions; (2) clock synchronization; (3) Industry Member Data reporting; (4) Customer information reporting; (5) Industry Member information reporting; (6) time stamps; (7) clock synchronization rule violations; (8) connectivity and data transmission; (9) development and testing; (10) recordkeeping; (11) timely, accurate and complete data; and (12) compliance dates.

²¹ See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. See Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015. The CAT NMS Plan was approved by the Commission, with limited changes made by the Commission, on November 15, 2016. See *infra* note 24.

²² 17 CFR 242.613.

²³ Securities Exchange Act Release No. 77724 (April 27, 2016), 81 FR 30614 (May 17, 2016).

²⁴ Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (“Approval Order”).

²⁵ See 17 CFR 242.613(g)(1).

²⁶ The Commission notes that the CAT NMS Plan defines an “Industry Member” as a member of a national securities exchange or a member of a national securities association. CAT NMS Plan, *supra* note 21, at Section 1.1. Because the Exchanges’ proposed CAT Compliance Rules implement the CAT NMS Plan, the term “Industry Member” is used throughout these Rules, and the term “Industry Member” means a member of the Exchange. The Commission notes that the individual Exchanges use different terms in their rulebooks to refer to an “Industry Member.”

A. Definitions

The proposed CAT Compliance Rules set forth the definitions for the terms used in each Exchange’s proposed CAT Compliance Rule.²⁷ Each of the defined terms in the proposed CAT Compliance Rules is discussed below.

1. Account Effective Date

(a) Customer Information Approach

Rule 613 of Regulation NMS requires that certain data elements be reported to the CAT to enable regulators to identify Customers associated with orders. The Exchanges note that Rule 613(c)(7)(i)(A) requires an Industry Member to report the “Customer-ID” for each Customer for the original receipt or origination of an order,²⁸ and that “Customer-ID” is defined in Rule 613(j)(5) to mean “with respect to a customer, a code that uniquely and consistently identifies such customer for purposes of providing data to the Central Repository.”²⁹ Rule 613(c)(8) requires Industry Members to use the same Customer-ID for each Customer.³⁰ The Exchanges note that the Commission granted the Participants exemptive relief to permit the use of an alternative approach to the requirement that an Industry Member report a Customer-ID for every Customer upon original receipt or origination.³¹ The alternative approach is called the “Customer Information Approach.”

The Exchanges state that under the Customer Information Approach, the CAT NMS Plan requires each Industry Member to assign a unique Firm Designated ID to each Customer, and that for the Firm Designated ID, Industry Members are permitted to use an account number or any other identifier defined by the firm, provided each identifier is unique across the firm for each business date (*i.e.*, a single firm may not have multiple separate customers with the same identifier on

²⁷ See proposed Bats BYX Rule 4.5; Bats BZX Rule 4.5; Bats EDGA Rule 4.5; Bats EDGX Rule 4.5; BX Rule 900 and Chapter IX, Section 8, paragraph (a); BOX Rule 16010; C2 Chapter 6, Section F; CBOE Rule 6.85; CHX Article 23, Rule 1; IEX Rule 11.610; ISE Rule 900; ISE Gemini Rule 900; ISE Mercury Rule 900; MIAx Rule 1701; MIAx PEARL Chapter XVII; Nasdaq Rules 6810 and Chapter IX, Section 8, paragraph (a); NYSE Rule 6810; NYSE Arca Equities Rule 6.6810; NYSE Arca Options Rule 11.6810; NYSE MKT Rule 6810; NYSE National Rule 14.1; Phlx Rule 910A.

²⁸ 17 CFR 242.613(c)(7)(i)(A).

²⁹ 17 CFR 242.613(j)(5).

³⁰ 17 CFR 242.613(c)(8).

³¹ See Securities Exchange Act Release No. 77265 (March 1, 2016), 81 FR 11856 (March 7, 2016) (“Exemption Order”). See also Letter from Participants to Brent J. Fields, Secretary, Commission, dated January 30, 2015 (“Exemptive Request Letter”).

any given date).³² Prior to their commencement of reporting to the CAT, Industry Members must submit an initial set of Customer information to the Central Repository, including the Firm Designated ID, Customer Identifying Information and Customer Account Information (which may include, as applicable, the Customer's name, address, date of birth, individual tax payer identifier number ("ITIN")/ social security number ("SSN"), individual's role in the account (e.g., primary holder, joint holder, guardian, trustee, person with power of attorney) and Legal Entity Identifier ("LEI") and/or Large Trader ID ("LTID")). This process is referred to as the "customer definition process."

The Exchanges note that in accordance with the Customer Information Approach, Industry Members are required to report only the Firm Designated ID for each new order submitted to the Central Repository, rather than the "Customer-ID" with individual order events. Within the Central Repository, each Customer will be uniquely identified by identifiers or a combination of identifiers such as ITIN/SSN, date of birth, and as applicable, LEI and LTID. The Plan Processor will be required to use these unique identifiers to map orders to specific Customers across all Industry Members and Participants. To ensure information identifying a Customer is up to date, Industry Members will be required to submit to the Central Repository daily and periodic updates for reactivated accounts, newly established accounts, and revised Firm Designated IDs or associated reportable Customer information.

(b) Definition of Account Effective Date

In connection with the Customer Information Approach, Industry Members will be required to report "Customer Account Information" to the Central Repository. "Customer Account Information" is defined in Rule 613(j)(4) to "include, but not be limited to, account number, account type, customer type, date account opened, and large trader identifier (if applicable)." ³³ Therefore, when reporting Customer Account Information, an Industry Member is required to report the date an account was opened. The Exchanges note that the Participants requested and received from the Commission an exemption to allow an "Account Effective Date" to be reported in lieu of an account open date in certain limited

circumstances.³⁴ The definition of "Account Effective Date" as set forth in the proposed CAT Compliance Rules describes those limited circumstances in which an Industry Member may report an "Account Effective Date" rather than the account open date. The Exchanges state that the proposed definition is the same as the definition of "Account Effective Date" set forth in Section 1.1 of the CAT NMS Plan, provided, however, that specific dates have replaced the descriptions of those dates set forth in Section 1.1 of the Plan.

Specifically, the proposed CAT Compliance Rules define "Account Effective Date" to mean, with regard to those circumstances in which an Industry Member has established a trading relationship with an institution but has not established an account with that institution: (1) When the trading relationship was established prior to November 15, 2018 for Industry Members other than Small Industry Members, or prior to November 15, 2019 for Small Industry Members, either (a) the date the relationship identifier was established within the Industry Member; (b) the date when trading began (i.e., the date the first order was received) using the relevant relationship identifier; or (c) if both dates are available, the earlier date will be used to the extent that the dates differ; or (2) when the trading relationship was established on or after November 15, 2018 for Industry Members other than Small Industry Members, or on or after November 15, 2019 for Small Industry Members, the date the Industry Member established the relationship identifier, which would be no later than the date the first order was received.³⁵

The proposed CAT Compliance Rules state that an "Account Effective Date" means, where an Industry Member changes back office providers or clearing firms prior to November 15, 2018 for Industry Members other than Small Industry Members, or prior to

November 15, 2019 for Small Industry Members, the date an account was established at the relevant Industry Member, either directly or via transfer.³⁶

The proposed CAT Compliance Rules state that an "Account Effective Date" means, where an Industry Member acquires another Industry Member prior to November 15, 2018 for Industry Members other than Small Industry Members, or prior to November 15, 2019 for Small Industry Members, the date an account was established at the relevant Industry Member, either directly or via transfer.³⁷

The proposed CAT Compliance Rules state that "Account Effective Date" means, where there are multiple dates associated with an account established prior to November 15, 2018 for Industry Members other than Small Industry Members, or prior to November 15, 2019 for Small Industry Members, the earliest available date.³⁸

The proposed CAT Compliance Rules state that an "Account Effective Date" means, with regard to Industry Member proprietary accounts established prior to November 15, 2018 for Industry Members other than Small Industry Members, or prior to November 15, 2019 for Small Industry Members: (1) The date established for the account in the Industry Member or in a system of the

³⁶ See proposed Bats BYX Rule 4.5(a)(2); Bats BZX Rule 4.5(a)(2); Bats EDGA Rule 4.5(a)(2); Bats EDGX Rule 4.5(a)(2); BX Rules 6810(a)(2) and Chapter IX, Section 8, paragraph (a)(i)(2); BOX Rule 16010(a)(2); C2 Chapter 6, Section F; CBOE Rule 6.85(a)(ii); CHX Article 23, Rule 1(a)(2); IEX Rule 11.610(a)(2); ISE Rule 900(a)(1); ISE Gemini Rule 900(a)(1); ISE Mercury 900(a)(1); MIAx Rule 1701(a)(2); MIAx PEARL Chapter XVII; NASDAQ Rules 6810(a)(2) and Chapter IX, Section 8, paragraph (a)(i)(2); NYSE Rule 6810(a)(2); NYSE Arca Equities Rule 6.6810(a)(2); NYSE Arca Options Rule 11.6810(a)(2); NYSE MKT Rule 6810(a)(2); NYSE National Rule 14.1(a)(2); Phlx Rule 910A(a)(2).

³⁷ See proposed Bats BYX Rule 4.5(a)(3); Bats BZX Rule 4.5(a)(3); Bats EDGA Rule 4.5(a)(3); Bats EDGX Rule 4.5(a)(3); BX Rules 6810(a)(3) and Chapter IX, Section 8, paragraph (a)(i)(3); BOX Rule 16010(a)(3); C2 Chapter 6, Section F; CBOE Rule 6.85(a)(iii); CHX Article 23, Rule 1(a)(3); IEX Rule 11.610(a)(3); ISE Rule 900(a)(3); ISE Gemini Rule 900(a)(3); ISE Mercury 900(a)(3); MIAx Rule 1701(a)(3); MIAx PEARL Chapter XVII; NASDAQ Rule 6810(a)(3) and Chapter IX, Section 8, paragraph (a)(i)(3); NYSE Rule 6810(a)(3); NYSE Arca Equities Rule 6.6810(a)(3); NYSE Arca Options Rule 11.6810(a)(3); NYSE MKT Rule 6810(a)(3); NYSE National Rule 14.1(a)(3); Phlx Rule 910A(a)(3).

³⁸ See proposed Bats BYX Rule 4.5(a)(4); Bats BZX Rule 4.5(a)(4); Bats EDGA Rule 4.5(a)(4); Bats EDGX Rule 4.5(a)(4); BX Rules 6810(a)(4) and Chapter IX, Section 8, paragraph (a)(i)(4); BOX Rule 16010(a)(4); C2 Chapter 6, Section F; CBOE Rule 6.85(a)(iv); CHX Article 23, Rule 1(a)(4); IEX Rule 11.610(a)(4); ISE Rule 900(a)(4); ISE Gemini Rule 900(a)(4); ISE Mercury 900(a)(4); MIAx Rule 1701(a)(4); MIAx PEARL Chapter XVII; NASDAQ Rule 6810(a)(4) and Chapter IX, Section 8, paragraph (a)(i)(4); NYSE Rule 6810(a)(4); NYSE Arca Equities Rule 6.6810(a)(4); NYSE Arca Options Rule 11.6810(a)(4); NYSE MKT Rule 6810(a)(4); NYSE National Rule 14.1(a)(4); Phlx Rule 910A(a)(4).

³² See *infra* Section III.A.17 for a discussion of the application of the term "Firm Designated ID."

³³ 17 CFR 242.613(j)(4).

³⁴ On September 2, 2015, the Participants filed a supplement to the Exemptive Request Letter. See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 2, 2015. This supplement to the Exemptive Request Letter further addressed the use of an "effective date" in lieu of a "date account opened."

³⁵ See proposed Bats BYX Rule 4.5(a)(1); Bats BZX Rule 4.5(a)(1); Bats EDGA Rule 4.5(a)(1); Bats EDGX Rule 4.5(a)(1); BX Rules 6810(a)(1) and Chapter IX, Section 8, paragraph (a)(i)(1); BOX Rule 16010(a)(1); C2 Chapter 6, Section F; CBOE Rule 6.85(a)(i); CHX Article 23, Rule 1(a)(1); IEX Rule 11.610(a)(1); ISE Rule 900(a)(1); ISE Gemini Rule 900(a)(1); ISE Mercury 900(a)(1); MIAx Rule 1701(a)(1); MIAx PEARL Chapter XVII; NASDAQ Rule 6810(a)(1) and Chapter IX, Section 8, paragraph (a)(i)(1); NYSE Rule 6810(a)(1); NYSE Arca Equities Rule 6.6810(a)(1); NYSE Arca Options Rule 11.6810(a)(1); NYSE MKT Rule 6810(a)(1); NYSE National Rule 14.1(a)(1); Phlx Rule 910A(a)(1).

Industry Member or (2) the date when proprietary trading began in the account (*i.e.*, the date on which the first orders were submitted from the account).³⁹

In addition, with regard to the provisions defining “Account Effective Date” as: (1) Where an Industry Member changes back office providers or clearing firms prior to November 15, 2018 for Industry Members other than Small Industry Members, or prior to November 15, 2019 for Small Industry Members, the date an account was established at the relevant Industry Member, either directly or via transfer;⁴⁰ (2) where an Industry Member acquires another Industry Member prior to November 15, 2018 for Industry Members other than Small Industry Members, or prior to November 15, 2019 for Small Industry Members, the date an account was established at the relevant Industry Member, either directly or via transfer;⁴¹ (3) where there are multiple dates associated with an account established prior to November 15, 2018 for Industry Members other than Small Industry Members, or prior to November 15, 2019 for Small Industry Members, the earliest available date;⁴² and (4) with regard to Industry Member proprietary accounts established prior to November 15, 2018 for Industry Members other than Small Industry Members, or prior to November 15, 2019 for Small Industry Members: (i) The date established for the account in the Industry Member or in a system of the Industry Member or (ii) the date when proprietary trading began in the account (*i.e.*, the date on which the first orders were submitted from the account);⁴³ the proposed CAT Compliance Rules state that the Account Effective Date will be no later than the date trading occurs at the Industry Member or in the Industry Member’s system.⁴⁴

2. Active Accounts

Under the Customer Information Approach, Industry Members are

required to report Customer Identifying Information and Customer Account Information for only those accounts that are active. Accordingly, the proposed CAT Compliance Rules define “Active Accounts” as an account that has had activity in Eligible Securities within the last six months.⁴⁵ The Exchanges state that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

3. Allocation Report

(a) Allocation Report Approach

Rule 613(c)(7)(vi)(A) of Regulation NMS requires each Industry Member to record and report to the Central Repository “the account number for any subaccounts to which the execution is allocated (in whole or in part).”⁴⁶ The Exchanges note that the Participants requested and received from the Commission exemptive relief from Rule 613 for an alternative to this approach (“Allocation Report Approach”).⁴⁷ The Allocation Report Approach permits Industry Members to record and report to the Central Repository an Allocation Report that includes, among other things, the Firm Designated ID for any account(s) to which executed shares are allocated when an execution is allocated in whole or part in lieu of requiring the reporting of the account number for any subaccount to which an execution is allocated, as is required by Rule 613.⁴⁸ Under Rule 613, regulators would be able to link the subaccount to which an allocation was made to a specific order. In contrast, under the Allocation Report Approach, regulators would only be able to link an allocation to the account to which it was made, and not to a specific order.

(b) Definition of Allocation Report

To assist in implementing the Allocation Report Approach, the proposed CAT Compliance Rules define

an “Allocation Report.” Specifically, an “Allocation Report” means a report made to the Central Repository by an Industry Member that identifies the Firm Designated ID for any account(s), including subaccount(s), to which executed shares are allocated and provides the security that has been allocated, the identifier of the firm reporting the allocation, the price per share of shares allocated, the side of shares allocated, the number of shares allocated to each account, and the time of the allocation; provided, for the avoidance of doubt, any such Allocation Report shall not be required to be linked to particular orders or executions.⁴⁹ The Exchanges state that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

4. Business Clock

To create the required audit trail, Industry Members are required to record the date and time of various Reportable Events to the Central Repository. Industry Members will use “Business Clocks” to record such dates and times. Accordingly, the proposed CAT Compliance Rules define the term “Business Clock” as a clock used to record the date and time of any Reportable Event required to be reported under each Exchange’s proposed CAT Compliance Rule.⁵⁰ The Exchanges state that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan, except a reference to Rule 613 at the end of the definition in Section 1.1 of the Plan is replaced with a reference to each Exchange’s proposed CAT Compliance Rule. The Exchanges state that this change is intended to recognize that the Industry Members’ obligations with regard to the CAT are set forth in

³⁹ See proposed Bats BYX Rule 4.5(a)(5); Bats BZX Rule 4.5(a)(5); Bats EDGA Rule 4.5(a)(5); Bats EDGX Rule 4.5(a)(5); BX Rules 6810(a)(5) and Chapter IX, Section 8, paragraph (a)(i)(5); BOX Rule 16010(a)(5); C2 Chapter 6, Section F; CBOE Rule 6.85(a)(v); CHX Article 23, Rule 1(a)(5); IEX Rule 11.610(a)(5); ISE Rule 900(a)(5); ISE Gemini Rule 900(a)(5); ISE Mercury 900(a)(5); MIAx Rule 1701(a)(5); MIAx PEARL Chapter XVII; NASDAQ Rule 6810(a)(5) and Chapter IX Section 8, paragraph (a)(i)(5); NYSE Rule 6810(a)(5); NYSE Arca Equities Rule 6.6810(a)(5); NYSE Arca Options Rule 11.6810(a)(5); NYSE MKT Rule 6810(a)(5); NYSE National Rule 14.1(a)(5); Phlx Rule 910A(a)(5).

⁴⁰ See *supra* note 36.

⁴¹ See *supra* note 37.

⁴² See *supra* note 38.

⁴³ See *supra* note 39.

⁴⁴ *Id.*

⁴⁵ See proposed Bats BYX Rule 4.5(b); Bats BZX Rule 4.5(b); Bats EDGA Rule 4.5(b); Bats EDGX Rule 4.5(b); BX Rules 6810(b) and Chapter IX, Section 8, paragraph (a)(ii); BOX Rule 16010(b); C2 Chapter 6, Section F; CBOE Rule 6.85(b); CHX Article 23, Rule 1(b); IEX Rule 11.610(b); ISE Rule 900(b); ISE Gemini Rule 900(b); ISE Mercury 900(b); MIAx Rule 1701(b); MIAx PEARL Chapter XVII; NASDAQ Rules 6810(b) and Chapter IX Section 8, paragraph (a)(ii); NYSE Rule 6810(b); NYSE Arca Equities Rule 6.6810(b); NYSE Arca Options Rule 11.6810(b); NYSE MKT Rule 6810(b); NYSE National Rule 14.1(b); and Phlx Rule 910A(b).

⁴⁶ 17 CFR 242.613(c)(7)(vi)(A).

⁴⁷ On April 3, 2015, the Participants filed a supplement related to their Exemptive Request Letter. See Letter from Robert Colby, FINRA, on behalf of the Participants, to Brent J. Fields, Secretary, Commission, dated April 3, 2015. This supplement provided examples of how the proposed relief related to allocations would operate.

⁴⁸ See Exemptive Request Letter, *supra* note 31, at 26–27; Exemption Order, *supra* note 31.

⁴⁹ See proposed Bats BYX Rule 4.5(c); Bats BZX Rule 4.5(c); Bats EDGA Rule 4.5(c); Bats EDGX Rule 4.5(c); BX Rules 6810(c) and Chapter IX, Section 8, paragraph (a)(iii); BOX Rule 16010(c); C2 Chapter 6, Section F; CBOE Rule 6.85(c); CHX Article 23, Rule 1(c); IEX Rule 11.610(c); ISE Rule 900(c); ISE Gemini Rule 900(c); ISE Mercury 900(c); MIAx Rule 1701(c); MIAx PEARL Chapter XVII; NASDAQ Rules 6810(c) and Chapter IX Section 8, paragraph (a)(iii); NYSE Rule 6810(c); NYSE Arca Equities Rule 6.6810(c); NYSE Arca Options Rule 11.6810(c); NYSE MKT Rule 6810(c); NYSE National Rule 14.1(c); Phlx Rule 910A(c).

⁵⁰ See proposed Bats BYX Rule 4.5(d); Bats BZX Rule 4.5(d); Bats EDGA Rule 4.5(d); Bats EDGX Rule 4.5(d); BX Rules 6810(d) and Chapter IX, Section 8, paragraph (a)(iv); BOX Rule 16010(d); C2 Chapter 6, Section F; CBOE Rule 6.85(d); CHX Article 23, Rule 1(d); IEX Rule 11.610(d); ISE Rule 900(d); ISE Gemini Rule 900(d); ISE Mercury 900(d); MIAx Rule 1701(d); MIAx PEARL Chapter XVII; NASDAQ Rules 6810(d) and Chapter IX Section 8, paragraph (a)(iv); NYSE Rule 6810(d); NYSE Arca Equities Rule 6.6810(d); NYSE Arca Options Rule 11.6810(d); NYSE MKT Rule 6810(d); NYSE National Rule 14.1(d); and Phlx Rule 910A(d).

each Exchange's proposed CAT Compliance Rule.

5. CAT

The proposed CAT Compliance Rules define the term "CAT" to mean the consolidated audit trail contemplated by Rule 613.⁵¹ The Exchanges state that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

6. CAT NMS Plan

The proposed CAT Compliance Rules define the term "CAT NMS Plan" to mean the National Market System Plan Governing the Consolidated Audit Trail, as amended from time to time.⁵²

7. CAT-Order-ID

(a) Daisy Chain Approach

The Exchanges state that under the CAT NMS Plan, a "daisy chain approach" would be used to link and reconstruct the complete lifecycle of each Reportable Event in CAT. According to this approach, Industry Members would assign their own identifiers to each order event. Within the Central Repository, the Plan Processor would replace the identifier provided by the Industry Member for each Reportable Event with a single identifier, called the CAT Order-ID, for all order events pertaining to the same order. This CAT Order-ID would be used to link the Reportable Events related to the same order.

(b) Definition of CAT-Order-ID

To implement a daisy chain approach, the Exchanges propose to define in the proposed CAT Compliance Rules the term "CAT-Order-ID" to mean a unique order identifier or series of unique order identifiers that allows the Central Repository to efficiently and accurately link all Reportable Events for an order, and all orders that result from the

aggregation or disaggregation of such order.⁵³ The Exchanges state that this is the same definition as set forth in Rule 613(j)(1), and Section 1.1 of the CAT NMS Plan defines "CAT-Order-ID" by reference to Rule 613(j)(1).⁵⁴

8. CAT Reporting Agent

The CAT NMS Plan permits an Industry Member to use a third party, such as a vendor, to report the required data to the Central Repository on behalf of the Industry Member.⁵⁵ The Exchanges state that such a third party, referred to in the proposed CAT Compliance Rules as a "CAT Reporting Agent," would be one type of a Data Submitter,⁵⁶ as that term is used in the CAT NMS Plan. Therefore, the proposed CAT Compliance Rules define the term "CAT Reporting Agent" ⁵⁷ to mean a Data Submitter that is a third party that enters into an agreement with an Industry Member pursuant to which the CAT Reporting Agent agrees to fulfill such Industry Member's obligations under each Exchange's proposed CAT Compliance Rule.⁵⁸

9. Central Repository

The proposed CAT Compliance Rules define the term "Central Repository" to mean the repository responsible for the receipt, consolidation, and retention of

all information reported to the CAT pursuant to Rule 613 of Regulation NMS and the CAT NMS Plan.⁵⁹ The Exchanges state that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan, except they use the phrase "CAT NMS Plan" in place of the phrase "this Agreement."

10. Compliance Threshold

The proposed CAT Compliance Rules state that each Industry Member shall be required to meet a separate compliance threshold which will be an Industry Member-specific rate that may be used as the basis for further review or investigation into the Industry Member's performance with regard to the CAT.⁶⁰ The proposed CAT Compliance Rules define the Industry Member-specific rate noted as the term "Compliance Threshold."⁶¹ The Exchanges state that this definition has the same substantive meaning as the definition set forth in Section 1.1 of the CAT NMS Plan.

11. Customer

Industry Members are required to submit to the Central Repository certain information related to their Customers, including Customer Identifying Information and Customer Account Information, as well as data related to their Customer's Reportable Events. Accordingly, the proposed CAT Compliance Rules define the term

⁵¹ See proposed Bats BYX Rule 4.5(e); Bats BZX Rule 4.5(e); Bats EDGA Rule 4.5(e); Bats EDGX Rule 4.5(e); BX Rules 6810(e) and Chapter IX, Section 8, paragraph (a)(v); BOX Rule 16010(e); C2 Chapter 6, Section F; CBOE Rule 6.85(e); CHX Article 23, Rule 1(e); IEX Rule 11.610(e); ISE Rule 900(e); ISE Gemini Rule 900(e); ISE Mercury 900(e); MIAX Rule 1701(e); MIAX PEARL Chapter XVII; NASDAQ Rules 6810(e) and Chapter IX Section 8, paragraph (a)(iv); NYSE Rule 6810(e); NYSE Arca Equities Rule 6.6810(e); NYSE Arca Options Rule 11.6810(e); NYSE MKT Rule 6810(e); NYSE National Rule 14.1(e); and Phlx Rule 910A(e).

⁵² See proposed Bats BYX Rule 4.5(f); Bats BZX Rule 4.5(f); Bats EDGA Rule 4.5(f); Bats EDGX Rule 4.5(f); BX Rules 6810(f) and Chapter IX, Section 8, paragraph (a)(vi); BOX Rule 16010(f); C2 Chapter 6, Section F; CBOE Rule 6.85(f); CHX Article 23, Rule 1(f); IEX Rule 11.610(f); ISE Rule 900(f); ISE Gemini Rule 900(f); ISE Mercury 900(f); MIAX Rule 1701(f); MIAX PEARL Chapter XVII; NYSE Rule 6810(f); NYSE Arca Equities Rule 6.6810(f); NYSE Arca Options Rule 11.6810(f); NYSE MKT Rule 6810(f); NYSE National Rule 14.1(f); and Phlx Rule 910A(f).

⁵³ See proposed Bats BYX Rule 4.5(g); Bats BZX Rule 4.5(g); Bats EDGA Rule 4.5(g); Bats EDGX Rule 4.5(g); BX Rules 6810(g) and Chapter IX, Section 8, paragraph (a)(vii); BOX Rule 16010(g); C2 Chapter 6, Section F; CBOE Rule 6.85(g); CHX Article 23, Rule 1(g); IEX Rule 11.610(g); ISE Rule 900(g); ISE Gemini Rule 900(g); ISE Mercury 900(g); MIAX Rule 1701(g); MIAX PEARL Chapter XVII; NASDAQ Rules 6810(g) and Chapter IX Section 8, paragraph (a)(vii); NYSE Rule 6810(g); NYSE Arca Equities Rule 6.6810(g); NYSE Arca Options Rule 11.6810(g); NYSE MKT Rule 6810(g); NYSE National Rule 14.1(g); and Phlx Rule 910A(g).

⁵⁴ See 17 CFR 242.613(j)(1).

⁵⁵ See CAT NMS Plan, *supra* note 21, at Appendix C, Section A.1(a).

⁵⁶ See *infra* Section III.A.14 defining "Data Submitter."

⁵⁷ The Exchanges also note that this definition is based on FINRA's definition of a "Reporting Agent" as set forth in FINRA's Order Audit Trail System ("OATS") rules. Specifically, FINRA Rule 7410(n) defines a "Reporting Agent" as a third party that enters into any agreement with a member pursuant to which the Reporting Agent agrees to fulfill such FINRA member's reporting obligations under FINRA Rule 7450. The Exchanges represent that the Reporting Agent for OATS fulfills a similar role to the CAT Reporting Agent.

⁵⁸ See proposed Bats BYX Rule 4.5(h); Bats BZX Rule 4.5(h); Bats EDGA Rule 4.5(h); Bats EDGX Rule 4.5(h); BX Rules 6810(h) and Chapter IX, Section 8, paragraph (a)(viii); BOX Rule 16010(h); C2 Chapter 6, Section F; CBOE Rule 6.85(h); CHX Article 23, Rule 1(h); IEX Rule 11.610(h); ISE Rule 900(h); ISE Gemini Rule 900(h); ISE Mercury 900(h); MIAX Rule 1701(h); MIAX PEARL Chapter XVII; NASDAQ Rules 6810(h) and Chapter IX, Section 8, paragraph (a)(viii); NYSE Rule 6810(h); NYSE Arca Equities Rule 6.6810(h); NYSE Arca Options Rule 11.6810(h); NYSE MKT Rule 6810(h); NYSE National Rule 14.1(h); and Phlx Rule 910A(h).

⁵⁹ See proposed Bats BYX Rule 4.5(i); Bats BZX Rule 4.5(i); Bats EDGA Rule 4.5(i); Bats EDGX Rule 4.5(i); BX Rules 6810(i) and Chapter IX, Section 8, paragraph (a)(ix); BOX Rule 16010(i); C2 Chapter 6, Section F; CBOE Rule 6.85(i); CHX Article 23, Rule 1(i); IEX Rule 11.610(i); ISE Rule 900(i); ISE Gemini Rule 900(i); ISE Mercury 900(i); MIAX Rule 1701(i); MIAX PEARL Chapter XVII; NYSE Rule 6810(i); NYSE Arca Equities Rule 6.6810(i); NYSE Arca Options Rule 11.6810(i); NYSE MKT Rule 6810(i); NYSE National Rule 14.1(i); and Phlx Rule 910A(i).

⁶⁰ See proposed Bats BYX Rule 4.15(d); Bats BZX Rule 4.15(d); Bats EDGA Rule 4.15(d); Bats EDGX Rule 4.15(d); BX Rules 6893(d) and Chapter IX, Section 8, subparagraph (k)(iv); BOX Rule 16093(d); C2 Chapter 6, Section F; CBOE Rule 6.95(d); CHX Article 23, Rule 11(d); IEX Rule 11.693(d); MIAX Rule 1711(d); MIAX PEARL Chapter XVII; ISE Rule 910(d); ISE Gemini Rule 910(d); ISE Mercury Rule 910(d); NASDAQ Rules 6893(d) and Chapter IX, Section 8, subparagraph (k)(iv); NYSE Rule 6893(d); NYSE Arca Equities Rule 6.6893(d); NYSE Arca Options Rule 11.6893(d); NYSE MKT Rule 6893(d); NYSE National Rule 14.11(d); and Phlx Rule 993A(d).

⁶¹ See proposed Bats BYX Rule 4.5(j); Bats BZX Rule 4.5(j); Bats EDGA Rule 4.5(j); Bats EDGX Rule 4.5(j); BX Rules 6810(j) and Chapter IX, Section 8, paragraph (a)(x); BOX Rule 16010(j); C2 Chapter 6, Section F; CBOE Rule 6.85(j); CHX Article 23, Rule 1(j); IEX Rule 11.610(j); ISE Rule 900(j); ISE Gemini Rule 900(j); ISE Mercury 900(j); MIAX Rule 1701(j); MIAX PEARL Chapter XVII; NASDAQ Rules 6810(j) and Chapter IX, Section 8, paragraph (a)(x); NYSE Rule 6810(j); NYSE Arca Equities Rule 6.6810(j); NYSE Arca Options Rule 11.6810(j); NYSE MKT Rule 6810(j); NYSE National Rule 14.1(j); and Phlx Rule 910A(j).

“Customer.” Specifically, the term “Customer” is defined to mean: (1) The account holder(s) of the account at an Industry Member originating the order; and (2) any person from whom the Industry Member is authorized to accept trading instructions for such account, if different from the account holder(s).⁶² The Exchanges state that this is the same definition as set forth in Rule 613(j)(3), except the Exchanges propose to replace the references to a registered broker-dealer or broker-dealer with a reference to an Industry Member for consistency of terms used in each Exchange’s proposed CAT Compliance Rule.⁶³ The Exchanges also note that Section 1.1 of the CAT NMS Plan defines “Customer” by reference to Rule 613(j)(3).

12. Customer Account Information

As discussed above, under the Customer Information Approach, Industry Members are required to report Customer Account Information to the Central Repository as part of the customer definition process. Accordingly, the Exchanges propose to define the term “Customer Account Information” to clarify what customer information would need to be reported to the Central Repository.

The proposed CAT Compliance Rules define the term “Customer Account Information” to include, in part, account number, account type, customer type, date account opened, and large trader identifier (if applicable).⁶⁴ The proposed CAT Compliance Rules, however, provide an alternative definition of “Customer Account Information” in two limited circumstances. First, in those circumstances in which an Industry Member has established a trading

relationship with an institution but has not established an account with that institution, the Industry Member will: (1) Provide the Account Effective Date in lieu of the “date account opened”; (2) provide the relationship identifier in lieu of the “account number”; and (3) identify the “account type” as a “relationship.”⁶⁵ Second, in those circumstances in which the relevant account was established prior to November 15, 2018 for Industry Members other than Small Industry Members, or prior to November 15, 2019 for Small Industry Members, and no “date account opened” is available for the account, the Industry Member will provide the Account Effective Date in the following circumstances: (1) Where an Industry Member changes back office providers or clearing firms and the date account opened is changed to the date the account was opened on the new back office/clearing firm system; (2) where an Industry Member acquires another Industry Member and the date account opened is changed to the date the account was opened on the post-merger back office/clearing firm system; (3) where there are multiple dates associated with an account in an Industry Member’s system, and the parameters of each date are determined by the individual Industry Member; and (4) where the relevant account is an Industry Member proprietary account.⁶⁶ The proposed definition is the same as the definition of “Customer Account Information” set forth in Section 1.1 of the CAT NMS Plan; provided, however, that specific dates have replaced the descriptions of those dates set forth in Section 1.1 of the Plan.

⁶⁵ See proposed Bats BYX Rule 4.5(l)(1); Bats BZX Rule 4.5(l)(1); Bats EDGA Rule 4.5(l)(1); Bats EDGX Rule 4.5(l)(1); C2 Chapter 6, Section F; CBOE Rule 6.85(l)(i); BX Rules 6810(l)(1) and Chapter IX, Section 8, paragraph (a)(xii)(1); BOX Rule 16010(l)(1); CHX Article 23, Rule 1(l)(1); IEX Rule 11.610(l)(1); ISE Rule 900(l)(1); ISE Gemini Rule 900(l)(1); ISE Mercury 900(l)(1); MIAX Rule 1701(l)(1); MIAX PEARL Chapter XVII; NASDAQ Rules 6810(l)(1) and Chapter IX, Section 8, paragraph (a)(xii)(1); NYSE Rule 6810(l)(1); NYSE Arca Equities Rule 6.6810(l)(1); NYSE Arca Options Rule 11.6810(l)(1); NYSE MKT Rule 6810(l)(1); NYSE National Rule 14.1(l)(1); and Phlx Rule 910A(l)(1).

⁶⁶ See proposed Bats BYX Rule 4.5(l)(2); Bats BZX Rule 4.5(l)(2); Bats EDGA Rule 4.5(l)(2); Bats EDGX Rule 4.5(l)(2); BX Rules 6810(l)(2) and Chapter IX, Section 8, paragraph (a)(xii)(2); BOX Rule 16010(l)(2); C2 Chapter 6, Section F; CBOE Rule 6.85(l)(ii); CHX Article 23, Rule 1(l)(2); IEX Rule 11.610(l)(2); ISE Rule 900(l)(2); ISE Gemini Rule 900(l)(2); ISE Mercury 900(l)(2); MIAX Rule 1701(l)(2); MIAX PEARL Chapter XVII; Nasdaq Rules 6810(l)(2) and Chapter IX, Section 8, paragraph (a)(xii)(2); NYSE Rule 6810(l)(2); NYSE Arca Equities Rule 6.6810(l)(2); NYSE Arca Options Rule 11.6810(l)(2); NYSE MKT Rule 6810(l)(2); NYSE National Rule 14.1(l)(2); and Phlx Rule 910A(l)(2).

⁶² See proposed Bats BYX Rule 4.5(k); Bats BZX Rule 4.5(k); Bats EDGA Rule 4.5(k); Bats EDGX Rule 4.5(k); BX Rules 6810(k) and Chapter IX, Section 8, paragraph (a)(xi); BOX Rule 16010(k); C2 Chapter 6, Section F; CBOE Rule 6.85(k); CHX Article 23, Rule 1(k); IEX Rule 11.610(k); ISE Rule 900(k); ISE Gemini Rule 900(k); ISE Mercury 900(k); MIAX Rule 1701(k); MIAX PEARL Chapter XVII; NASDAQ Rules 6810(k) and Chapter IX, Section 8, paragraph (a)(xi); NYSE Rule 6810(k); NYSE Arca Equities Rule 6.6810(k); NYSE Arca Options Rule 11.6810(k); NYSE MKT Rule 6810(k); NYSE National Rule 14.1(k); and Phlx Rule 910A(k).

⁶³ 17 CFR 242.613(j)(3).

⁶⁴ See proposed Bats BYX Rule 4.5(l); Bats BZX Rule 4.5(l); Bats EDGA Rule 4.5(l); Bats EDGX Rule 4.5(l); BX Rules 6810(l) and Chapter IX, Section 8, paragraph (a)(xii); BOX Rule 16010(l); C2 Chapter 6, Section F; CBOE Rule 6.85(l); CHX Article 23, Rule 1(l); ISE Rule 900(l); ISE Gemini Rule 900(l); ISE Mercury 900(l); IEX Rule 11.610(l); MIAX Rule 1701(l); MIAX PEARL Chapter XVII; NASDAQ Rules 6810(l) and Chapter IX, Section 8, paragraph (a)(xii); NYSE Rule 6810(l); NYSE Arca Equities Rule 6.6810(l); NYSE Arca Options Rule 11.6810(l); NYSE MKT Rule 6810(l); NYSE National Rule 14.1(l); and Phlx Rule 910A(l).

13. Customer Identifying Information

As discussed above, under the Customer Information Approach, Industry Members are required to report Customer Identifying Information to the Central Repository as part of the customer definition process. Accordingly, the Exchanges propose to define the term “Customer Account Information” in the proposed CAT Compliance Rules to include, but not be limited to: name, address, date of birth, ITIN/SSN, individual’s role in the account (e.g., primary holder, joint holder, guardian, trustee, person with the power of attorney). With respect to legal entities, “Customer Identifying Information” includes, but is not limited to, name, address, EIN/LEI or other comparable common entity identifier, if applicable. The definition further notes that an Industry Member that has an LEI for a Customer must submit the Customer’s LEI in addition to other information of sufficient detail to identify the Customer.⁶⁷ The Exchanges state that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

14. Data Submitter

The CAT NMS Plan uses the term “Data Submitter” to refer to any person that reports data to the Central Repository.⁶⁸ Such Data Submitters may include those entities that are required to submit data to the Central Repository (e.g., national securities exchanges, national securities associations and Industry Members), third-parties that may submit data to the CAT on behalf of CAT Reporters (i.e., CAT Reporting Agents), and outside parties that are not required to submit data to the CAT but from which the CAT may receive data (e.g., securities information processors (“SIPs”)). To include this term in the proposed CAT Compliance Rules, the Exchanges propose to define “Data Submitter” to mean any person that reports data to the Central Repository, including national securities exchanges, national securities associations, broker-dealers, the SIPs for the CQS, CTA, UTP

⁶⁷ See proposed Bats BYX Rule 4.5(m); Bats BZX Rule 4.5(m); Bats EDGA Rule 4.5(m); Bats EDGX Rule 4.5(m); BX Rules 6810(m) and Chapter IX, Section 8, paragraph (a)(xiii); BOX Rule 16010(m); C2 Chapter 6, Section F; CBOE Rule 6.85(m); CHX Article 23, Rule 1(m); IEX Rule 11.610(m); ISE Rule 900(m); ISE Gemini Rule 900(m); ISE Mercury 900(m); MIAX Rule 1701(m); MIAX PEARL Chapter XVII; NASDAQ Rules 6810(m) and Chapter IX, Section 8, paragraph (a)(xiii); NYSE Rule 6810(m); NYSE Arca Equities Rule 6.6810(m); NYSE Arca Options Rule 11.6810(m); NYSE MKT Rule 6810(m); NYSE National Rule 14.1(m); and Phlx Rule 910A(m).

⁶⁸ See CAT NMS Plan, *supra* note 21 at Appendix C, Section A.1(a).

and Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (“OPRA”) Plans, and certain other vendors or third parties that may submit data to the Central Repository on behalf of Industry Members.⁶⁹

15. Eligible Security

The reporting requirements of the proposed CAT Compliance Rules only apply to Reportable Events in Eligible Securities. Currently, an Eligible Security includes NMS Securities and OTC Equity Securities. Accordingly, the proposed CAT Compliance Rules define the term “Eligible Security” to include: (1) All NMS Securities; and (2) all OTC Equity Securities.⁷⁰ The Exchanges state that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

16. Error Rate

(a) Generally

The CAT NMS Plan requires the Plan Processor to: (1) Measure and report errors every business day; (2) provide Industry Members daily statistics and error reports as they become available, including a description of such errors; (3) provide monthly reports to Industry Members that detail an Industry Member’s performance and comparison statistics; (4) define educational and support programs for Industry Members to minimize Error Rates; and (5) identify, daily, all Industry Members exceeding the maximum allowable Error Rate. To timely correct data-submitted errors to the Central Repository, the CAT NMS Plan requires that the Central Repository receive and process error corrections at all times. Further, the CAT NMS Plan requires that Industry Members be able to submit error corrections to the Central Repository

through a web-interface or via bulk uploads or file submissions, and that the Plan Processor, subject to the Operating Committee’s approval, support the bulk replacement of records and the reprocessing of such records. The Participants, furthermore, require that the Plan Processor identify Industry Member data submission errors based on the Plan Processor’s validation processes.⁷¹

(b) Definition of Error Rate

To implement the requirements of the CAT NMS Plan related to the Error Rate, the Exchanges propose to define the term “Error Rate” in the proposed CAT Compliance Rules. “Error Rate” is defined to mean the percentage of Reportable Events collected by the Central Repository in which the data reported does not fully and accurately reflect the order event that occurred in the market.⁷² The Exchanges state that this is the same definition as set forth in Rule 613(j)(6), and Section 1.1 of the CAT NMS Plan defines “Error Rate” by reference to Rule 613(j)(6).⁷³

(c) Maximum Error Rate

Under the CAT NMS Plan, the Operating Committee would set the maximum Error Rate that the Central Repository would tolerate from an Industry Member reporting data to the Central Repository.⁷⁴ The Operating Committee would review and reset the maximum Error Rate, at least annually.⁷⁵ If an Industry Member reports CAT data to the Central Repository with errors such that their error percentage exceeds the maximum Error Rate, then such Industry Member would not be in compliance with the CAT NMS Plan or Rule 613.⁷⁶ The Exchanges state that, according to the CAT NMS Plan, the Exchanges or the SEC may take appropriate action against an Industry Member for failing to comply with its CAT reporting

obligations.⁷⁷ The CAT NMS Plan sets the initial Error Rate at 5%.⁷⁸ The Exchanges state that it is anticipated that the maximum Error Rate will be reviewed and lowered by the Operating Committee once Industry Members begin to report to the Central Repository.⁷⁹

17. Firm Designated ID

As discussed above, under the Customer Information Approach, the CAT NMS Plan requires each Industry Member to utilize a unique Firm Designated ID. Industry Members will be permitted to use as the Firm Designated ID an account number or any other identifier defined by the firm, provided each identifier is unique across the firm for each business date. Industry Members will be required to report only the Firm Designated ID for each new order submitted to the Central Repository, rather than the “Customer-ID” with individual order events. Accordingly, the Exchanges propose to define the term “Firm Designated ID” in the proposed CAT Compliance Rules to mean a unique identifier for each trading account designated by Industry Members for purposes of providing data to the Central Repository, where each such identifier is unique among all identifiers from any given Industry Member for each business date.⁸⁰ The Exchanges state that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan. Industry Members will be permitted to use an account number or any other identifier defined by the firm, provided each identifier is unique across the firm for each business date (*i.e.*, a single firm may not have multiple separate customers with the same identifier on any given date).

⁶⁹ See proposed Bats BYX Rule 4.5(n); Bats BZX Rule 4.5(n); Bats EDGA Rule 4.5(n); Bats EDGX Rule 4.5(n); BX Rules 6810(n) and Chapter IX, Section 8, paragraph (a)(xiv); BOX Rule 16010(n); C2 Chapter 6, Section F; CBOE Rule 6.85(n); CHX Article 23, Rule 1(n); IEX Rule 11.610(n); ISE Rule 900(n); ISE Gemini Rule 900(n); ISE Mercury 900(n); MIAx Rule 1701(n); MIAx PEARL Chapter XVII; NASDAQ Rules 6810(n) and Chapter IX, Section 8, paragraph (a)(xiv); NYSE Rule 6810(n); NYSE Arca Equities Rule 6.6810(n); NYSE Arca Options Rule 11.6810(n); NYSE MKT Rule 6810(n); NYSE National Rule 14.1(n); and Phlx Rule 910A(n).

⁷⁰ See proposed Bats BYX Rule 4.5(o); Bats BZX Rule 4.5(o); Bats EDGA Rule 4.5(o); Bats EDGX Rule 4.5(o); BX Rules 6810(o) and Chapter IX, Section 8, paragraph (a)(xv); BOX Rule 16010(o); C2 Chapter 6, Section F; CBOE Rule 6.85(o); CHX Article 23, Rule 1(o); IEX Rule 11.610(o); ISE Rule 900(o); ISE Gemini Rule 900(o); ISE Mercury 900(o); MIAx Rule 1701(o); MIAx PEARL Chapter XVII; NYSE Rule 6810(o); NYSE Arca Equities Rule 6.6810(o); NYSE Arca Options Rule 11.6810(o); NYSE MKT Rule 6810(o); NYSE National Rule 14.1(o); and Phlx Rule 910A(o).

⁷¹ Approval Order, *supra* note 24, at 84718.

⁷² See proposed Bats BYX Rule 4.5(p); Bats BZX Rule 4.5(p); Bats EDGA Rule 4.5(p); Bats EDGX Rule 4.5(p); BX Rules 6810(p) and Chapter IX, Section 8, paragraph (a)(xvii); BOX Rule 16010(p); C2 Chapter 6, Section F; CBOE Rule 6.85(p); CHX Article 23, Rule 1(p); IEX Rule 11.610(p); ISE Rule 900(p); ISE Gemini Rule 900(p); ISE Mercury 900(p); MIAx Rule 1701(p); MIAx PEARL Chapter XVII; Nasdaq Rules 6810(p) and Chapter IX, Section 8, paragraph (a)(xvi); NYSE Rule 6810(p); NYSE Arca Equities Rule 6.6810(p); NYSE Arca Options Rule 11.6810(p); NYSE MKT Rule 6810(p); NYSE National Rule 14.1(p); and Phlx Rule 910A(p).

⁷³ 17 CFR 242.613(j)(6).

⁷⁴ CAT NMS Plan, *supra* note 21, at Section 6.5(d)(i).

⁷⁵ CAT NMS Plan, *supra* note 21, at Appendix C, Section A.3(b).

⁷⁶ CAT NMS Plan, *supra* note 21, at Appendix C, Section A.3(b); 17 CFR 242.613(g)–(h).

⁷⁷ CAT NMS Plan, *supra* note 21, at Appendix C, Section A.3(b).

⁷⁸ CAT NMS Plan, *supra* note 21, at Section 6.5(d)(i).

⁷⁹ CAT NMS Plan, *supra* note 21, at Appendix C, Section A.3(b).

⁸⁰ See proposed Bats BYX Rule 4.5(q); Bats BZX Rule 4.5(q); Bats EDGA Rule 4.5(q); Bats EDGX Rule 4.5(q); BX Rules 6810(q) and Chapter IX, Section 8, paragraph (a)(xvii); BOX Rule 16010(q); C2 Chapter 6, Section F; CBOE Rule 6.85(q); CHX Article 23, Rule 1(q); IEX Rule 11.610(q); ISE Rule 900(q); ISE Gemini Rule 900(q); ISE Mercury 900(q); MIAx Rule 1701(q); MIAx PEARL Chapter XVII; NASDAQ Rules 6810(q) and Chapter IX, Section 8, paragraph (a)(xvii); NYSE Rule 6810(q); NYSE Arca Equities Rule 6.6810(q); NYSE Arca Options Rule 11.6810(q); NYSE MKT Rule 6810(q) (NYSE MKT proposed adding a rule reference, in NYSE MKT Rule 0—Equities, to make clear due to the organization of its rulebook that “the proposed [CAT Compliance Rules] would apply to Industry Members of the Exchange’s equities and options markets.”); NYSE National Rule 14.1(q); and Phlx Rule 910A(q).

18. Industry Member

The proposed CAT Compliance Rules define the term “Industry Member” to mean “a member of a national securities exchange or a member of a national securities association.”⁸¹ The Exchanges state that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

19. Industry Member Data

The proposed CAT Compliance Rules state that the term “Industry Member Data” has the meaning set forth in each Exchange’s proposed CAT Compliance Rule.⁸² The Exchanges state that this definition has the same substantive meaning as the definition set forth in Section 1.1 of the CAT NMS Plan.

20. Initial Plan Processor

The proposed CAT Compliance Rules define the term “Initial Plan Processor” to mean the first Plan Processor selected by the Operating Committee in accordance with Rule 613, Section 6.1 of the CAT NMS Plan and the National Market System Plan Governing the Process for Selecting a Plan Processor and Developing a Plan for the Consolidated Audit Trail.⁸³ The Exchanges state that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

⁸¹ See proposed Bats BYX Rule 4.5(r); Bats BZX Rule 4.5(r); Bats EDGA Rule 4.5(r); Bats EDGX Rule 4.5(r); BX Rules 6810(r) and Chapter IX, Section 8, paragraph (a)(xviii); BOX Rule 16010(r); C2 Chapter 6, Section F; CBOE Rule 6.85(r); CHX Article 23, Rule 1(r); IEX Rule 11.610(r); ISE Rule 900(r); ISE Gemini Rule 900(r); ISE Mercury 900(r); MIAX Rule 1701(r); MIAX PEARL Chapter XVII; NASDAQ Rules 6810(r) and Chapter IX, Section 8, paragraph (a)(xviii); NYSE Rule 6810(r); NYSE Arca Equities Rule 6.6810(r); NYSE Arca Options Rule 11.6810(r); NYSE MKT Rule 6810(r); NYSE National Rule 14.1(r); Phlx Rule 910A(r).

⁸² See proposed Bats BYX Rule 4.5(s); Bats BZX Rule 4.5(s); Bats EDGA Rule 4.5(s); Bats EDGX Rule 4.5(s); BX Rules 6810(s) and Chapter IX, Section 8, paragraph (a)(xix); BOX Rule 16010(s); C2 Chapter 6, Section F; CBOE Rule 6.85(s); CHX Article 23, Rule 1(s); IEX Rule 11.610(s); ISE Rule 900(s); ISE Gemini Rule 900(s); ISE Mercury 900(s); MIAX Rule 1701(s); MIAX PEARL Chapter XVII; NASDAQ Rules 6810(s) and Chapter IX, Section 8, paragraph (a)(xix); NYSE Rule 6810(s); NYSE Arca Equities Rule 6.6810(s); NYSE Arca Options Rule 11.6810(s); NYSE MKT Rule 6810(s); NYSE National Rule 14.1(s); and Phlx Rule 910A(s).

⁸³ See proposed Bats BYX Rule 4.5(t); Bats BZX Rule 4.5(t); Bats EDGA Rule 4.5(t); Bats EDGX Rule 4.5(t); BX Rules 6810(t) and Chapter IX, Section 8, paragraph (a)(xx); BOX Rule 16010(t); C2 Chapter 6, Section F; CBOE Rule 6.85(t); CHX Article 23, Rule 1(t); IEX Rule 11.610(t); ISE Rule 900(t); ISE Gemini Rule 900(t); ISE Mercury 900(t); MIAX Rule 1701(t); MIAX PEARL Chapter XVII; NASDAQ Rules 6810(t) and Chapter IX, Section 8, paragraph (a)(xx); NYSE Rule 6810(t); NYSE Arca Equities Rule 6.6810(t); NYSE Arca Options Rule 11.6810(t); NYSE MKT Rule 6810(t); NYSE National Rule 14.1(t); and Phlx Rule 910A(t).

21. Listed Option or Option

The Exchanges represent that the reporting requirements of the CAT NMS Plan and the proposed CAT Compliance Rules apply to Eligible Securities, which includes NMS Securities, which, in turn, includes Listed Options. Certain requirements of the proposed CAT Compliance Rules apply specifically to Listed Options. Accordingly, “Listed Option” or “Option” have the meaning set forth in Rule 600(b)(35) of Regulation NMS.⁸⁴ Rule 600(b)(35) of Regulation NMS defines a listed option as “any option traded on a registered national securities exchange or automated facility of a national securities association.”⁸⁵ The Exchanges state that the proposed definition of “Listed Option” is the same definition as the definition set forth in Section 1.1 of the CAT NMS Plan.

22. Manual Order Event

(a) Manual Order Event Approach

The CAT NMS Plan sets forth clock synchronization and timestamp requirements for Industry Members which reflect exemptions for Manual Order Events granted by the Commission.⁸⁶ Specifically, the Plan requires Industry Members to record and report the time of each Reportable Event using timestamps reflecting current industry standards (which must be at least to the millisecond) or, if an Industry Member’s order handling or execution system uses timestamps in increments finer than milliseconds, such finer increments, when reporting to the Central Repository. For Manual Order Events, however, the Plan provides that such events must be recorded in increments up to and including one second, provided that Industry Members record and report the time the event is captured electronically in an order handling and execution system (“Electronic Capture Time”) in milliseconds. In addition, Industry Members are required to synchronize their respective Business Clocks (other than such Business Clocks used solely for Manual Order Events) at a minimum

⁸⁴ See proposed Bats BYX Rule 4.5(u); Bats BZX Rule 4.5(u); Bats EDGA Rule 4.5(u); Bats EDGX Rule 4.5(u); BX Rules 6810(u) and Chapter IX, Section 8, paragraph (a)(xxi); BOX Rule 16010(u); C2 Chapter 6, Section F; CBOE Rule 6.85(u); CHX Article 23, Rule 1(u); IEX Rule 11.610(u); ISE Rule 900(u); ISE Gemini Rule 900(u); ISE Mercury 900(u); MIAX Rule 1701(u); MIAX PEARL Chapter XVII; NASDAQ Rules 6810(u) and Chapter IX, Section 8, paragraph (a)(xxi); NYSE Rule 6810(u); NYSE Arca Equities Rule 6.6810(u); NYSE Arca Options Rule 11.6810(u); NYSE MKT Rule 6810(u); NYSE National Rule 14.1(u); and Phlx Rule 910A(u).

⁸⁵ 17 CFR 242.600(b)(35).

⁸⁶ See Exemption Order, *supra* note 31.

to within 50 milliseconds of the time maintained by the National Institute of Standards and Technology (“NIST”), and maintain such synchronization. Each Industry Member is required to synchronize its Business Clocks used solely for Manual Order Events, however, at a minimum to within one second of the time maintained by the NIST.

(b) Definition of Manual Order Event

In order to clarify what a Manual Order Event is for clock synchronization and time stamp purposes, the Exchanges propose to define the term “Manual Order Event” in the proposed CAT Compliance Rules.⁸⁷ Specifically, the term “Manual Order Event” means a non-electronic communication of order-related information for which Industry Members must record and report the time of the event. The Exchanges state that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

23. Material Terms of the Order

The proposed CAT Compliance Rules require Industry Members to record and report to the Central Repository Material Terms of the Order with certain Reportable Events (e.g., for the original receipt or origination of an order, for the routing of an order). Accordingly, the Exchanges propose to define the term “Material Terms of the Order” to include: The NMS Security or OTC Equity Security symbol; security type; price (if applicable); size (displayed and non-displayed); side (buy/sell); order type; if a sell order, whether the order is long, short, short exempt; open/close indicator (except on transactions in equities); time in force (if applicable); if the order is for a Listed Option, option type (put/call), option symbol or root symbol, underlying symbol, strike price, expiration date, and open/close (except on market maker quotations); and any special handling instructions.⁸⁸ The

⁸⁷ See proposed Bats BYX Rule 4.5(v); Bats BZX Rule 4.5(v); Bats EDGA Rule 4.5(v); Bats EDGX Rule 4.5(v); BX Rules 6810(v) and Chapter IX, Section 8, paragraph (a)(xxii); BOX Rule 16010(v); C2 Chapter 6, Section F; CBOE Rule 6.85(v); CHX Article 23, Rule 1(v); IEX Rule 11.610(v); ISE Rule 900(v); ISE Gemini Rule 900(v); ISE Mercury 900(v); MIAX Rule 1701(v); MIAX PEARL Chapter XVII; NASDAQ Rules 6810(v) and Chapter IX, Section 8, paragraph (a)(xxii); NYSE Rule 6810(v); NYSE Arca Equities Rule 6.6810(v); NYSE Arca Options Rule 11.6810(v); NYSE MKT Rule 6810(v); NYSE National Rule 14.1(v); and Phlx Rule 910A(v).

⁸⁸ See proposed Bats BYX Rule 4.5(w); Bats BZX Rule 4.5(w); Bats EDGA Rule 4.5(w); Bats EDGX Rule 4.5(w); BX Rules 6810(w) and Chapter IX, Section 8, paragraph (a)(xxiii); BOX Rule 16010(w); C2 Chapter 6, Section F; CBOE Rule 6.85(w); CHX Article 23, Rule 1(w); IEX Rule 11.610(w); ISE Rule 900(w); ISE Gemini Rule 900(w); ISE Mercury

Exchanges state that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

24. NMS Security

NMS Securities are one of the types of Eligible Securities for the CAT. Therefore, the Exchanges propose to define the term “NMS Security” to mean any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in Listed Options.⁸⁹ The Exchanges state that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

25. NMS Stock

Under the CAT NMS Plan, the Operating Committee may establish different Trading Days for NMS Stocks, as defined in Rule 600(b)(47) of Regulation NMS,⁹⁰ Listed Options, OTC Equity Securities, and any other securities that are included as Eligible Securities from time to time.⁹¹ Accordingly, the Exchanges propose to define the term “NMS Stock” to mean any NMS Security other than an option.⁹² The Exchanges state that this is the same definition as set forth in Rule 600(b)(47) of Regulation NMS.⁹³

900(w); MIAx Rule 1701(w); MIAx PEARL Chapter XVII; NASDAQ Rules 6810(w) and Chapter IX, Section 8, paragraph (a)(xxiii); NYSE Rule 6810(w); NYSE Arca Equities Rule 6.6810(w); NYSE Arca Options Rule 11.6810(w); NYSE MKT Rule 6810(w); NYSE National Rule 14.1(w); and Phlx Rule 910A(w).

⁸⁹ See proposed Bats BYX Rule 4.5(x); Bats BZX Rule 4.5(x); Bats EDGA Rule 4.5(x); Bats EDGX Rule 4.5(x); BX Rules 6810(x) and Chapter IX, Section 8, paragraph (a)(xxiv); BOX Rule 16010(x); C2 Chapter 6, Section F; CBOE Rule 6.85(x); CHX Article 23, Rule 1(x); IEX Rule 11.610(x); ISE Rule 900(x); ISE Gemini Rule 900(x); ISE Mercury 900(x); MIAx Rule 1701(x); MIAx PEARL Chapter XVII; NASDAQ Rules 6810(x) and Chapter IX, Section 8, paragraph (a)(xxiv); NYSE Rule 6810(x); NYSE Arca Equities Rule 6.6810(x); NYSE Arca Options Rule 11.6810(x); NYSE MKT Rule 6810(x); NYSE National Rule 14.1(x); and Phlx Rule 910A(x).

⁹⁰ 17 CFR 242.600(b)(47).

⁹¹ See CAT NMS Plan, *supra* note 21, at Section 1.1 (defining “Trading Day”).

⁹² See proposed Bats BYX Rule 4.5(y); Bats BZX Rule 4.5(y); Bats EDGA Rule 4.5(y); Bats EDGX Rule 4.5(y); BX Rules 6810(y) and Chapter IX, Section 8, paragraph (a)(xxv); BOX Rule 16010(y); C2 Chapter 6, Section F; CBOE Rule 6.85(y); CHX Article 23, Rule 1(y); IEX Rule 11.610(y); ISE Rule 900(y); ISE Gemini Rule 900(y); ISE Mercury 900(y); MIAx Rule 1701(y); MIAx PEARL Chapter XVII; NASDAQ Rules 6810(y) and Chapter IX, Section 8, paragraph (a)(xxv); NYSE Rule 6810(y); NYSE Arca Equities Rule 6.6810(y); NYSE Arca Options Rule 11.6810(y); NYSE MKT Rule 6810(y); NYSE National Rule 14.1(y); and Phlx Rule 910A(y).

⁹³ 17 CFR 242.600(b)(47).

26. Operating Committee

The proposed CAT Compliance Rules define the term “Operating Committee” to mean the governing body of the CAT NMS, LLC designated as such and described in Article IV of the CAT NMS Plan.⁹⁴ The Exchanges state that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan, except the Exchanges propose to use the phrase “CAT NMS LLC” in place of the phrase “the Company” for clarity.

27. Options Market Maker

(a) Options Market Maker Quote Exemption

Rule 613(c)(7) provides that the CAT NMS Plan must require each Industry Member to record and electronically report to the Central Repository details for each order and each reportable event, including the routing and modification or cancellation of an order.⁹⁵ Rule 613(j)(8) defines “order” to include “any bid or offer.”⁹⁶ Therefore, under Rule 613, the details for each Options Market Maker quotation must be reported to the Central Repository by both the Options Market Maker and the options exchange to which it routes its quote.

The Participants, however, requested and received exemptive relief from Rule 613 of Regulation NMS so that the CAT NMS Plan may permit Options Market Maker quotes to be reported to the Central Repository by the relevant options exchange in lieu of requiring that such reporting be done by both the options exchange and the Options Market Maker, as is required by Rule 613.⁹⁷ In accordance with the exemptive relief, Options Market Makers will be required to report to the options exchange the time at which a quote in a Listed Option is sent to the options exchange. Such time information also will be reported to the Central Repository by the options exchange in lieu of reporting by the Options Market Maker.

⁹⁴ See proposed Bats BYX Rule 4.5(z); Bats BZX Rule 4.5(z); Bats EDGA Rule 4.5(z); Bats EDGX Rule 4.5(z); BX Rules 6810(z) and Chapter IX, Section 8, paragraph (a)(xxvi); BOX Rule 16010(z); C2 Chapter 6, Section F; CBOE Rule 6.85(z); CHX Article 23, Rule 1(z); IEX Rule 11.610(z); ISE Rule 900(z); ISE Gemini Rule 900(z); ISE Mercury 900(z); MIAx Rule 1701(z); MIAx PEARL Chapter XVII; NYSE Rule 6810(z); NASDAQ Rules 6810(z) and Chapter IX, Section 8, paragraph (a)(xxvi); NYSE Arca Equities Rule 6.6810(z); NYSE Arca Options Rule 11.6810(z); NYSE MKT Rule 6810(z); NYSE National Rule 14.1(z); and Phlx Rule 910A(z).

⁹⁵ 17 CFR 242.613(c)(7).

⁹⁶ 17 CFR 242.613(j)(8).

⁹⁷ See Exemptive Request Letter, *supra* note 31, at 2; Exemption Order, *supra* note 31.

(b) Definition of Options Market Maker

To implement the requirements related to Option Market Maker quotes, the Exchanges propose to define the term “Options Market Maker” to mean a broker-dealer registered with an exchange for the purpose of making markets in options contracts traded on the exchange.⁹⁸ The Exchanges state that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

28. Order

The proposed CAT Compliance Rules require each Industry Member to record and electronically report to the Central Repository certain details for each order. Accordingly, the Exchanges propose to define the term “Order” with respect to Eligible Securities, to include: (1) Any order received by an Industry Member from any person; (2) any order originated by an Industry Member; or (3) any bid or offer.⁹⁹ The Exchanges state that this is the same definition as set forth in Rule 613(j)(8),¹⁰⁰ except the Exchanges propose to replace the phrase “member of a national securities exchange or national securities association” with the term “Industry Member.” The Exchanges also note that Section 1.1 of the CAT NMS Plan defines “Order” by reference to Rule 613(j)(8).

29. OTC Equity Security

OTC Equity Securities are one of the types of Eligible Securities for the CAT. Therefore, the Exchanges propose to define the term “OTC Equity Security” to mean any equity security, other than an NMS Security, subject to prompt last sale reporting rules of a registered national securities association and

⁹⁸ See proposed Bats BYX Rule 4.5(aa); Bats BZX Rule 4.5(aa); Bats EDGA Rule 4.5(aa); Bats EDGX Rule 4.5(aa); BX Rules 6810(aa) and Chapter IX, Section 8, paragraph (a)(xxvii); BOX Rule 16010(aa); C2 Chapter 6, Section F; CBOE Rule 6.85(aa); CHX Article 23, Rule 1(aa); IEX Rule 11.610(aa); ISE Rule 900(aa); ISE Gemini Rule 900(aa); ISE Mercury 900(aa); MIAx Rule 1701(aa); MIAx PEARL Chapter XVII; BX Rules 6810(aa) and Chapter IX, Section 8, paragraph (a)(xxvii); NYSE Rule 6810(aa); NYSE Arca Equities Rule 6.6810(aa); NYSE Arca Options Rule 11.6810(aa); NYSE MKT Rule 6810(aa); NYSE National Rule 14.1(aa); and Phlx Rule 910A(aa).

⁹⁹ See proposed Bats BYX Rule 4.5(bb); Bats BZX Rule 4.5(bb); Bats EDGA Rule 4.5(bb); Bats EDGX Rule 4.5(bb); BX Rules 6810(bb) and Chapter IX, Section 8, paragraph (a)(xxviii); BOX Rule 16010(bb); C2 Chapter 6, Section F; CBOE Rule 6.85(bb); CHX Article 23, Rule 1(bb); IEX Rule 11.610(bb); ISE Rule 900(bb); ISE Gemini Rule 900(bb); ISE Mercury 900(bb); MIAx Rule 1701(bb); MIAx PEARL Chapter XVII; NASDAQ Rules 6810(bb) and Chapter IX, Section 8, paragraph (a)(xxviii); NYSE Rule 6810(bb); NYSE Arca Equities Rule 6.6810(bb); NYSE Arca Options Rule 11.6810(bb); NYSE MKT Rule 6810(bb); NYSE National Rule 14.1(bb); and Phlx Rule 910A(bb).

¹⁰⁰ See 17 CFR 242.613(j)(8).

reported to one of such association's equity trade reporting facilities.¹⁰¹ The Exchanges state that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

30. Participant

The proposed CAT Compliance Rules define the term "Participant"¹⁰² to mean each Person identified as such in Exhibit A of the CAT NMS Plan, as amended, in such Person's capacity as a Participant in CAT NMS, LLC.¹⁰³ The Exchanges state that this is the same definition in substance as set forth in Section 1.1 of the CAT NMS Plan.

31. Person

The proposed CAT Compliance Rules define the term "Person" to mean any individual, partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or association and any heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so permits.¹⁰⁴ The Exchanges state that this is the same

definition as set forth in Section 1.1 of the CAT NMS Plan.

32. Plan Processor

The proposed CAT Compliance Rules define the term "Plan Processor" to mean the Initial Plan Processor or any other Person selected by the Operating Committee pursuant to Rule 613 and Sections 4.3(b)(i) and 6.1 of the CAT NMS Plan, and with regard to the Initial Plan Processor, the National Market System Plan Governing the Process for Selecting a Plan Processor and Developing a Plan for the Consolidated Audit Trail, to perform the CAT processing functions required by Rule 613 of Regulation NMS and set forth in the CAT NMS Plan.¹⁰⁵

33. Received Industry Member Data

The proposed CAT Compliance Rules state that the term "Received Industry Member Data" has the meaning set forth in each Industry Member's proposed CAT Compliance Rule.¹⁰⁶ The Exchanges represent that this definition has the same substantive meaning as the definition set forth in Section 1.1 of the CAT NMS Plan.

34. Recorded Industry Member Data

The proposed CAT Compliance Rules state that the term "Recorded Industry Member Data" has the meaning set forth in each Industry Member's proposed CAT Compliance Rule.¹⁰⁷ The

Exchanges state that this definition has the same substantive meaning as the definition set forth in Section 1.1 of the CAT NMS Plan.

35. Reportable Event

The proposed CAT Compliance Rules require each Industry Member to record and electronically report to the Central Repository certain details for each Reportable Event. The Exchanges propose to define the term "Reportable Event" to include, but not be limited to, the original receipt or origination, modification, cancellation, routing, execution (in whole or in part) and allocation of an order, and receipt of a routed order.¹⁰⁸ The Exchanges state that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

36. SRO

The Exchanges propose to define the term "SRO" to mean any self-regulatory organization within the meaning of Section 3(a)(26) of the Exchange Act.¹⁰⁹ The Exchanges state that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

37. SRO-Assigned Market Participant Identifier

(a) Existing Identifier Approach

The Participants requested and received exemptive relief from Rule 613 of Regulation NMS so that the CAT NMS Plan may permit the "Existing Identifier Approach," which would allow an Industry Member to report an existing SRO-Assigned Market Participant Identifier in lieu of requiring

paragraph (a)(xxxiii); NYSE Rule 6810(hh); NYSE Arca Equities Rule 6.6810(hh); NYSE Arca Options Rule 11.6810(hh); NYSE Arca Rule 6810(hh); NYSE National Rule 14.1(hh); and Phlx Rule 910A(hh).

¹⁰⁸ See proposed Bats BYX Rule 4.5(ii); Bats BZX Rule 4.5(ii); Bats EDGA Rule 4.5(ii); Bats EDGX Rule 4.5(ii); BX Rules 6810(ii) and Chapter IX, Section 8, paragraph (a)(xxv); BOX Rule 16010(ii); C2 Chapter 6, Section F; CBOE Rule 6.85(ii); CHX Article 23, Rule 1(ii); IEX Rule 11.610(ii); ISE Rule 900(ii); ISE Gemini Rule 900(ii); ISE Mercury 900(ii); MIAx Rule 1701(ii); MIAx PEARL Chapter XVII; NASDAQ Rules 6810(ii) and Chapter IX, Section 8, paragraph (a)(xxv); NYSE Rule 6810(ii); NYSE Arca Equities Rule 6.6810(ii); NYSE Arca Options Rule 11.6810(ii); NYSE MKT Rule 6810(ii); NYSE National Rule 14.1(ii); and Phlx Rule 910A(ii).

¹⁰⁹ See 15 U.S.C. 78c(a)(26); proposed Bats BYX Rule 4.5(jj); Bats BZX Rule 4.5(jj); Bats EDGA Rule 4.5(jj); Bats EDGX Rule 4.5(jj); BX Rules 6810(jj) and Chapter IX, Section 8, paragraph (a)(xxvi); BOX Rule 16010(jj); C2 Chapter 6, Section F; CBOE Rule 6.85(jj); CHX Article 23, Rule 1(jj); IEX Rule 11.610(jj); ISE Rule 900(jj); ISE Gemini Rule 900(jj); ISE Mercury 900(jj); MIAx Rule 1701(jj); MIAx PEARL Chapter XVII; NASDAQ Rules 6810(jj) and Chapter IX, Section 8, paragraph (a)(xxvi); NYSE Rule 6810(jj); NYSE Arca Equities Rule 6.6810(jj); NYSE Arca Options Rule 11.6810(jj); NYSE MKT Rule 6810(jj); NYSE National Rule 14.1(jj); and Phlx Rule 910A(jj).

¹⁰¹ See proposed Bats BYX Rule 4.5(cc); Bats BZX Rule 4.5(cc); Bats EDGA Rule 4.5(cc); Bats EDGX Rule 4.5(cc); BX Rules 6810(cc) and Chapter IX, Section 8, paragraph (a)(xxix); BOX Rule 16010(cc); C2 Chapter 6, Section F; CBOE Rule 6.85(cc); CHX Article 23, Rule 1(cc); IEX Rule 11.610(cc); ISE Rule 900(cc); ISE Gemini Rule 900(cc); ISE Mercury 900(cc); MIAx Rule 1701(cc); MIAx PEARL Chapter XVII; NASDAQ Rules 6810(cc) and Chapter IX, Section 8, paragraph (a)(xxix); NYSE Rule 6810(cc); NYSE Arca Equities Rule 6.6810(cc); NYSE Arca Options Rule 11.6810(cc); NYSE MKT Rule 6810(cc); NYSE National Rule 14.1(cc); and Phlx Rule 910A(cc).

¹⁰² The Commission notes that the proposed CHX CAT Compliance Rules use the term "Plan Participant" instead of "Participant," but the definitions are the same. See proposed CHX Article 23, Rule 1(dd).

¹⁰³ See proposed Bats BYX Rule 4.5(dd); Bats BZX Rule 4.5(dd); Bats EDGA Rule 4.5(dd); Bats EDGX Rule 4.5(dd); BX Rules 6810(dd) and Chapter IX, Section 8, paragraph (a)(xxx); BOX Rule 16010(dd); C2 Chapter 6, Section F; CBOE Rule 6.85(dd); CHX Article 23, Rule 1(dd); IEX Rule 11.610(dd); ISE Rule 900(dd); ISE Gemini Rule 900(dd); ISE Mercury 900(dd); MIAx Rule 1701(dd); MIAx PEARL Chapter XVII; NASDAQ Rules 6810(dd) and Chapter IX, Section 8, paragraph (a)(xxx); NYSE Rule 6810(dd); NYSE Arca Equities Rule 6.6810(dd); NYSE Arca Options Rule 11.6810(dd); NYSE MKT Rule 6810(dd); NYSE National Rule 14.1(dd); and Phlx Rule 910A(dd).

¹⁰⁴ See proposed Bats BYX Rule 4.5(ee); Bats BZX Rule 4.5(ee); Bats EDGA Rule 4.5(ee); Bats EDGX Rule 4.5(ee); BX Rules 6810(ee) and Chapter IX, Section 8, paragraph (a)(xxxi); BOX Rule 16010(ee); C2 Chapter 6, Section F; CBOE Rule 6.85(ee); CHX Article 23, Rule 1(ee); IEX Rule 11.610(ee); ISE Rule 900(ee); ISE Gemini Rule 900(ee); ISE Mercury 900(ee); MIAx Rule 1701(ee); MIAx PEARL Chapter XVII; NASDAQ Rules 6810(ee) and Chapter IX, Section 8, paragraph (a)(xxxi); NYSE Rule 6810(ee); NYSE Arca Equities Rule 6.6810(ee); NYSE Arca Options Rule 11.6810(ee); NYSE MKT Rule 6810(ee); NYSE National Rule 14.1(ee); and Phlx Rule 910A(ee).

¹⁰⁵ See proposed Bats BYX Rule 4.5(ff); Bats BZX Rule 4.5(ff); Bats EDGA Rule 4.5(ff); Bats EDGX Rule 4.5(ff); BX Rules 6810(ff) and Chapter IX, Section 8, paragraph (a)(xxxii); BOX Rule 16010(ff); C2 Chapter 6, Section F; CBOE Rule 6.85(ff); CHX Article 23, Rule 1(ff); IEX Rule 11.610(ff); ISE Rule 900(ff); ISE Gemini Rule 900(ff); ISE Mercury 900(ff); MIAx Rule 1701(ff); MIAx PEARL Chapter XVII; NASDAQ Rules 6810(ff) and Chapter IX, Section 8, paragraph (a)(xxxii); NYSE Rule 6810(ff); NYSE Arca Equities Rule 6.6810(ff); NYSE Arca Options Rule 11.6810(ff); NYSE MKT Rule 6810(ff); NYSE National Rule 14.1(ff); and Phlx Rule 910A(ff).

¹⁰⁶ See proposed Bats BYX Rule 4.5(gg); Bats BZX Rule 4.5(gg); Bats EDGA Rule 4.5(gg); Bats EDGX Rule 4.5(gg); BX Rules 6810(gg) and Chapter IX, Section 8, paragraph (a)(xxxiii); BOX Rule 16010(gg); C2 Chapter 6, Section F; CBOE Rule 6.85(gg); CHX Article 23, Rule 1(gg); IEX Rule 11.610(gg); ISE Rule 900(gg); ISE Gemini Rule 900(gg); ISE Mercury 900(gg); MIAx Rule 1701(gg); MIAx PEARL Chapter XVII; NASDAQ Rules 6810(gg) and Chapter IX, Section 8, paragraph (a)(xxxiii); NYSE Rule 6810(gg); NYSE Arca Equities Rule 6.6810(gg); NYSE Arca Options Rule 11.6810(gg); NYSE MKT Rule 6810(gg); NYSE National Rule 14.1(gg); and Phlx Rule 910A(gg).

¹⁰⁷ See proposed Bats BYX Rule 4.5(hh); Bats BZX Rule 4.5(hh); Bats EDGA Rule 4.5(hh); Bats EDGX Rule 4.5(hh); BX Rules 6810(hh) and Chapter IX, Section 8, paragraph (a)(xxxiv); BOX Rule 16010(hh); C2 Chapter 6, Section F; CBOE Rule 6.85(hh); CHX Article 23, Rule 1(hh); IEX Rule 11.610(hh); ISE Rule 900(hh); ISE Gemini Rule 900(hh); ISE Mercury 900(hh); MIAx Rule 1701(hh); MIAx PEARL Chapter XVII; NASDAQ Rules 6810(hh) and Chapter IX, Section 8,

the reporting of a universal CAT-Reporter-ID (that is, a code that uniquely and consistently identifies an Industry Member for purposes of providing data to the Central Repository).¹¹⁰ The CAT NMS Plan reflects the Existing Identifier Approach for purposes of identifying each Industry Member associated with an order or Reportable Event. Under the Existing Identifier Approach, Industry Members are required to record and report to the Central Repository an SRO-Assigned Market Participant Identifier for orders and certain Reportable Events to be used by the Central Repository to assign a unique CAT-Reporter-ID to identify Industry Members.

For the Central Repository to link the SRO-Assigned Market Participant Identifier to the CAT-Reporter-ID, each SRO will submit to the Central Repository, on a daily basis, all SRO-Assigned Market Participant Identifiers used by its Industry Members, as well as information to identify each such Industry Member, including CRD number and LEI, if the SRO has collected such LEI of the Industry Member. Additionally, each Industry Member is required to submit to the Central Repository the CRD number of the Industry Member as well as the LEI of the Industry Member (if the Industry Member has an LEI). The Plan Processor will use this information to assign a CAT-Reporter-ID to each Industry Member for internal use within the Central Repository.

(b) Definition of SRO-Assigned Market Participant Identifier

To implement the Existing Identifier Approach, the Exchanges propose to define the term “SRO-Assigned Market Participant Identifier” to mean an identifier assigned to an Industry Member by an SRO or an identifier used by a Participant.¹¹¹ The Exchanges state that this is the same definition as set

forth in Section 1.1 of the CAT NMS Plan.

38. Small Industry Member

The Exchanges represent that the requirements of the proposed CAT Compliance Rules differ to some extent for Small Industry Members versus Industry Members other than Small Industry Members. For example, the compliance dates for reporting data to the CAT are different for Small Industry Members versus other Industry Members. Accordingly, to clarify the requirements that apply to which Industry Members, the Exchanges propose to define the term “Small Industry Member” to mean an Industry Member that qualifies as a small broker-dealer as defined in Exchange Act Rule 0–10(c).¹¹² The Exchanges state that this is the same in substance as the definition of “Small Industry Member” as set forth in Section 1.1 of the CAT NMS Plan. Specifically, Section 1.1 of the CAT NMS Plan defines a “Small Industry Member” as “an Industry Member that qualifies as a small broker-dealer as defined in Rule 613.” The definition of a small broker-dealer under Rule 613, in turn, is a small broker-dealer as defined in Exchange Act Rule 0–10(c).

39. Trading Day

The proposed CAT Compliance Rules establish the deadlines for reporting certain data to the Central Repository using the term “Trading Day.” Accordingly, the Exchanges propose that the term “Trading Day” shall have the meaning as is determined by the Operating Committee.¹¹³ For the avoidance of doubt, the Exchanges

represent that the Operating Committee may establish different Trading Days for NMS Stocks, Listed Options, OTC Equity Securities, and any other securities that are included as Eligible Securities from time to time.

B. Clock Synchronization

Rule 613(d)(1) of Regulation NMS requires Industry Members to synchronize their Business Clocks to the time maintained by NIST, consistent with industry standards.¹¹⁴ To comply with this provision, Section 6.8 of the Plan sets forth the clock synchronization requirements for Industry Members.¹¹⁵ To implement these provisions with regard to its Industry Members, the Exchanges propose CAT Compliance Rules to require their Industry Members to comply with the clock synchronization requirements of the Plan.¹¹⁶

1. Clock Synchronization

The proposed CAT Compliance Rules set forth the manner in which Industry Members must synchronize their Business Clocks. The Rules require each Industry Member to synchronize its Business Clocks, other than such Business Clocks used solely for Manual Order Events or used solely for the time of allocation on Allocation Reports, at a minimum to within a fifty (50) millisecond tolerance of the time maintained by the NIST atomic clock, and maintain such synchronization. The Exchanges represent that this is the same requirement as set forth in Section 6.8(a)(ii)(A) of the CAT NMS Plan.

The proposed CAT Compliance Rules require each Industry Member to synchronize (1) its Business Clocks used solely for Manual Order Events and (2) its Business Clocks used solely for the time of allocation on Allocation Reports at a minimum to within a one second

¹¹⁰ See Exemptive Request Letter, *supra* note 31, at 19; Exemption Order, *supra* note 31 at 40–41.

¹¹¹ For example, an Industry Member would be permitted to use any existing SRO-Assigned Market Participant Identifier (e.g., FINRA MPID, NASDAQ MPID, NYSE Mnemonic, CBOE User Acronym and CHX Acronym) when reporting order information to the Central Repository. See 15 U.S.C. 78c(a)(26); proposed Bats BYX Rule 4.5(kk); Bats BZX Rule 4.5(kk); Bats EDGA Rule 4.5(kk); Bats EDGX Rule 4.5(kk); BX Rules 6810(kk) and Chapter IX, Section 8, paragraph (a)(xxxvii); BOX Rule 16010(kk); C2 Chapter 6, Section F; CBOE Rule 6.85(kk); CHX Article 23, Rule 1(kk); IEX Rule 11.610(kk); ISE Rule 900(kk); ISE Gemini Rule 900(kk); ISE Mercury 900(kk); MIAX Rule 1701(kk); MIAX PEARL Chapter XVII; NASDAQ Rules 6810(kk) and Chapter IX, Section 8, paragraph (a)(xxxvii); NYSE Rule 6810(kk); NYSE Arca Equities Rule 6.6810(kk); NYSE Arca Options Rule 11.6810(kk); NYSE MKT Rule 6810(kk); NYSE National Rule 14.1(kk); and Phlx Rule 910A(kk).

¹¹² 17 CFR 240.0–10(c); proposed Bats BYX Rule 4.5(ll); Bats BZX Rule 4.5(ll); Bats EDGA Rule 4.5(ll); Bats EDGX Rule 4.5(ll); BX Rules 6810(ll) and Chapter IX, Section 8, paragraph (a)(xxxviii); BOX Rule 16010(ll); C2 Chapter 6, Section F; CBOE Rule 6.85(ll); CHX Article 23, Rule 1(ll); IEX Rule 11.610(ll); ISE Rule 900(ll); ISE Gemini Rule 900(ll); ISE Mercury 900(ll); MIAX Rule 1701(ll); MIAX PEARL Chapter XVII; NASDAQ Rules 6810(ll) and Chapter IX, Section 8, paragraph (a)(xxxviii); NYSE Rule 6810(ll); NYSE Arca Equities Rule 6.6810(ll); NYSE Arca Options Rule 11.6810(ll); NYSE MKT Rule 6810(ll); NYSE National Rule 14.1(ll); and Phlx Rule 910A(ll).

¹¹³ See proposed Bats BYX Rule 4.5(mm); Bats BZX Rule 4.5(mm); Bats EDGA Rule 4.5(mm); Bats EDGX Rule 4.5(mm); BX Rules 6810(mm) and Chapter IX, Section 8, paragraph (a)(xxxix); BOX Rule 16010(mm); C2 Chapter 6, Section F; CBOE Rule 6.85(mm); CHX Article 23, Rule 1(mm); IEX Rule 11.610(mm); ISE Rule 900(mm); ISE Gemini Rule 900(mm); ISE Mercury 900(mm); MIAX Rule 1701(mm); MIAX PEARL Chapter XVII; NASDAQ Rules 6810(mm) and Chapter IX, Section 8, paragraph (a)(xxxix); NYSE Rule 6810(mm); NYSE Arca Equities Rule 6.6810(mm); NYSE Arca Options Rule 11.6810(mm); NYSE MKT Rule 6810(mm); NYSE National Rule 14.1(mm); and Phlx Rule 910A(mm).

¹¹⁴ 17 CFR 242.613(d)(1). Related to the clock synchronization requirements, the Commission notes that the Participants also filed a request for an exemption from the March 15, 2017 filing deadline requirement set forth Section 6.7(a)(ii) of the CAT NMS Plan and in the proposed CAT Compliance Rules. See *infra* note 161. The Commission granted the Participants' exemption request. See *infra* note 163.

¹¹⁵ In addition, Section 6.7(a)(ii) of the Plan sets forth the timeline for CAT Reporters to comply with the clock synchronization requirements.

¹¹⁶ See proposed Bats BYX Rule 4.6; Bats BZX Rule 4.6; Bats EDGA Rule 4.6; Bats EDGX Rule 4.6; BX Rule 6820 and Section IX, Section 8, subparagraph (b); BOX Rule 16020; C2 Chapter 6, Section F; CBOE Rule 6.86; CHX Article 23, Rule 2; IEX Rule 11.620; ISE Rule 901; ISE Gemini Rule 901; ISE Mercury Rule 901; MIAX Rule 1702; MIAX PEARL Chapter XVII; Nasdaq Rule 6820 and Section IX, Section 8, subparagraph (b); NYSE Rule 6820; NYSE Arca Equities Rule 6.6820; NYSE Arca Options Rule 11.6820; NYSE MKT Rule 6820; NYSE National Rule 14.2; and Phlx Rule 920A.

tolerance of the time maintained by the NIST atomic clock, and maintain such synchronization. The Exchanges state that this is the same requirement as set forth in Section 6.8(a)(iii) and (iv) of the CAT NMS Plan. The proposed CAT Compliance Rules clarify that the tolerance described in paragraphs (a)(1) and (2) of the proposed Rules includes all of the following: (1) The time difference between the NIST atomic clock and the Industry Member's Business Clock; (2) the transmission delay from the source; and (3) the amount of drift of the Industry Member's Business Clock.

The proposed CAT Compliance Rules require Industry Members to synchronize their Business Clocks every business day before market open to ensure that timestamps for Reportable Events are accurate.¹¹⁷ In addition, to maintain clock synchronization, Business Clocks must be checked against the NIST atomic clock and re-synchronized, as necessary, throughout the day.

2. Documentation

The proposed CAT Compliance Rules set forth documentation requirements with regard to clock synchronization. Specifically, the proposed Rules require Industry Members to document and maintain their synchronization procedures for their Business Clocks. The proposed Rules require Industry Members to keep a log of the times when they synchronize their Business Clocks and the results of the synchronization process. This log is required to include notice of any time a Business Clock drifts more than the applicable tolerance specified in the Rules. Such logs must include results for a period of not less than five years ending on the then current date, or for the entire period for which the Industry Member has been required to comply with this Rule if less than five years. The Exchanges state that these documentation requirements are the same as those set forth in the "Sequencing Orders and Clock Synchronization" section of Appendix C of the CAT NMS Plan.

3. Certification

The proposed CAT Compliance Rules set forth certification requirements with regard to clock synchronization. Specifically, the Rules require each Industry Member to certify to a Participant that its Business Clocks

satisfy the synchronization requirements set forth in the proposed CAT Compliance Rules periodically in accordance with the certification schedule established by the Operating Committee pursuant to the CAT NMS Plan. The Exchanges state that this requirement is the same requirement as set forth in Section 6.8(a)(ii)(B), (iii) and (iv) of the CAT NMS Plan. The Exchanges state that they intend to announce to their Industry Members the certification schedule established by the Operating Committee.¹¹⁸

4. Violation Reporting

The proposed CAT Compliance Rules establish reporting requirements with regard to clock synchronization. These proposed Rules require Industry Members to report to the Plan Processor and FINRA violations of the clock synchronization requirements of the proposed Rules pursuant to the thresholds set by the Operating Committee pursuant to the CAT NMS Plan. The Exchanges represent that this requirement is the same requirement as set forth in Section 6.8(a)(ii)(C), (iii) and (iv) of the CAT NMS Plan. The Exchanges intend to announce to their Industry Members the relevant thresholds established by the Operating Committee.¹¹⁹

C. Industry Member Data Reporting

Rule 613(c) of Regulation NMS requires the CAT NMS Plan to set forth certain provisions requiring Industry Members to record and report data to the CAT.¹²⁰ To comply with this provision, Section 6.4 of the CAT NMS Plan sets forth the data reporting requirements for Industry Members. To implement these provisions with regard to its Industry Members, the Exchanges propose provisions in their CAT Compliance Rules addressing Industry Member Data Reporting to require their Industry Members to comply with the Industry Member Data reporting requirements of the Plan.¹²¹ The proposed CAT Compliance Rules have

five sections covering: (1) Recording and reporting Industry Member Data, (2) timing of the recording and reporting, (3) the applicable securities covered by the recording and reporting requirements, (4) the security symbology to be used in the recording and reporting, and (5) error correction requirements, each of which is described below.

1. Recording and Reporting Industry Member Data

The proposed CAT Compliance Rules describe the recording and reporting of Industry Member Data to the Central Repository. The proposed Rules cover Recorded Industry Member Data, Received Industry Member Data and Options Market Maker data. The proposed CAT Compliance Rules set forth the recording and reporting requirements required in Section 6.4(d)(i)–(iii) of the CAT NMS Plan.

The proposed CAT Compliance Rules require, subject to provisions regarding Options Market Makers, each Industry Member to record and electronically report to the Central Repository the following details for each order and each Reportable Event, as applicable ("Recorded Industry Member Data") in the manner prescribed by the Operating Committee pursuant to the CAT NMS Plan:

- For original receipt or origination of an order: (1) Firm Designated ID(s) for each Customer; (2) CAT-Order-ID; (3) SRO-Assigned Market Participant Identifier of the Industry Member receiving or originating the order; (4) date of order receipt or origination; (5) time of order receipt or origination (using timestamps pursuant to the proposed Rules¹²²); and (6) Material Terms of the Order;

- for the routing of an order: (1) CAT-Order-ID; (2) date on which the order is routed; (3) time at which the order is routed (using timestamps pursuant to the proposed Rules¹²³); (4) SRO-Assigned Market Participant Identifier of the Industry Member routing the order; (5) SRO-Assigned Market Participant Identifier of the Industry Member or Participant to which the order is being routed; (6) if routed internally at the Industry Member, the identity and nature of the department or desk to which the order is routed; and (7) Material Terms of the Order;

- for the receipt of an order that has been routed, the following information: (1) CAT-Order-ID; (2) date on which the order is received; (3) time at which the order is received (using timestamps

¹¹⁸ The Exchanges will do so via Regulatory Circular, Regulatory Information Circular, Information Circular, Circular, Information Memorandum or Trader Update, as applicable.

¹¹⁹ *Id.*

¹²⁰ See 17 CFR 242.613(c).

¹²¹ See proposed Bats BYX Rule 4.7; Bats BZX Rule 4.7; Bats EDGA Rule 4.7; Bats EDGX Rule 4.7; BX Rule 6830 and Section IX, Section 8, subparagraph (c); BOX Rule 16030; C2 Chapter 6, Section F; CBOE Rule 6.87(b); CHX Article 23, Rule 3; IEX Rule 11.630; ISE Rule 902; ISE Gemini Rule 902; ISE Mercury Rule 902; MIAX Rule 1703; MIAX PEARL Chapter XVII; Nasdaq Rule 6830 and Section IX, Section 8, subparagraph (c); NYSE Rule 6830; NYSE Arca Equities Rule 6.6830; NYSE Arca Options Rule 11.6830; NYSE MKT Rule 6830; NYSE National Rule 14.3; Phlx Rule 930A.

¹¹⁷ The proposed CBOE and C2 CAT Compliance Rules require Industry Members to synchronize their business clocks before each trading session. See proposed CBOE Rule 6.86(a)(iv); C2 Chapter 6, Section F.

¹²² See *infra* note 135.

¹²³ *Id.*

pursuant to the proposed Rules¹²⁴); (4) SRO-Assigned Market Participant Identifier of the Industry Member receiving the order; (5) SRO-Assigned Market Participant Identifier of the Industry Member or Participant routing the order; and (6) Material Terms of the Order;

- if the order is modified or cancelled: (1) CAT-Order-ID; (2) date the modification or cancellation is received or originated; (3) time at which the modification or cancellation is received or originated (using timestamps pursuant to the proposed Rules¹²⁵); (4) price and remaining size of the order, if modified; (5) other changes in the Material Terms of the Order, if modified; and (6) whether the modification or cancellation instruction was given by the Customer or was initiated by the Industry Member;

- if the order is executed, in whole or in part: (1) CAT-Order-ID; (2) date of execution; (3) time of execution (using timestamps pursuant to the proposed Rules¹²⁶); (4) execution capacity (principal, agency or riskless principal); (5) execution price and size; (6) SRO-Assigned Market Participant Identifier of the Industry Member executing the order; (7) whether the execution was reported pursuant to an effective transaction reporting plan or the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information; and

- other information or additional events as may be prescribed pursuant to the CAT NMS Plan.

The proposed CAT Compliance Rules require, subject to provisions regarding Options Market Makers, each Industry Member to record and report to the Central Repository the following, as applicable (“Received Industry Member Data”) and collectively with the information referred to in the proposed Rules governing Industry Member Data in the manner prescribed by the Operating Committee pursuant to the CAT NMS Plan:

- If the order is executed, in whole or in part: (1) An Allocation Report; (2) SRO-Assigned Market Participant Identifier of the clearing broker or prime broker, if applicable; and (3) CAT-Order-ID of any contra-side order(s);

- if the trade is cancelled, a cancelled trade indicator; and

- for original receipt or origination of an order, the Firm Designated ID for the relevant Customer, and in accordance with the proposed CAT Compliance Rules, Customer Account Information

and Customer Identifying Information for the relevant Customer.

The proposed CAT Compliance Rules state that each Industry Member that is an Options Market Maker is not required to report to the Central Repository the Industry Member Data regarding the routing, modification or cancellation of its quotes in Listed Options. Each Industry Member that is an Options Market Maker, however, is required to report to the Exchange the time at which its quote in a Listed Option is sent to the Exchange (and, if applicable, any subsequent quote modification time and/or cancellation time when such modification or cancellation is originated by the Options Market Maker). The proposed CAT Compliance Rules implement the Options Market Maker Quote Exemption, as discussed above.

2. Timing of Recording and Reporting

The proposed CAT Compliance Rules describe the requirements related to the timing of recording and reporting of Industry Member Data.¹²⁷ These Rules set forth the requirements related to the timing of the recording and reporting requirements required in Section 6.4(b)(i)–(ii) of the CAT NMS Plan.

The proposed CAT Compliance Rules require each Industry Member to record Recorded Industry Member Data contemporaneously with the applicable Reportable Event. The proposed Rules require each Industry Member to report: (1) Recorded Industry Member Data to the Central Repository by 8:00 a.m. Eastern Time on the Trading Day following the day the Industry Member records such Recorded Industry Member Data; and (2) Received Industry Member Data to the Central Repository by 8:00 a.m. Eastern Time on the Trading Day following the day the Industry Member receives such Received Industry Member Data. The Rules state that Industry Members may, but are not required to, voluntarily report Industry Member Data prior to the applicable 8:00 a.m. Eastern Time deadline.

3. Applicable Securities

The proposed CAT Compliance Rules describe the securities to which the

recording and reporting requirements of the proposed Rules apply. The proposed Rules set forth the description of applicable securities as set forth in Section 6.4(c)(i) and (ii) of the CAT NMS Plan, respectively.¹²⁸ The proposed Rules require each Industry Member to record and report to the Central Repository the Industry Member Data as set forth in the Rules for each NMS Security registered or listed for trading on such exchange or admitted to unlisted trading privileges on such exchange. The proposed Rules require each Industry Member to record and report to the Central Repository the Industry Member Data as set forth in the Rules for each Eligible Security for which transaction reports are required to be submitted to FINRA.

4. Security Symbolology

The proposed CAT Compliance Rules describe the security symbolology that Industry Members are required to use when reporting Industry Member Data to the Central Repository. The proposed Rules require, for each exchange-listed Eligible Security, each Industry Member to report Industry Member Data to the Central Repository using the symbolology format of the exchange listing the security.¹²⁹ The Exchanges state that this requirement implements the requirement set forth in Section 2 of Appendix D of the CAT NMS Plan to use the listing exchange symbolology when reporting data to the Central Repository for exchange-listed Eligible Securities.

For each Eligible Security that is not exchange-listed, however, the Exchanges represent that there is no listing exchange to provide the symbolology format. Moreover, to date,

¹²⁸ See proposed Bats BYX Rule 4.7(c); Bats BZX Rule 4.7(c); Bats EDGA Rule 4.7(c); Bats EDGX Rule 4.7(c); BX Rule 6830(c) and Section IX, Section 8, subparagraph (c)(iii); BOX Rule 16030(c); C2 Chapter 6, Section F; CBOE Rule 6.87(c); CHX Article 23, Rule 3(c); IEX Rule 11.630(c); ISE Rule 902(c); ISE Gemini Rule 902(c); ISE Mercury Rule 902(c); MIAX Rule 1703(c); MIAX PEARL Chapter XVII; Nasdaq Rule 6830(c) and Section IX, Section 8, subparagraph (c); NYSE Rule 6830(c)(iii); NYSE Rule 6830(c); NYSE Arca Equities Rule 6.6830(c); NYSE Arca Options Rule 11.6830(c); NYSE MKT Rule 6830(c); NYSE National Rule 14.3(c); and Phlx Rule 930A(c).

¹²⁹ See proposed Bats BYX Rule 4.7(d); Bats BZX Rule 4.7(d); Bats EDGA Rule 4.7(d); Bats EDGX Rule 4.7(d); BX Rule 6830(d) and Section IX, Section 8, subparagraph (c)(iv); BOX Rule 16030(d); C2 Chapter 6, Section F; CBOE Rule 6.87(d); CHX Article 23, Rule 3(d); IEX Rule 11.630(d); ISE Rule 902(d); ISE Gemini Rule 902(d); ISE Mercury Rule 902(d); MIAX Rule 1703(d); MIAX PEARL Chapter XVII; NASDAQ Rule 6830(d) and Section IX, Section 8, subparagraph (c)(iv); NYSE Rule 6830(d); NYSE Arca Equities Rule 6.6830(d); NYSE Arca Options Rule 11.6830(d); NYSE MKT Rule 6830(d); NYSE National Rule 14.3(d); and Phlx Rule 930A(d).

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ See proposed Bats BYX Rule 4.7(b); Bats BZX Rule 4.7(b); Bats EDGA Rule 4.7(b); Bats EDGX Rule 4.7(b); BX Rule 6830(b) and Section IX, Section 8, subparagraph (c)(ii); BOX Rule 16030(b); C2 Chapter 6, Section F; CBOE Rule 6.87(b); CHX Article 23, Rule 3(b); IEX Rule 11.630(b); ISE Rule 902(b); ISE Gemini Rule 902(b); ISE Mercury Rule 902(b); MIAX Rule 1703(b); MIAX PEARL Chapter XVII; NASDAQ Rule 6830(b) and Section IX, Section 8, subparagraph (c)(ii); NYSE Rule 6830(b); NYSE Arca Equities Rule 6.6830(b); NYSE Arca Options Rule 11.6830(b); NYSE MKT Rule 6830(b); NYSE National Rule 14.3(b); and Phlx Rule 930A(b).

the requisite symbology format has not been determined. Therefore, the proposed CAT Compliance Rules require, for each Eligible Security that is not exchange-listed, each Industry Member to report Industry Member Data to the Central Repository using such symbology format as approved by the Operating Committee pursuant to the CAT NMS Plan. The Exchanges state that they intend to announce to their Industry Members the relevant symbology formats established by the Operating Committee.¹³⁰

5. Error Correction Timeline

To ensure that the CAT contains accurate data, the CAT NMS Plan requires Industry Members to correct erroneous data submitted to the Central Repository. Therefore, the proposed CAT Compliance Rules require that for each Industry Member for which errors in Industry Member Data submitted to the Central Repository have been identified by the Plan Processor or otherwise, such Industry Member submit corrected Industry Member Data to the Central Repository by 8:00 a.m. Eastern Time on T+3. The Exchanges represent that this requirement implements the error correction requirement set forth in Section 6 of Appendix D of the CAT NMS Plan.

D. Customer Information Reporting

Section 6.4(d)(iv) of the CAT NMS Plan requires Industry Members to submit to the Central Repository certain information related to their Customers in accordance with the Customer Information Approach discussed above. The Exchanges propose CAT Compliance Rules regarding Customer information reporting to implement this provision of the CAT NMS Plan with regard to their Industry Members.¹³¹

1. Initial Set of Customer Information

The proposed CAT Compliance Rules require each Industry Member to submit to the Central Repository the Firm Designated ID, Customer Account Information and Customer Identifying Information for each of its Customers with an Active Account prior to such Industry Member's commencement of

reporting to the Central Repository and in accordance with the deadlines set forth in the CAT Compliance Rules.

2. Daily Updates to Customer Information

The proposed CAT Compliance Rules require each Industry Member to submit to the Central Repository any updates, additions or other changes to the Firm Designated ID, Customer Account Information and Customer Identifying Information for each of its Customers with an Active Account on a daily basis.

3. Periodic Updates to Complete Set of Customer Information

The proposed CAT Compliance Rules also require each Industry Member, on a periodic basis as designated by the Plan Processor and approved by the Operating Committee, to submit to the Central Repository a complete set of Firm Designated IDs, Customer Account Information and Customer Identifying Information for each of its Customers with an Active Account. This periodic refresh is intended to ensure that the Central Repository has the most current information identifying a Customer. The Exchanges represented that they intend to announce to their Industry Members when such a periodic refresh is required by the Plan Processor and the Operating Committee.¹³²

4. Error Correction Timeline

Finally, the proposed CAT Compliance Rules address the correction of erroneous Customer data reported to the Central Repository to ensure an accurate audit trail. The Rules require, for each Industry Member for which errors in Firm Designated ID, Customer Account Information and Customer Identifying Information for each of its Customers with an Active Account submitted to the Central Repository have been identified by the Plan Processor or otherwise, such Member to submit corrected data to the Central Repository by 5:00 p.m. Eastern Time on T+3. The Exchanges state that this requirement implements the error correction requirement set forth in Appendix C of the CAT NMS Plan.

E. Industry Member Information Reporting

Section 6.4(d)(vi) of the CAT NMS Plan requires Industry Members to submit to the Central Repository information sufficient to identify such Industry Member, including CRD number and LEI, if such LEI has been obtained, in accordance with the Existing Identifier Approach discussed

above. The proposed CAT Compliance Rules require each Industry Member to submit to the Central Repository information sufficient to identify such Industry Member, including CRD number and LEI, if such LEI has been obtained, prior to such Industry Member's commencement of reporting to the Central Repository and in accordance with the deadlines set forth in the proposed Rules, and keep such information up to date as necessary.¹³³ The Exchanges state that this provision implements Section 6.4(d)(vi) of the CAT NMS Plan with regard to its Industry Members information reporting.

F. Time Stamps

Rule 613(d)(3) of Regulation NMS sets forth requirements for time stamps used by CAT Reporters in recording and reporting data to the CAT.¹³⁴ To comply with this provision, Section 6.8(b) of the Plan sets forth time stamp requirements for Industry Members. To implement this provision with regard to its Industry Members, the Exchanges propose CAT Compliance Rules to require their Industry Members to comply with the time stamp requirements of the Plan.¹³⁵

1. Millisecond Time Stamps

The proposed CAT Compliance Rules set forth the time stamp increments to be used by Industry Members in their CAT reporting. The Rules require each Industry Member to record and report Industry Member Data to the Central Repository with time stamps in milliseconds. To the extent that any Industry Member's order handling or execution systems utilize time stamps in increments finer than milliseconds, the proposed Rules require such Industry Member to record and report Industry Member Data to the Central Repository with time stamps in such finer

¹³³ See proposed Bats BYX Rule 4.9; Bats BZX Rule 4.9; Bats EDGA Rule 4.9; Bats EDGX Rule 4.9; BX Rules 6850 and Chapter IX, Section 8, subparagraph (e); BOX Rule 16050; C2 Chapter 6, Section F; CBOE Rule 6.89; CHX Article 23, Rule 5; IEX Rule 11.650; ISE Rule 904; ISE Gemini Rule 904; ISE Mercury Rule 904; MIAX Rule 1705; MIAX PEARL Chapter XVII; NASDAQ Rule 6850 and Chapter IX, Section 8, subparagraph (e); NYSE Rule 6850; NYSE Arca Equities Rule 6.6850; NYSE Arca Options Rule 11.6850; NYSE MKT Rule 6850; NYSE National Rule 14.5; and Phlx Rule 950A.

¹³⁴ 17 CFR 242.613(d)(3).

¹³⁵ See proposed Bats BYX Rule 4.10; Bats BZX Rule 4.10; Bats EDGA Rule 4.10; Bats EDGX Rule 4.10; BX Rules 6850 and Chapter IX, Section 8, subparagraph (f); BOX Rule 16060; C2 Chapter 6, Section F; CBOE Rule 6.90; CHX Article 23, Rule 6; IEX Rule 11.660; MIAX Rule 1706; MIAX PEARL Chapter XVII; NASDAQ Rule 6850 and Chapter IX, Section 8, subparagraph (f); NYSE Rule 6860; NYSE Arca Equities Rule 6.6860; NYSE Arca Options Rule 11.6860; NYSE MKT Rule 6860; NYSE National Rule 14.6; and Phlx Rule 960A.

¹³⁰ See *supra* note 118.

¹³¹ See proposed Bats BYX Rule 4.8; Bats BZX Rule 4.8; Bats EDGA Rule 4.8; Bats EDGX Rule 4.8; BX Rule 6840 and Chapter IX, Section 8, subparagraph (d); BOX Rule 16040; C2 Chapter 6, Section F; CBOE Rule 6.88; CHX Article 23, Rule 4; IEX Rule 11.640; ISE Rule 903; ISE Gemini Rule 903; ISE Mercury Rule 903; MIAX Rule 1704; MIAX PEARL Chapter XVII; NASDAQ Rule 6840 and Chapter IX, Section 8, subparagraph (d); NYSE Rule 6840; NYSE Arca Equities Rule 6.6840; NYSE Arca Options Rule 11.6840; NYSE MKT Rule 6840; NYSE National Rule 14.4; and Phlx Rule 940A.

¹³² See *supra* note 118.

increment, subject to the proposed Rules regarding Manual Order Events and Allocation Reports.

2. One-Second Time Stamps/Electronic Order Capture

The proposed CAT Compliance Rules set forth the permissible time stamp increments for Manual Order Events and Allocation Reports. Specifically, the proposed Rules permit each Industry Member to record and report Manual Order Events to the Central Repository in increments up to and including one second, provided that each Industry Member is required to record and report the Electronic Capture Time in milliseconds. In addition, the proposed CAT Compliance Rules permit each Industry Member to record and report the time of Allocation Reports in increments up to and including one second.

G. Clock Synchronization Rule Violations

The proposed CAT Compliance Rules describe potential violations of the clock synchronization time period requirements.¹³⁶ The proposed Rules state that an Industry Member that engages in a pattern or practice of reporting Reportable Events outside of the required clock synchronization time period without reasonable justification or exceptional circumstances may be considered in violation of this Rule. The Exchanges state that this provision implements the requirements of Section 6.8 of the CAT NMS Plan which requires the Compliance Rule to provide that a pattern or practice of reporting events outside of the required clock synchronization time period without reasonable justification or exceptional circumstances may be considered a violation of Rule 613 of Regulation NMS or the CAT NMS Plan.

H. Connectivity and Data Transmission

The proposed CAT Compliance Rules address connectivity and data transmission requirements related to the CAT.¹³⁷

¹³⁶ See proposed Bats BYX Rule 4.11; Bats BZX Rule 4.11; Bats EDGA Rule 4.11; Bats EDGX Rule 4.11; BX Rules 6865 and Chapter IX, Section 8, subparagraph (g); BOX Rule 16065; C2 Chapter 6, Section F; CBOE Rule 6.91; CHX Article 23, Rule 7; IEX Rule 11.665; ISE Rule 906; ISE Gemini Rule 906; ISE Mercury Rule 906; MIAX Rule 1707; MIAX PEARL Chapter XVII; NASDAQ Rules 6865 and Chapter IX, Section 8, subparagraph (g); NYSE Rule 6865; NYSE Arca Equities Rule 6.6865; NYSE Arca Options Rule 11.6865; NYSE MKT Rule 6865; NYSE National Rule 14.7; and Phlx Rule 965A.

¹³⁷ See proposed Bats BYX Rule 4.12; Bats BZX Rule 4.12; Bats EDGA Rule 4.12; Bats EDGX Rule 4.12; BX Rules 6870 and Chapter IX, Section 8, subparagraph (h); BOX Rule 16070; C2 Chapter 6, Section F; CBOE Rule 6.92; CHX Article 23, Rule

1. Data Transmission

The proposed CAT Compliance Rules describe the format(s) for reporting Industry Member Data to the Central Repository. Specifically, the proposed Rules require each Industry Member to transmit data as required under the CAT NMS Plan to the Central Repository utilizing such format(s) as may be provided by the Plan Processor and approved by the Operating Committee. The Exchanges state that this provision implements the formatting requirements as set forth in Section 6.4(a) of the CAT NMS Plan.

2. Connectivity

The proposed CAT Compliance Rules address connectivity requirements related to the CAT. The proposed Rules require each Industry Member to connect to the Central Repository using a secure method(s), including, but not limited to, private line(s) and virtual private network connection(s). The Exchanges state that this provision implements the connectivity requirements set forth in Section 4 of Appendix D to the CAT NMS Plan.

3. CAT Reporting Agent

The proposed CAT Compliance Rules permit Industry Members to enter into an agreement with CAT Reporting Agents to fulfill their data reporting obligations related to the CAT.¹³⁸ Any such agreement must be evidenced in writing, which specifies the respective functions and responsibilities of each party to the agreement that are required to effect full compliance with the requirements of the proposed CAT Compliance Rules. The proposed Rules require that all written documents evidencing an agreement with a CAT Reporting Agent be maintained by each party to the agreement. The proposed Rules further state that each Industry Member remains primarily responsible for compliance with the requirements of the proposed CAT Compliance Rules, notwithstanding the existence of an agreement described otherwise in the proposed Rules.

I. Development and Testing

The Exchanges propose CAT Compliance Rules to address

8; IEX Rule 11.670; ISE Rule 907; ISE Gemini Rule 907; ISE Mercury 907; MIAX Rule 1708; MIAX PEARL Chapter XVII; NASDAQ Rules Chapter IX, Section 8, subparagraph (h); NYSE Rule 6870; NYSE Arca Equities Rule 6.6870; NYSE Arca Options Rule 11.6870; NYSE MKT Rule 6870; NYSE National Rule 14.8; and Phlx Rule 970A.

¹³⁸ The Exchanges represent that the proposed Rules are based on FINRA Rule 7450(c), which permits OATS Reporting Members to enter into agreements with Reporting Agents to fulfill the OATS obligations of the OATS Reporting Member.

requirements for Industry Members related to CAT development and testing.¹³⁹

1. Development

The proposed Rules set forth the testing requirements and deadlines for Industry Members to develop and commence reporting to the Central Repository. The Exchanges state that these requirements are set forth in Appendix C to the CAT NMS Plan.

The CAT Compliance Rules set forth the deadlines related to connectivity and acceptance testing. Industry Members (other than Small Industry Members) are required to begin connectivity and acceptance testing with the Central Repository no later than August 15, 2018, and Small Industry Members are required to begin connectivity and acceptance testing with the Central Repository no later than August 15, 2019.

The CAT Compliance Rules also set forth the deadlines related to reporting Customer and Industry Member information.¹⁴⁰ The proposed Rules require Industry Members (other than Small Industry Members) to begin reporting Customer and Industry Member information to the Central Repository for processing no later than October 15, 2018. The proposed Rules require Small Industry Members to begin reporting Customer and Industry Member information to the Central Repository for processing no later than October 15, 2019.

The proposed CAT Compliance Rules set forth the deadlines related to the submission of order data. Under the proposed Rules, Industry Members (other than Small Industry Members) are permitted, but not required, to submit order data for testing purposes

¹³⁹ See proposed Bats BYX Rule 4.13; Bats BZX Rule 4.13; Bats EDGA Rule 4.13; Bats EDGX Rule 4.13; BX Rules 6880 and Chapter IX, Section 8, subparagraph (i); BOX Rule 16080; C2 Chapter 6, Section F; CBOE Rule 6.93; CHX Article 23, Rule 9; IEX Rule 11.680; ISE Rule 908; ISE Gemini Rule 908; ISE Mercury Rule 908; MIAX Rule 1709; MIAX PEARL Chapter XVII; NASDAQ Rule 6880 and Chapter IX, Section 8, subparagraph (i); NYSE Rule 6880; NYSE Arca Equities Rule 6.6880; NYSE Arca Options Rule 11.6880; NYSE MKT Rule 6880; NYSE National Rule 14.9; and Phlx Rule 980A.

¹⁴⁰ See proposed Bats BYX Rule 4.13(a)(2); Bats BZX Rule 4.13(a)(2); Bats EDGA Rule 4.13(a)(2); Bats EDGX Rule 4.13(a)(2); BX Rules 6880(a)(2) and Chapter IX, Section 8, subparagraph (i)(i)(2); BOX Rule 16080(a)(2); C2 Chapter 6, Section F; CBOE Rule 6.93(a)(ii); CHX Article 23, Rule 9(a)(2); IEX Rule 11.680(a)(2); ISE Rule 908(a)(2); ISE Gemini Rule 908(a)(2); ISE Mercury 908(a)(2); MIAX Rule 1709(a)(2); MIAX PEARL Chapter XVII; NASDAQ Rule 6880(a)(2) and Chapter IX, Section 8, subparagraph (i)(i)(2); NYSE Rule 6880(a)(2); NYSE Arca Equities Rule 6.6880(a)(2); NYSE Arca Options Rule 11.6880(a)(2); NYSE MKT Rule 6880(a)(2); NYSE National Rule 14.9(a)(2); and Phlx Rule 980A(a)(2).

beginning no later than May 15, 2018. In addition, Industry Members (other than Small Industry Members) are required to participate in the coordinated and structured testing of order submission, which will begin no later than August 15, 2018. Under the proposed Rules, Small Industry Members are permitted, but not required, to submit order data for testing purposes beginning no later than May 15, 2019. In addition, Small Industry Members are required to participate in the coordinated and structured testing of order submission, which will begin no later than August 15, 2019.

The proposed CAT Compliance Rules state that Industry Members are permitted, but not required to, submit Quote Sent Times on Options Market Maker quotes to Exchanges, beginning no later than October 15, 2018 for testing purposes.

2. Testing

The proposed CAT Compliance Rules implement the requirement under the CAT NMS Plan that Industry Members participate in required industry testing with the Central Repository. Specifically, the proposed Rules require that each Industry Member participate in testing related to the Central Repository, including any industry-wide disaster recovery testing, pursuant to the schedule established pursuant to the CAT NMS Plan. The Exchanges state that they intend to announce to its Industry Members the schedule established pursuant to the CAT NMS Plan.¹⁴¹

J. Recordkeeping

The proposed CAT Compliance Rules set forth the recordkeeping obligations related to the CAT for Industry Members.¹⁴² The proposed Rules require each Industry Member to maintain and preserve records of the information required to be recorded under the proposed Rules for the period of time and accessibility specified in Exchange Act Rule 17a-4(b).¹⁴³ The records required to be maintained and preserved under the proposed Rules may be immediately produced or

reproduced on “micrographic media” as defined in Rule 17a-4(f)(1)(i)¹⁴⁴ or by means of “electronic storage media” as defined in Exchange Act Rule 17a-4(f)(1)(ii)¹⁴⁵ that meet the conditions set forth in Exchange Act Rule 17a-4(f)¹⁴⁶ and be maintained and preserved for the required time in that form. The proposed CAT Compliance Rules are based on FINRA Rule 7440(a)(5), which sets forth the recordkeeping requirements related to OATS.

K. Timely, Accurate and Complete Data

1. General

The Exchanges note that Rule 613 of Regulation NMS and the CAT NMS Plan emphasize the importance of the timeliness, accuracy, completeness and integrity of the data submitted to the CAT.¹⁴⁷ Accordingly, the proposed CAT Compliance Rules require that Industry Members record and report data to the Central Repository as required by the proposed Rules in a manner that ensures the timeliness, accuracy, integrity and completeness of such data.¹⁴⁸ The Exchanges state that the proposed CAT Compliance Rules implement the Plan’s requirement with respect to the importance of timely, accurate and complete data with regard to Industry Members.

2. LEIs

In addition, without limiting the general requirement as set forth in the proposed Rules, the proposed CAT Compliance Rules require Industry Members to accurately provide the LEIs in their records as required by the proposed Rules and state that Industry Members may not knowingly submit inaccurate LEIs to the Central Repository. The Exchanges note, however, that this requirement does not impose any additional due diligence obligations on Industry Members with regard to LEIs for CAT purposes. Accordingly, the Exchanges state that this provision does not impose any due diligence obligations beyond those that may exist today with respect to

information associated with LEIs. Although Industry Members will not be required to perform additional due diligence with regard to the LEIs for CAT purposes, Industry Members will be required to accurately provide the LEIs in their records and may not knowingly submit inaccurate LEIs to the CAT. The Exchanges believe that these proposed Rules are consistent with the Approval Order for the CAT NMS Plan regarding an Industry Member’s obligations regarding LEIs.¹⁴⁹

3. Compliance With Error Rate

The proposed CAT Compliance Rules state that, if an Industry Member reports data to the Central Repository with errors such that its error percentage exceeds the maximum Error Rate established by the Operating Committee pursuant to the CAT NMS Plan, then such Industry Member would not be in compliance with the Rules. As discussed above, the initial maximum Error Rate is 5%, although the Error Rate is expected to be reduced over time. The Exchanges state that they intend to announce to their Industry Members changes to the Error Rate established pursuant to the CAT NMS Plan.¹⁵⁰

4. Compliance Thresholds

The proposed CAT Compliance Rules also address compliance thresholds related to reporting data to the CAT. These proposed Rules state that each Industry Member is required to meet a separate compliance threshold which will be an Industry Member-specific rate that may be used as the basis for further review or investigation into the Industry Member’s performance with regard to the CAT (the “Compliance Thresholds”). The Exchanges note that Compliance Thresholds will compare an Industry Member’s error rate to the aggregate Error Rate over a period of time to be defined by the Operating Committee. Compliance Thresholds will be set by the Operating Committee, and will be calculated at intervals to be set by the Operating Committee.¹⁵¹ Compliance Thresholds will include compliance with the data reporting and clock synchronization requirements. The proposed CAT Compliance Rules state that an Industry Member’s performance with respect to its Compliance Threshold will not signify, as a matter of law, that such Industry

¹⁴¹ See *supra* note 118.

¹⁴² See proposed Bats BYX Rule 4.14; Bats BZX Rule 4.14; Bats EDGA Rule 4.14; Bats EDGX Rule 4.14; BX Rules 6890 and Chapter IX, Section 8, subparagraph (j); BOX Rule 16090; C2 Chapter 6, Section F; CBOE Rule 6.94; CHX Article 23, Rule 10; IEX Rule 11.690; ISE Rule 909; ISE Gemini Rule 909; ISE Mercury Rule 909; MIAx Rule 1710; MIAx PEARL Chapter XVII; NASDAQ Rule 6890 and Chapter IX, Section 8, subparagraph (j); NYSE Rule 6890; NYSE Arca Equities Rule 6.6890; NYSE Arca Options Rule 11.6890; NYSE MKT Rule 6890; NYSE National Rule 14.10; and Phlx Rule 990A.

¹⁴³ 17 CFR 240.17a-4(b).

¹⁴⁴ 17 CFR 240.17a-4(f)(1)(i).

¹⁴⁵ 17 CFR 240.17a-4(f)(1)(ii).

¹⁴⁶ 17 CFR 240.17a-4(f).

¹⁴⁷ See 17 CFR 242.613(e)(4)(i)(D)(ii); and CAT NMS Plan, *supra* note 21, at Section 6.5(d).

¹⁴⁸ See proposed Bats BYX Rule 4.15; Bats BZX Rule 4.15; Bats EDGA Rule 4.15; Bats EDGX Rule 4.15; BX Rule 6893 and Chapter IX, Section 8, subparagraph (k); BOX Rule 16093; C2 Chapter 6, Section F; CBOE Rule 6.95; CHX Article 23, Rule 11; IEX Rule 11.693; ISE Rule 910; ISE Gemini Rule 910; ISE Mercury Rule 910; MIAx Rule 1711; MIAx PEARL Chapter XVII; Nasdaq Rule 6893 and Chapter IX, Section 8, subparagraph (k) NYSE Rule 6893; NYSE Arca Equities Rule 6.6893; NYSE Arca Options Rule 11.6893; NYSE MKT Rule 6893; NYSE National Rule 14.11; and Phlx Rule 993A.

¹⁴⁹ See Approval Order, *supra* note 24, at 84745.

¹⁵⁰ See *supra* note 118.

¹⁵¹ See CAT NMS Plan, *supra* note 21, at Appendix C.

Member has violated the proposed Rules.

L. Compliance Dates

1. General

The proposed CAT Compliance Rules set forth the compliance dates for the various provisions of the proposed Rules.¹⁵² The proposed Rules state that, except otherwise set forth in the proposed Rules, the compliance date for the proposed CAT Compliance Rules will be the date of Commission approval of the proposed rule changes.

2. Clock Synchronization

The proposed CAT Compliance Rules establish the compliance dates for the clock synchronization requirements. The proposed CAT Compliance Rules state that each Industry Member shall comply with the Rules with regard to Business Clocks that capture time in milliseconds commencing on or before March 15, 2017. The proposed Rules also state that each Industry Member shall comply with the Rules with regard to Business Clocks that do not capture time in milliseconds commencing on or before February 19, 2018. The compliance date set forth in the proposed CAT Compliance Rules reflects the exemptive relief granted by the Commission with regard to the clock synchronization requirements related to Business Clocks that do not capture time in milliseconds.¹⁵³

3. CAT Data Reporting

The proposed CAT Compliance Rules establish the compliance dates for the data recording and reporting requirements for Industry Members. The proposed Rules require each Industry Member (other than Small Industry Members) to record and report the Industry Member Data to the Central Repository by November 15, 2018. The proposed Rules require that each Industry Member that is a Small

Industry Member to record and report the Industry Member Data to the Central Repository by November 15, 2019. The Exchanges state that such compliance dates are consistent with the compliance dates set forth in Rule 613(a)(3)(v) and (vi),¹⁵⁴ and Section 6.7(a)(v) and (vi) of the CAT NMS Plan.

IV. Summary of Comments

As noted above, the Commission received three comment letters on the proposed rule change and a response letter from the Participants.¹⁵⁵ Two commenters raised concerns about the clock synchronization requirements for Allocation Reports.¹⁵⁶ One commenter noted that the CAT NMS Plan states that the Participants have not yet determined how the “time of allocation” will be defined and that the Participants stated they would address this in the Technical Specifications.¹⁵⁷ Given that the time of allocation had not yet been defined, this commenter stated that “it was not possible to ensure clock synchronization requirements on Allocation Reports at this time.”¹⁵⁸ Another commenter asked for clarification whether the Clock Synchronization Exemption Request, as discussed below, filed by the Participants extends to time stamps required for Allocation Reports, and for clarification regarding when time stamps on manual orders and electronic capture of manual orders need to be captured.¹⁵⁹

The Participants noted in their Response Letter that Section 6.7(a)(ii) of the CAT NMS Plan requires that Industry Members must synchronize their Business Clocks and certify that they have satisfied applicable Business Clock synchronization requirements by March 15, 2017.¹⁶⁰ However, the Participants noted that, on January 17, 2017, they filed with the Commission a request for exemptive relief from Section 6.7(a)(ii) of the CAT NMS Plan (the “Clock Synchronization Exemption Request”).¹⁶¹ The Clock Synchronization Exemption Request requested that the Commission permit the Participants to extend the Business Clock synchronization compliance date in Section 6.7(a)(ii) of the CAT NMS

Plan from March 15, 2017 to February 19, 2018 for Industry Members’ Business Clocks that do not capture time in milliseconds.¹⁶² On March 2, 2017, the Commission granted the Exemption Request.¹⁶³

The Participants also noted that the Operating Committee of the CAT NMS Plan recently approved guidance that clarifies that, for purposes of the initial March 15, 2017 Business Clock synchronization and certification deadlines, “Business Clocks” include those clocks that currently capture time in milliseconds and that are used to record time related to “Reportable Events,” as defined under the Plan, including, without limitation, the original receipt or origination, modification, cancellation, routing, execution (in whole or in part) and allocation of an order, and receipt of a routed order, in Eligible Securities (*i.e.*, NMS Securities and OTC Equity Securities).¹⁶⁴ The Participants represented that each Participant has, or will, issue this guidance to its members. The Participants further stated in their response letter that to align the compliance rule with the Exemption Request, Business Clocks used solely for the time of allocation on Allocation Reports must comply with the March 15, 2017 synchronization deadline to the extent that such Business Clocks currently capture time in milliseconds.¹⁶⁵

With respect to time stamps on manual orders and electronic capture of manual orders the Participants acknowledged in their response letter that additional information will be provided in Technical Specifications prepared by the Plan Processor and approved by the Operating Committee.¹⁶⁶ The Participants noted that the Technical Specifications also will define the “time of the allocation.” The Participants stated that as a result, the Participants cannot issue additional information or definitions at this time since the development and construction of the CAT System and Central Repository are underway. The Participants represented that the Participants intend to work with the Plan Processor to define various terms,

¹⁵² See proposed Bats BYX Rule 4.16; Bats BZX Rule 4.16; Bats EDGA Rule 4.16; Bats EDGX Rule 4.16; BOX Rule 16095; BX Rule 6895 and Chapter IX, Section 8, subparagraph (I); C2 Chapter 6, Section F; CBOE Rule 6.96; CHX Article 23, Rule 12; IEX Rule 11.695; ISE Rule 911; ISE Gemini Rule 911; ISE Mercury Rule 911; MIAX Rule 1712; MIAX PEARL Chapter XVII; NASDAQ Rule 6895 and Chapter IX, Section 8, subparagraph (I); NYSE Rule 6895; NYSE Arca Equities Rule 6.6895; NYSE Arca Options Rule 11.6895; NYSE MKT Rule 6895; NYSE National Rule 14.12; and Phlx Rule 995A.

¹⁵³ See *infra* notes 161 and 163, and accompanying text (discussing the Participants’ Clock Synchronization Exemption Request and Order Granting Limited Exemptive Relief, Pursuant to Rule 608(e) of the Securities Exchange Act of 1934, from the Clock Synchronization Compliance Deadline Specified in Section 6.7(a)(ii) of the National Market System Plan Governing the Consolidated Audit Trail).

¹⁵⁴ 17 CFR 242.613(a)(3)(v), (vi).

¹⁵⁵ See *supra* note 17.

¹⁵⁶ Thomson Reuters Letter at 1; FIF Letter at 1.

¹⁵⁷ Thomson Reuters Letter at 1.

¹⁵⁸ Thomson Reuters Letter at 1–2. See also FIF Letter at 2.

¹⁵⁹ FIF Letter at 1, 2.

¹⁶⁰ Participants’ Response Letter at 2.

¹⁶¹ See Letter from Participants to Brent J. Fields, Secretary, Commission, dated January 17, 2017 (“Clock Synchronization Exemption Request Letter”).

¹⁶² *Id.*

¹⁶³ See Order Granting Limited Exemptive Relief, Pursuant to Rule 608(e) of the Securities Exchange Act of 1934, from the Clock Synchronization Compliance Deadline Specified in Section 6.7(a)(ii) of the National Market System Plan Governing the Consolidated Audit Trail, Securities Exchange Act Release No. 80142 (March 2, 2017), 82 FR 13034 (March 8, 2017) (“Clock Synchronization Exemption Order”).

¹⁶⁴ Participants’ Response Letter at 2.

¹⁶⁵ *Id.* at 3.

¹⁶⁶ *Id.*

including “time of the allocation,” and to provide Technical Specifications approved by the Operating Committee before Industry Members will be required to report to the Central Repository on November 15, 2018 (or November 15, 2019 for Small Industry Members) or comply with the February 19, 2018 Business Clock synchronization requirement.

One commenter discussed several concerns related to the clock synchronization requirements of the proposed CAT Compliance Rules.¹⁶⁷ This commenter noted that “retention of a complete log of clock synchronization events is an additional business cost without providing compensatory regulatory benefit.”¹⁶⁸ This commenter urged FINRA to collect clock synchronization data based on the data received as a result of the requirements of FINRA Rule 4590 to see if such a log of clock synchronization is “required to effectively surveil for compliance with clock synchronization standards” and requested that the Commission require FINRA to assess the effectiveness of the logging requirement.¹⁶⁹ This commenter also noted that there is a two year difference in the log retention requirements between FINRA Rule 4590 and the proposed CAT Compliance Rules and stated that the extra two years of log retention represents an additional business cost for storage and clock management.¹⁷⁰

In response, the Participants stated that they believe that it is appropriate for Industry Members to maintain a log of all clock synchronization events in order to demonstrate the Industry Members’ compliance with the Proposed Compliance Rule and the CAT NMS Plan and to retain such log for five-years.¹⁷¹ The Participants noted that the Business Clock synchronization log was discussed and considered in the CAT NMS Plan Proposing and Adopting Releases, and that the Commission considered an alternative where Industry Members would record only exceptions to the clock synchronization requirement. Because the CAT NMS Plan contains the requirement that logs be created and retained for five-years, the Participants stated that the retention period set forth in the Participants’ Proposed Compliance Rules is consistent with the data retention period applicable to the Central Repository as set forth in Rule 613(e)(8).

With respect to the clock synchronization procedures in the proposed CAT Compliance Rules, one commenter also stated that proposed Rules “[do] not contain any definition of clock synchronization certification procedures and schedules, reporting procedures for violation notification or any specifics regarding documentation requirements.”¹⁷² This commenter requested that the date for compliance with the clock synchronization procedures be delayed, and requested that there be the adoption of “one set of procedures for clock synchronization management and reporting to regulators be adopted across FINRA and CAT.”¹⁷³

In response, the Participants stated that they agree it would be helpful to provide Industry Members with additional guidance regarding Industry Members’ compliance with the clock synchronization and certification requirements set forth in the CAT NMS Plan and the Proposed Compliance Rules.¹⁷⁴ Accordingly, the Participants stated that they have issued, or intend to issue, to their members guidance approved by the Operating Committee regarding clock synchronization and certification procedures and schedules, and documentation requirements (*i.e.*, regarding the logging of clock synchronization events). The Participants represented that they intend to issue this guidance prior to the initial March 15, 2017 compliance deadline. The Participants also noted that thereafter they will issue additional guidance approved by the Operating Committee regarding the reporting of violations of applicable clock synchronization thresholds. Accordingly, the Participants stated that they believe that the Proposed Compliance Rules need not be amended at this time.

Two commenters also discussed the application of the Firm Designated ID requirement in the CAT NMS Plan. Both commenters noted that the Proposed Compliance Rules require each Industry Member to provide a Firm Designated ID “for each Customer,” whereas a “Firm Designated ID,” in relevant part, is defined as a “unique identifier for each trading account. Both commenters requested that the Participants amend the language of the Proposed Compliance Rules to reflect the Exemption Order.¹⁷⁵

In response, the Participants stated that they recognize that the definition of

Firm Designated ID and the reporting requirements set forth in Section 6.3 of the CAT NMS Plan, as well as the parallel provisions in the proposed Participant Compliance Rules are somewhat unclear.¹⁷⁶ The Participants noted that the Customer Information Approach is intended to require that each broker-dealer assign a unique Firm Designated ID at the account level, rather than the customer level. Accordingly, the Participants state that Section 6.3(d)(i)(A) of the CAT NMS Plan, which refers to the assignment of a “Firm Designated ID(s) for each Customer,” should not be interpreted to mean that each Customer must have a unique Firm Designated ID, rather, a Firm Designated ID must be assigned at the account level, so that multiple Customers may have the same Firm Designated ID. The Participants further stated that they will consider issuing additional guidance, subject to the approval of the Operating Committee of the CAT NMS Plan, to Industry Members on this issue and, as necessary, whether to amend the CAT NMS Plan to clarify the use of Firm Designated IDs.

One commenter suggested that the Participants consider firms that are exempt from reporting to OATS as “Small Industry Members,” stating that “this should be so easy and so obviously warranted (given the huge incremental cost of first-time order reporting for those firms that choose to remain independent and comply) that we cannot imagine any objection.”¹⁷⁷ This commenter also requested that a cost and benefit analysis should be performed to review the impact of the CAT on firms currently exempt from OATS.¹⁷⁸

In response, the Participants stated they believe that the definition of Small Industry Member for purposes of the CAT NMS Plan and Participant Compliance Rules is appropriate and need not be amended.¹⁷⁹ The Participants noted that as a threshold matter, this definition was created and adopted by the Commission rather than the Participants, and that the definition of “Small Industry Member” in the CAT

¹⁶⁷ FIF Letter at 2.

¹⁶⁸ FIF Letter at 2.

¹⁶⁹ FIF Letter at 2.

¹⁷⁰ FIF Letter at 2.

¹⁷¹ Participants’ Response Letter at 4.

¹⁷² FIF Letter at 3.

¹⁷³ FIF Letter at 3.

¹⁷⁴ Participants’ Response Letter at 5.

¹⁷⁵ FIF Letter at 3–4; Thomson Reuters Letter at 2–5.

¹⁷⁶ Participants’ Response Letter at 5. The Participants noted that Bats BZX Exchange, Inc.’s proposed Rule 4.7(a)(1)(A)(i) and 4.7(a)(2)(C) refers to “Customer” rather than “account.” See, e.g., Bats BZX Exchange, Inc.’s Proposed Compliance Rule Notice of Filing of a Proposed Rule Change to Adopt Rules 4.5 Through 4.16 to Implement the Compliance Rule Regarding the National Market System Plan Governing the Consolidated Audit Trail, Securities Exchange Act Release No. 79927 (February 2, 2017), 82 FR 9874 (February 8, 2017).

¹⁷⁷ Wachtel Letter at 1.

¹⁷⁸ Wachtel Letter at 1, 3.

¹⁷⁹ Participants’ Response Letter at 6.

NMS Plan refers to the definition of “small broker-dealer” in Rule 613 of Regulation NMS. Rule 613(a)(3)(v) and (vi) define “small broker-dealer” by using the definition set forth in Rule 0–10(c) under the Exchange Act.¹⁸⁰ In adopting Rule 613, the Participants noted that the Commission explained that defining “small broker-dealer” by reference to Rule 0–10(c) “is appropriate because it is an existing regulatory standard that is an indication of small entities for which regulators should be sensitive when imposing regulatory burden.”¹⁸¹ The Participants stated that they cannot modify the definition of “Small Industry Member” because it is based on the definition of small broker-dealer in Rule 613 and that the Commission would have to effectuate any change to the requirement that broker-dealers (other than “small broker-dealers”) must report to the CAT no later than two-years after the Effective Date.¹⁸² The Participants also noted that after the CAT is operational and the Central Repository begins to collect data, the Participants will conduct various assessments, as set forth in Section 6.6 of the CAT NMS Plan, regarding the operations and efficiency of the Plan Processor, CAT and Central Repository. As necessary, the Participants will consider whether to amend any requirements in the CAT NMS Plan or Proposed Compliance Rules, provided that such amendments are necessary or appropriate and comply with Rule 613 of Regulation NMS.

V. Discussion and Commission Findings

After carefully considering the proposed CAT Compliance Rules, the comments submitted, and the Participants’ response to the comments, the Commission finds that the proposals are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national

securities exchanges.¹⁸³ Specifically, the Commission finds that the proposed rule changes are consistent with Section 6(b)(5) of the Act,¹⁸⁴ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to 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 are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. In addition, the Commission finds that the proposed rule changes are consistent with Section 6(b)(8) of the Act,¹⁸⁵ which requires that the rules of a national securities exchange not impose any burden on competition that is not necessary or appropriate.

Rule 613(g) of Regulation NMS provides that each national securities exchange and national securities association shall file with the Commission pursuant to section 19(b)(2) of the Act and Rule 19b–4 on or before 60 days from approval of the CAT NMS Plan a proposed rule change to require its members to comply with the requirements of this section and the national market system plan approved by the Commission. In addition, Rule 608(c) of Regulation NMS provides that “[e]ach self-regulatory organization shall comply with the terms of any effective national market system plan of which it is a sponsor or participant. Each self-regulatory organization also shall, absent reasonable justification or excuse, enforce compliance with any such plan by its members and persons associated with its members.”¹⁸⁶ The Exchanges, as Participants in the Plan, have obligations to comply, and enforce compliance by their members, with the terms of the Plan. Accordingly, the Exchanges filed these proposed rule changes to adopt their proposed CAT Compliance Rules, which would impose compliance obligations on the Exchanges’ members. As discussed below, the Commission also believes the proposals are consistent with the Act because they are designed to assist the Exchanges in meeting their regulatory obligations pursuant to Rule 608 of Regulation NMS and the Plan.

A. Definitions

The Commission finds that proposed CAT Compliance Rules addressing definitions¹⁸⁷ are consistent with the Act as they implement the CAT NMS Plan. With the exception of the term “CAT Reporting Agent,” the definitions in proposed CAT Compliance Rules are consistent with the definitions of Article I, Section 1.1 of the CAT NMS Plan. With respect to the inclusion of a definition for “CAT Reporting Agent,” the Exchanges note that the CAT NMS Plan permits an Industry Member to use a third party, such as a vendor, to report the required data to the Central Repository on behalf of an Industry Member, and that as defined, a “CAT Reporting Agent” would be one type of Data Submitter, which term is defined in the CAT NMS Plan.

The Commission notes that two commenters discussed the need for further clarification on the application of the term “Firm Designated ID.” The Participants responded that the Customer Information Approach is intended to require that each broker-dealer assign a unique Firm Designated ID at the account level, rather than the customer level. Accordingly, a Firm Designated ID must be assigned at the account level, so multiple Customers may be associated with the same Firm Designated ID. The Commission believes that the definition of the term Firm Designated ID and its applicability to accounts is consistent with the Customer Information Approach and the CAT NMS Plan.

B. Clock Synchronization

The Commission finds that the proposed CAT Compliance Rules addressing clock synchronization¹⁸⁸ are consistent with the Act as they implement the clock synchronization provisions of the CAT NMS Plan. The Commission notes that the proposed CAT Compliance Rules set out the clock synchronization requirements for the Exchanges’ members and that these clock synchronization requirements, including the synchronization standards, tolerance levels, documentation, certification and violation reporting are consistent with and implement the clock synchronization requirements of the CAT NMS Plan.¹⁸⁹

¹⁸⁰ Rule 0–10(c) defines a “small broker-dealer” as one that has total capital of less than \$500,000 on the date in the prior fiscal year as of which its audited financial statements were filed (or on the last business day of the preceding fiscal year if not required to file such statements), and those not affiliated with any other person that is not a small business or small organization. See Rule 0–10(c).

¹⁸¹ See Approval Order, *supra* note 24 at 45722, 45804.

¹⁸² Participants’ Response Letter at 6. The Participants added that “[s]eparately, the Commission explained that the CAT NMS Plan ‘attempts to mitigate its impact on [OATS-exempt or excluded broker-dealers or limited purpose broker-dealers] by proposing to follow a cost allocation formula that should charge lower fees to smaller broker-dealers.’” Accordingly, the Participants stated that they do not believe that an additional cost-benefit analysis is necessary at this time. Participants’ Response Letter at 7.

¹⁸³ In approving these proposed rule changes, the Commission has considered the proposed rules’ impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁸⁴ 15 U.S.C. 78(f)(b)(5).

¹⁸⁵ 15 U.S.C. 78(f)(b)(8).

¹⁸⁶ 17 CFR 242.608(c).

¹⁸⁷ See *supra* note 27. The Commission also notes that NYSE MKT’s proposed change to NYSE MKT Rule 0—Equities, is reasonable to clarify that the CAT Compliance Rules would apply to Industry Members of the Exchange’s equities and options markets.

¹⁸⁸ See *supra* note 116.

¹⁸⁹ See CAT NMS Plan, Section 6.8.

As noted above, two commenters raised concerns about the clock synchronization requirements in proposed Rule 6820, including whether the synchronization requirements of the rule apply to Business Clocks that capture Manual Order Events; the definition of “time of allocation,” the necessity of the clock synchronization log; and the details concerning the clock synchronization certification. The Participants responded by clarifying the applicability of the clock synchronization requirements to Allocation Reports, and by stating that the Participants intend to work with the Plan Processor to define various terms, including “time of allocation,” and to provide Technical Specifications approved by the Operating Committee—relating to time stamps on manual orders and electronic capture of manual orders, as well as the “time of allocation”—before Industry Members will be required to report to the Central Repository on November 15, 2018 (or November 15, 2019 for Small Industry Members) or comply with the February 19, 2018 Business Clock synchronization requirement.¹⁹⁰ The Participants also provided further details about the utility of the synchronization logs and discussed the clock synchronization certification requirements. The Commission believes that the Participants’ response is reasonable and consistent with the Act.

C. Industry Member Data Reporting

The Commission finds that the provisions of the proposed CAT Compliance Rules regarding Industry Member data reporting¹⁹¹ are consistent with the Act as they implement the data reporting requirements for Industry Members that are required by the CAT NMS Plan. As noted above, each Exchange’s proposed CAT Compliance Rule is divided into five sections which address (1) recording and reporting Industry Member Data, (2) timing of the recording and reporting, (3) the applicable securities covered by the recording and reporting requirements, (4) the security symbology to be used in the recording and reporting,¹⁹² and (5) error correction requirements.

¹⁹⁰ Participants’ Response Letter at 3. *See also* Clock Synchronization Exemption Request Letter, *supra* note 161, and Clock Synchronization Order, *supra* note 163.

¹⁹¹ *See supra* note 121.

¹⁹² The Commission notes that, with respect to the security symbology that must be reported by an Industry Member for an Eligible Security that is not Exchange-listed, the proposed CAT Compliance Rules state that an Industry Member should use the symbology format approved by the Operating Committee. The Exchanges represent that for such securities, there is no listing exchange to provide

D. Customer Information Reporting

The Commission finds that the provisions of the proposed CAT Compliance Rules regarding the data reported to the CAT in order to identify Customers¹⁹³ are consistent with the Act as they implement the reporting provisions of the CAT NMS Plan relating to the identification of Customers.

E. Industry Member Information Reporting

The Commission finds that the provisions of the proposed CAT Compliance Rules which set out the requirements for Industry Members regarding the data that they must report to identify such Industry Member, including the timeframe for reporting such identifying information,¹⁹⁴ are consistent with the Act as they implement the Industry Member reporting provisions of the CAT NMS Plan.

F. Time Stamps

The Commission finds that the provisions of the proposed CAT Compliance Rules regarding the time stamp increments to be used by Industry Members in their CAT Reporting¹⁹⁵ are consistent with the Act as they implement the time stamp provisions of the CAT NMS Plan. In general, the proposed CAT Compliance Rules require Industry Members to record and report Industry Member Data to the Central Repository in milliseconds, but provide that, to the extent any Industry Member’s order handling or execution systems utilize time stamps in increments finer than milliseconds, such Industry Member is to record and report Industry Member Data to the Central Repository with time stamps in such finer increment. The proposed CAT Compliance Rules address the need for Industry Members to capture Manual Order Events in increments up to and including one second, provided that each Industry Member is required to record and report the Electronic Capture Time in milliseconds.

G. Clock Synchronization Rule Violation

The Commission finds that the proposed CAT Compliance Rules addressing clock synchronization rule violations¹⁹⁶ are consistent with the Act as they implement the clock

the symbology format and that the requisite symbology format has not been determined at this time.

¹⁹³ *See supra* note 131.

¹⁹⁴ *See supra* note 133.

¹⁹⁵ *See supra* note 135.

¹⁹⁶ *See supra* note 136.

synchronization rule violation provisions of the CAT NMS Plan. Specifically, the Commission notes that the proposed CAT Compliance Rules describe potential violations of the clock synchronization time period requirements, and specifically state that an Industry Member that engages in a pattern or practice of reporting Reportable Events outside of the required clock synchronization time period without reasonable justification or exceptional circumstances may be considered in violation of these Rules.

H. Connectivity and Data Transmission

The Commission finds that the provisions of the proposed CAT Compliance Rules addressing connectivity and data transmission¹⁹⁷ are consistent with the Act as they implement the connectivity and data transmission provisions of the CAT NMS Plan. The proposed CAT Compliance Rules require each Industry Member to transmit data as required under the CAT NMS Plan to the Central Repository utilizing such format(s) as may be provided by the Plan Processor and approved by the Operating Committee, and require each Industry Member to connect to the Central Repository using a secure method(s), including, but not limited to, private line(s) and virtual private network connection(s).

The proposed CAT Compliance Rules permit Industry Members to use CAT Reporting Agents to fulfill their data reporting obligations related to the CAT. The Commission notes that these provisions of the proposed CAT Compliance Rules are substantively similar to FINRA Rule 7450(c), which permits OATS Reporting Members to enter into agreements with Reporting Agents to fulfill the OATS obligations of the OATS Reporting Member, specifies responsibilities and procedures for maintaining such agreements between the OATS Reporting Member and the Reporting Members, and clarifies that an OATS Reporting Member remains primarily responsible for compliance with the OATS reporting rules.

I. Development and Testing

The Commission finds that the proposed CAT Compliance Rules addressing development and testing¹⁹⁸ are consistent with the Act as they implement the development and testing provisions of the CAT NMS Plan. The proposed CAT Compliance Rules address Industry Members’ connectivity and testing requirements, including

¹⁹⁷ *See supra* note 137.

¹⁹⁸ *See supra* note 139.

connectivity and acceptance testing timelines. The proposed CAT Compliance Rules address the requirements relating to Industry Members' reporting of Customer and Industry Member information, the submission of order data, including the Quote Sent time to be reported by Options Market Makers. The proposed CAT Compliance Rules also require that each Industry Member shall participate in the testing related to the Central Repository, including any industry-wide disaster recovery testing.

J. Recordkeeping

The Commission finds that the proposed CAT Compliance Rules addressing recordkeeping¹⁹⁹ are consistent with the Act. The Commission notes that the proposed CAT Compliance Rules require each Industry Member to maintain and preserve, and specifies the manner in which such records must be maintained and preserved, information required to be recorded under each Exchange's proposed CAT Compliance Rule for the period of time and accessibility specified in Rule 17a-4(b).²⁰⁰ Because the proposed CAT Compliance Rules incorporate Rule 17a-4(b) and implements the recordkeeping provision of the CAT NMS Plan, the Commission finds that the recordkeeping provisions of the proposed CAT Compliance Rules are consistent with the Act.

K. Timely, Accurate and Complete Data

The Commission finds that the proposed CAT Compliance Rules addressing timely, accurate and complete data²⁰¹ are consistent with the Act as they implement the requirements for reporting data to the CAT as set forth in the CAT NMS Plan. The Exchanges note that the proposed CAT Compliance Rules implement the requirement in Rule 613 and the CAT NMS Plan that data reported to the CAT be timely, accurate and complete. Specifically, the proposed CAT Compliance Rules require that Industry Members record and report data to the Central Repository as required by the each Exchange's proposed CAT Compliance Rule in a manner that ensures the timeliness, accuracy, integrity and completeness of such data.

The proposed CAT Compliance Rules require Industry Members to accurately provide the LEIs in their records as

required by each Exchange's proposed CAT Compliance Rule and states that Industry Members may not knowingly submit inaccurate LEIs to the Central Repository. The proposed CAT Compliance Rules note, however, that this requirement does not impose any additional due diligence obligations on Industry Members with regard to LEIs for CAT purposes. The proposed CAT Compliance Rules also require Industry Members to be in compliance with the Error Rate as set forth in the CAT NMS Plan and the Compliance Thresholds as discussed in the CAT NMS Plan and determined by the Operating Committee. The proposed CAT Compliance Rules implement the CAT NMS Plan's provisions.²⁰²

L. Compliance Dates

The Commission finds that the compliance dates in the proposed CAT Compliance Rules²⁰³ are consistent with the Act, as they implement the compliance dates for reporting data to the CAT as set forth in the CAT NMS Plan and an exemptive order issued by the Commission. The proposed CAT Compliance Rules state that, except as otherwise set forth in each Exchange's proposed CAT Compliance Rule, the compliance date for the proposed CAT Compliance Rules will be the date of Commission approval of the proposed CAT Compliance Rules.

The proposed CAT Compliance Rules state that each Industry Member that captures time in milliseconds shall comply with the provisions of each Exchange's proposed Rule regarding Business Clock synchronization on or before March 15, 2017. Also, the proposed CAT Compliance Rules state that each Industry Member that does not capture time in milliseconds shall comply with the provisions of each Exchange's proposed Rule regarding Business Clock synchronization on or before February 19, 2018. The Commission notes that the compliance date for Industry Members regarding Business Clocks that do not capture time in milliseconds reflects the exemptive relief requested by the Participants and granted by the Commission with regard to the clock synchronization requirements related to Business Clocks that do not capture time in milliseconds.²⁰⁴

The proposed CAT Compliance Rules also require each Industry Member (other than Small Industry Members) to record and report the Industry Member

Data to the Central Repository by November 15, 2018, and each Industry Member that is a Small Industry Member to record and report the Industry Member Data to the Central Repository by November 15, 2019.²⁰⁵

The proposed CAT Compliance Rules implement the CAT NMS Plan's provisions regarding the reporting of Industry Member data to the Central Repository.

The Commission notes that one commenter also requested that the Exchanges classify all firms currently exempt from reporting to OATS to be classified as a "Small Industry Member" as defined by the CAT NMS Plan.²⁰⁶ The commenter notes that some OATS exempt firms would be classified as Large Industry Members but really should be subject to the three year implementation timeframe for Small Industry Members. The Participants responded that the definition of "Small Industry Member" is appropriate because it is an existing regulatory standard. The Commission believes that the Exchanges' proposed rule changes' use of the "Small Industry Member" definition is consistent with the CAT NMS Plan.

The Commission notes that a commenter suggested that a cost/benefit analysis be performed to review the impact of CAT on firms currently exempt from reporting to OATS. The Participants responded the Commission had already undertaken into account the impact of CAT on firms currently exempt from OATS. The Commission likewise notes that it took into account the impact of the Plan on firms currently exempt from reporting to OATS when it approved the CAT NMS Plan.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes (SR-BatsBYX-2017-02; SR-BatsBZX-2017-08; SR-BatsEDGA-2017-03; SR-BatsEDGX-2017-08; SR-BOX-2017-07; SR-C2-2017-007; SR-CBOE-2017-012; SR-CHX-2017-03; SR-ISE-2017-08; SR-IEX-2017-04; SR-ISEGemini-2017-04; SR-ISEMercury-2017-03; SR-MIAX-2017-03; SR-PEARL-2017-04; SR-NASDAQ-2017-008; SR-BX-2017-007; SR-PHLX-2017-07; SR-NYSE-2017-01; SR-NYSEArca-2017-03; SR-NYSEArca-2017-04; SR-NYSEMKT-2017-02; SR-NSX-2017-03) are approved.

²⁰⁵ Such compliance dates are consistent with the compliance dates set forth in SEC Rule 613(a)(3)(v) and (vi), and Sections 6.7(a)(v) and (vi) of the CAT NMS Plan.

²⁰⁶ Wachtel Letter at 1.

¹⁹⁹ See *supra* note 142.

²⁰⁰ 17 CFR 240.17a-4(b). The Exchanges also note that the recordkeeping provisions of the proposed CAT Compliance Rules are based on FINRA Rule 7440(a)(5), which sets forth the recordkeeping requirements related to OATS.

²⁰¹ See *supra* note 148.

²⁰² See CAT NMS Plan, Sections 6.4; 6.5(d); Appendix C, Section A.3(b).

²⁰³ See *supra* note 152.

²⁰⁴ See *supra* note 163.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰⁷

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017-05505 Filed 3-20-17; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80248; File No. SR-ISEGemini-2017-13]

Self-Regulatory Organizations; ISE Gemini, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Rename the Exchange

March 15, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 7, 2017, ISE Gemini, LLC (“ISE Gemini” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Constitution, Second Amended and Restated LLC Agreement, Rule Book, and Fee Schedule to rename itself Nasdaq GEMX, LLC.

The text of the proposed rule change is available on the Exchange’s Web site at www.ise.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 rename the Exchange to reflect its new placement within the Nasdaq, Inc. corporate structure in connection with the March 9, 2016 acquisition by Nasdaq of the capital stock of U.S. Exchange Holdings, and the thereby indirectly acquiring all of the interests of the International Securities Exchange, LLC, ISE Gemini, LLC and ISE Mercury, LLC.³

Specifically, all references in the Constitution, Second Amended and Restated LLC Agreement, Rule Book and Fee Schedule to “ISE Gemini, LLC” shall be amended to “Nasdaq GEMX, LLC.”

The Exchange proposes to amend its name on April 3, 2017.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁵ in particular, 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 by renaming the Exchange to reflect its current ownership.

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 impact the intense competition that exists in the options market. The name change will reflect the current ownership structure and unify the options markets operated by Nasdaq, Inc.

³ See Securities Exchange Act Release No. 78119 (June 27, 2016), 81 FR 41611 (SR-ISE-2016-11; SR-ISE Gemini-2016-05; SR-ISE Mercury-2016-10) (Order Granting Accelerated Approval of Proposed Rule Changes, Each as Modified by Amendment No. 1 Thereto, Relating to a Corporate Transaction in Which Nasdaq, Inc. Will Become the Indirect Parent of ISE, ISE Gemini, and ISE Mercury).

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 Act⁶ and Rule 19b-4(f)(6) thereunder.⁷

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act⁸ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)⁹ 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 may amend its name as of April 3, 2017, to coincide with the full symbol migration to INET, a Nasdaq, Inc. supported architecture.¹⁰ The Exchange stated that it began a six week symbol rollout to INET on February 27, 2017, and that all symbols will have migrated on April 3, 2017. The Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 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.

⁸ 17 CFR 240.19b-4(f)(6).

⁹ 17 CFR 240.19b-4(f)(6)(iii).

¹⁰ See Securities Exchange Act Release No. 80011 (February 10, 2017), 82 FR 10927 (February 16, 2017) (order approving SR-ISEGemini-2016-17). The Commission notes that the Exchange was previously approved to become a subsidiary of Nasdaq, Inc. See Securities Exchange Act Release No. 78119 (June 21, 2016), 81 FR 41611 (June 27, 2016) (SR-ISE-2016-11; SR-ISE Gemini-2016-05; SR-ISE Mercury-2016-10) (Order Granting Accelerated Approval of Proposed Rule Changes, Each as Modified by Amendment No. 1 Thereto, Relating to a Corporate Transaction in Which Nasdaq, Inc. Will Become the Indirect Parent of ISE, ISE Gemini, and ISE Mercury).

²⁰⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

designates the proposed rule change operative upon filing.¹¹

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-ISEGemini-2017-13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-ISEGemini-2017-13. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of

10:00 a.m. and 3:00 p.m. Copies of 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISEGemini-2017-13, and should be submitted on or before April 11, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017-05498 Filed 3-20-17; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80254; File No. SR-NYSEArca-2016-96]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, To Amend NYSE Arca Equities Rule 8.700 and To List and Trade Shares of the Managed Emerging Markets Trust Under Proposed Amended NYSE Arca Equities Rule 8.700

March 15, 2017.

I. Introduction

On July 1, 2016, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend NYSE Arca Equities Rule 8.700, which governs the listing and trading of Managed Trust Securities on the Exchange, and to list and trade shares ("Shares") of the Managed Emerging Markets Trust ("Trust") under NYSE Arca Equities Rule 8.700, as proposed to be amended. The proposed rule change was published for comment in the **Federal Register** on July 21, 2016.³ On August 30, 2016, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed

rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.⁴ On October 18, 2016, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.⁵ On November 4, 2016, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the original proposal.⁶ On January 9, 2017, the Exchange filed Amendment No. 2 to the proposed rule change, which again replaced and superseded the original proposal. On January 13, 2017, the Commission issued a notice of designation of a longer period for Commission action on proceedings to determine whether to approve or disapprove the proposed rule change.⁷ On February 10, 2017, the Exchange filed Amendment No. 3 to the proposed rule change, which replaced and superseded the proposal as modified by Amendment No. 2.⁸ The Commission

⁴ See Securities Exchange Act Release No. 78727, 81 FR 61268 (September 6, 2016).

⁵ See Securities Exchange Act Release No. 79111, 81 FR 73179 (October 24, 2016).

⁶ The Exchange subsequently withdrew Amendment No. 1.

⁷ See Securities Exchange Act Release No. 79802, 82 FR 7884 (January 23, 2017). The Commission designated March 18, 2017 as the date by which the Commission shall either approve or disapprove the proposed rule change.

⁸ In Amendment No. 3, the Exchange: (1) Further revised NYSE Arca Equities Rule 8.700 to (a) expand the permissible holdings for trusts that issue Managed Fund Securities, (b) clarify that the trusts will not be registered or required to be registered as investment companies, and (c) provide that the intraday indicative value ("IIV") for Managed Trust Securities will be disseminated during the Exchange's Core Trading Session; (2) amended the description of the Trust's permitted investments; (3) clarified that a 20% limit is applicable to the Trust's holdings of over-the-counter ("OTC") derivatives, and it would be measured according to aggregate gross notional value; (4) clarified the circumstances in which the Trust would invest in swaps; (5) expanded the information that will be included in the Disclosed Portfolio for the Shares, as well as other information that will be made publicly available; (6) discussed whether arbitrage in the Shares would be impacted by the Trust's use of derivatives; (7) stated that no more than 10% of the net assets of the Trust invested in futures and listed swaps, calculated using the aggregate gross notional value of those derivatives, would consist of futures and listed swaps whose principal market is not a member of the Intermarket Surveillance Group ("ISG") or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement ("CSSA"); (8) stated that the Financial Industry Regulatory Authority ("FINRA"), on behalf of the Exchange, is able to access, as needed, trade information for certain cash equivalents held by the Trust reported to FINRA's Trade Reporting and Compliance Engine; (9) amended the description of the creation and redemption of Shares; (10) provided additional justifications for the proposal; and (11) made conforming, clarifying, and technical changes. All of the amendments to the proposed rule change, including Amendment No. 3, are available at: <https://www.sec.gov/comments/sr-nysearca-2016-96/nysearca201696.shtml>.

¹¹ 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).

¹² 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

¹⁷ 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 78345 (July 15, 2016), 81 FR 47447.

received no comments on the proposed rule change. The Commission is publishing this notice to solicit comments on Amendment No. 3 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 3, on an accelerated basis.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 3⁹

A. Proposed Amendments to NYSE Arca Equities Rule 8.700

NYSE Arca Equities Rule 8.700(c)(1) currently defines “Managed Trust Securities” to mean a security that is registered under the Securities Act of 1933, as amended, (i) is issued by a trust that (1) is a commodity pool as defined in the Commodity Exchange Act (“CEA”) and regulations thereunder, and that is managed by a commodity pool operator registered with the Commodity Futures Trading Commission (“CFTC”) and (2) holds long and/or short positions in exchange-traded futures contracts and/or certain currency forward contracts selected by the trust’s advisor consistent with the trust’s investment objectives, which will only include exchange-traded futures contracts involving commodities, currencies, stock indices, fixed income indices, interest rates and sovereign, private and mortgage or asset backed debt instruments, and/or forward contracts on specified currencies, each as disclosed in the trust’s prospectus as such may be amended from time to time; and (ii) is issued and redeemed continuously in specified aggregate amounts at the next applicable net asset value (“NAV”).

The Exchange proposes to amend the definition of “Managed Trust Securities” to permit trusts that issue Managed Trust Securities to hold exchange-traded futures contracts on commodity indices and currency indices, as well as swaps on stock indices, fixed income indices, commodity indices, commodities, currencies, currency indices, and interest rates.¹⁰ The Exchange also proposes to specify that trusts that issue Managed Trust Securities may hold cash and cash equivalents.¹¹ In addition, the Exchange proposes to amend the definition of “Managed Trust Securities” to provide that any trust (or

any series thereof) that issues Managed Trust Securities is not registered or required to be registered as an investment company under the Investment Company Act of 1940 (“1940 Act”).

Moreover, the Exchange proposes to amend NYSE Arca Equities Rule 8.700(e)(2)(A) to provide that the IIV for Managed Trust Securities will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange’s Core Trading Session (rather than during the time when Managed Trust Securities trade on the Exchange).

B. Proposal to List and Trade the Shares

The Exchange proposes to list and trade Shares of the Trust under NYSE Arca Equities Rule 8.700, as proposed to be amended. The Trust is a Delaware statutory trust that will issue Shares representing fractional undivided beneficial interests in the Trust.¹² The Trust is a commodity pool as defined in the CEA and the regulations of the CFTC.¹³ The Trust will be operated by Artivest Advisors LLC, a Delaware limited liability company that is also the Trust’s advisor (“Adviser”) and will be registered under the CEA as a commodity pool operator. The Adviser is the commodity trading advisor of the Trust and will at all times be either registered as a commodity trading advisor or properly exempt from such registration under the CEA. The Adviser is not a broker-dealer and is not affiliated with a broker-dealer.¹⁴

The Bank of New York Mellon, a New York banking corporation, is the trustee of the Trust. The Bank of New York Mellon also is the administrator of the Trust, the custodian of the Trust, the processing agent of the Trust, and the settlement agent of the Trust. The Trust has engaged Foreside Fund Services, LLC to act as a distributor on its behalf.

¹² See Pre-Effective Amendment No. 5, dated August 18, 2015, to the Trust’s Registration Statement on Form S-1 (File No. 333-182772) under the Securities Act of 1933.

¹³ The Trust will not be an investment company registered under the 1940 Act and will not be required to register under the 1940 Act.

¹⁴ In the event (a) the Adviser or any sub-adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is or becomes affiliated with a broker-dealer, such broker-dealer will erect and maintain a fire wall around the personnel of the Adviser who have access to information concerning changes and adjustments to the Disclosed Portfolio (as defined in NYSE Arca Equities Rule 8.700(c)(2)). Personnel of the Adviser who make decisions regarding the composition of the Disclosed Portfolio must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Disclosed Portfolio.

Operation of the Trust

According to the Exchange, the Trust will pursue long-term total returns by seeking to provide both (1) a long-only exposure to one or more emerging markets stock indices (“index exposure”)¹⁵ and (2) “alpha” returns that are additive to, and are not correlated with, the index exposure (measured over rolling 5-year periods),¹⁶ while seeking to control overall downside risk and volatility.¹⁷

Index Exposure Portfolio Construction

According to the Exchange, the Trust will seek to maintain constant exposure to one or more emerging markets stock indices by holding long positions in emerging markets index futures contracts. Initially, the Trust will hold long MSCI Emerging Markets Index futures contracts to achieve its index exposure.¹⁸ The Adviser may in the future invest in additional or different emerging markets index futures contracts.

Alpha Portfolio Construction

According to the Exchange, the alpha portfolio primarily will be composed of futures contracts on emerging market stock indices and foreign currency forward contracts.¹⁹ The alpha portfolio will also be composed of commodity futures contracts and financial futures contracts.²⁰ According to the Exchange, the Adviser anticipates that as the Trust grows larger, it may also, in certain limited circumstances, invest in exchange-traded swaps, swaps accepted for central clearing (“cleared swaps”), and swaps that are not accepted for central clearing (“uncleared swaps”).

¹⁵ The index exposure is generally expected to be maintained at a level equal to 100% of the Trusts’ net assets.

¹⁶ The alpha exposure generally will not exceed a level equal to 300% of the Trust’s net assets.

¹⁷ The Trust will not use any particular index or benchmark to construct the alpha portfolio.

¹⁸ ICE Futures U.S. has been licensed to create futures contracts on the MSCI Emerging Markets Index. ICE Futures U.S. is a member of the ISC.

¹⁹ The Trust will only enter into foreign currency forward contracts related to foreign currencies that have significant foreign exchange turnover and are included in the most recent Bank for International Settlements Triennial Central Bank Survey (“BIS Survey”). Specifically, the Trust may enter into foreign currency forward contracts that provide exposure to such currencies selected from the top 40 currencies (as measured by percentage share of average daily turnover for the applicable month and year) included in the BIS Survey.

²⁰ The Trust expects to trade in commodity futures contracts, including metals, agriculturals, energies, and softs. The Trust expects to trade in a wide variety of financial futures contracts, namely, interest rates, currencies and currency indices, U.S. and non-U.S. stock indices and government bond futures contracts.

⁹ For a more detailed description of the Trust and the Shares, see Amendment No. 3, *supra* note 8.

¹⁰ See proposed changes to NYSE Arca Equities Rule 8.700(c)(1). The Exchange also proposes to make a conforming change in NYSE Arca Equities Rule 8.700(d).

¹¹ See proposed changes to NYSE Arca Equities Rule 8.700(c)(1).

These limited circumstances are only the following:

- When futures contracts or forward contracts are not available or market conditions do not permit investing in futures contracts or forward contracts (for example, a particular futures contract or forward contract may not exist or may trade only on an exchange that has not yet been approved by the Trust); and
- When there are position limits, price limits or accountability limits on futures contracts.

According to the Exchange, swaps would only be used by the Trust as a substitute for futures contracts or forward contracts in the limited circumstances described above when the Adviser has determined that it is necessary to use swaps in order for the Trust to remain consistent with the Trust's investment objective. Further, the Adviser expects that the Trust's use of swaps, if any, will be of a de minimis nature. Moreover, to the extent that the Trust invests in swaps, it would first make use of exchange-traded swaps. If an investment in exchange-traded swaps is unavailable, then the Trust would invest in cleared swaps that clear through derivatives clearing organizations that satisfy the Trust's criteria. If an investment in cleared swaps is unavailable, then the Trust would invest in uncleared swaps in the OTC market. No more than 20% of the Trust's portfolio, measured by aggregate gross notional value, may be invested, on both an initial and ongoing basis, in OTC derivatives, including swaps.

Other Trust Investments

The Trust's portfolio may contain cash, which may be used, as needed, to secure the Trust's trading obligations with respect to its trading positions. Moreover, in order to collateralize futures contracts and forward contracts, the Trust may invest in cash equivalents.²¹

²¹ "Cash equivalents" means short-term instruments with maturities of less than three months. "Short-term instruments" means: (1) U.S. Government securities, including bills, notes and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (2) certificates of deposit issued against funds deposited in a bank or savings and loan association; (3) bankers' acceptances, which are short-term credit instruments used to finance commercial transactions; (4) repurchase agreements and reverse repurchase agreements; (5) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; (6) commercial paper, which are short-term unsecured promissory notes; and (7) money market funds.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.²² In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with Section 6(b)(5) of the Act,²³ which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission also finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,²⁴ which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities.

According to the Exchange, quotation and last sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line, and the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Also, information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. In addition, the IIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session (as defined in NYSE Arca Equities Rule 7.34).²⁵ On a daily basis, the Trust will disclose on its Web site for each futures contract, forward contract, swap or other financial instrument in the Disclosed Portfolio the following information: Name; ticker symbol (if applicable); CUSIP or other identifier (if applicable);

²² In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²³ 15 U.S.C. 78f(b)(5).

²⁴ 15 U.S.C. 78k-1(a)(1)(C)(iii).

²⁵ The Exchange notes that several major market data vendors widely disseminate IIVs taken from the CTA high-speed line or other data feeds.

description of the holding; with respect to derivatives, the identity of the security, commodity, index or other underlying asset; the quantity or aggregate amount of the holding as measured by par value, notional value or amount, number of contracts or number of units (if applicable); maturity date; coupon rate (if applicable); effective date or issue date (if applicable); market value; percentage weighting in the Disclosed Portfolio; and expiration date (if applicable). The Adviser's Web site will also include the current prospectus of the Trust and additional data relating to NAV and other applicable quantitative information.²⁶ Price information for the futures contracts, forward contracts, swaps and other financial instruments held by the Trust will be available through major market data vendors and/or the exchange on which they are listed and traded, as applicable.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange will obtain a representation from the Trust that the NAV and the NAV per Share will be calculated daily and that the NAV, the NAV per Share, and the composition of the Disclosed Portfolio will be made available to all market participants at the same time. Further, trading in the Shares will be subject to NYSE Arca Equities Rules 7.12 and 8.700(e)(2)(D), which set forth circumstances under which trading in the Shares may be halted. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.²⁷ The Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the Portfolio.²⁸ The Exchange represents

²⁶ The Trust's NAV and the NAV per Share will be calculated and disseminated daily. The Exchange will disseminate for the Trust on a daily basis by means of the CTA high-speed line information with respect to the most recent NAV per Share and the number of Shares outstanding, among other things. The Exchange will also make available on its Web site daily trading volume, closing prices, and the NAV per Share.

²⁷ These may include: (1) The extent to which trading is not occurring in the underlying futures contracts, forward contracts, or swaps; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

²⁸ See NYSE Arca Equities Rule 8.700(e)(2)(B)(ii).

that it has a general policy prohibiting the distribution of material, non-public information by its employees.

The Exchange represents that it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made the following representations:

(1) The Trust will be subject to the criteria in NYSE Arca Equities Rule 8.700 for initial and continued listing of the Shares.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) Trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, and these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.²⁹

(4) The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and certain futures contracts with other markets or other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares and certain futures contracts from such markets or entities. In addition, the Exchange may obtain information regarding trading in the Shares and certain futures contracts from markets or other entities that are members of ISG or with which the Exchange has in place a CSSA. FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain cash equivalents held by the Trust reported to FINRA's Trade Reporting and Compliance Engine.

(5) No more than 10% of the investments in futures contracts and listed swaps (calculated using the aggregate gross notional value of such futures and swaps) shall consist of futures contracts and listed swaps whose principal market is not a member of ISG or is a market with which the Exchange does not have a CSSA.

(6) No more than 20% of the Trust's portfolio, measured by aggregate gross notional value, may be invested, on both

an initial and an ongoing basis, in OTC derivatives.

(7) Prior to the commencement of trading, the Exchange will inform its ETP Holders (as defined in NYSE Arca Equities Rule 1.1(n)) in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (i) The procedures for purchases and redemptions of Shares in Baskets (and that Shares are not individually redeemable); (ii) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (iii) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (iv) how information regarding the IIV and the Disclosed Portfolio is disseminated; (v) the risks involved in trading the Shares during the opening and late trading sessions when an updated IIV will not be calculated or publicly disseminated; and (iv) trading information.

(8) For the initial and continued listing of the Shares, the Trust must be in compliance with Rule 10A-3 under the Act.³⁰

(9) A minimum of 100,000 Shares will be outstanding at the start of trading on the Exchange.

The Exchange represents that all statements and representations made in the filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures constitute continued listing requirements for listing the Shares on the Exchange. In addition, the Trust has represented to the Exchange that it will advise the Exchange of any failure by the Trust to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor³¹ for compliance with the continued listing requirements. If the Trust is not in

compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m).

With respect to the proposed amendments to NYSE Arca Equities Rule 8.700, the Commission notes that the proposal to permit the holding of additional types of futures contracts and swaps is consistent with the permissible holdings for other types of exchange-traded products.³² Moreover, the Commission notes that, even though the amended definition of "Managed Trust Securities" would expand the scope of permissible holdings for a trust, the Exchange must file a proposal under Section 19(b) of the Act before listing and trading separate and distinct Managed Trust Securities.³³ Finally, the Commission notes that the amended IIV dissemination requirement under NYSE Arca Equities Rule 8.700(e)(2)(A) is consistent with the current IIV dissemination requirement for other types of exchange-traded products.³⁴

This approval order is based on all of the Exchange's representations, including those set forth above and in Amendment No. 3.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with Section 6(b)(5) of the Act³⁵ and Section 11A(a)(1)(C)(iii) of the Act³⁶ and the rules and regulations thereunder applicable to a national securities exchange.

IV. Solicitation of Comments on Amendment No. 3

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 3 to 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

³² See, e.g., NYSE Arca Equities Rule 8.600, Commentary .01(d)-(e). The Commission notes that the proposal to specify a trust's ability to hold cash and cash equivalents is also consistent with the permissible holdings of other types of exchange-traded products. See, e.g., NYSE Arca Equities Rule 8.600, Commentary .01(c).

³³ See NYSE Arca Equities Rule 8.700(h).

³⁴ See, e.g., NYSE Arca Equities Rule 8.600(d)(2)(A). The Commission also believes that the proposed clarifying and conforming changes in NYSE Arca Equities Rule 8.700 are consistent with the Act.

³⁵ 15 U.S.C. 78f(b)(5).

³⁶ 15 U.S.C. 78k-1(a)(1)(C)(iii).

³⁰ See 17 CFR 240.10A-3.

³¹ The Commission notes that certain proposals for the listing and trading of exchange-traded products include a representation that the exchange will "surveil" for compliance with the continued listing requirements. See, e.g., Securities Exchange Act Release No. 77499 (April 1, 2016), 81 FR 20428, 20432 (April 7, 2016) (SR-BATS-2016-04). In the context of this representation, it is the Commission's view that "monitor" and "surveil" both mean ongoing oversight of compliance with the continued listing requirements. Therefore, the Commission does not view "monitor" as a more or less stringent obligation than "surveil" with respect to the continued listing requirements.

²⁹ The Exchange states that FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement, and that the Exchange is responsible for FINRA's performance under this regulatory services agreement.

- Send an email to rule-comments@sec.gov. Please include File Number SR–NYSEArca–2016–96 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2016–96. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–96 and should be submitted on or before April 11, 2017.

V. Accelerated Approval of the Proposed Rule Change, as Modified by Amendment No. 3

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 3, prior to the thirtieth day after the date of publication of Amendment No. 3 in the **Federal Register**. The modifications and additional information in Amendment No. 3, such as clarifications regarding how the various limits on the Trust's permitted holdings would be calculated and expansion of the information provided regarding the Trust's Disclosed Portfolio, assisted the Commission in finding that the proposal is consistent with the Act. Accordingly, the Commission finds good cause for

approving the proposed rule change, as modified by Amendment No. 3, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.³⁷

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,³⁸ that the proposed rule change (SR–NYSEArca–2016–96), as modified by Amendment No. 3, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁹

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–05503 Filed 3–20–17; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80252; File No. SR–NYSEArca–2017–26]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Options Fee Schedule

March 15, 2017.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 (the “Act”) ² and Rule 19b–4 thereunder,³ notice is hereby given that, on March 10, 2017, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fee Schedule (“Fee Schedule”). The proposed rule change is available on the Exchange's Web site at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

³⁷ 15 U.S.C. 78s(b)(2).

³⁸ 15 U.S.C. 78s(b)(2).

³⁹ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend the Fee Schedule. Specifically, the Exchange proposes to modify the criteria for achieving various credits, including by broadening qualifying order flow and trading activity, to make the credits more achievable to a variety of market participants.

Currently, the Exchange provides a number of incentives for OTP Holders and OTP Firms (collectively, “OTPs”) designed to encourage OTPs to direct additional order flow to the Exchange to achieve more favorable pricing and higher credits. Among these incentives are enhanced posted liquidity credits based on achieving certain percentages of NYSE Arca Equity daily activity, also known as “cross-asset pricing.” In addition, certain of the qualifications for achieving these incentives are more tailored to specific activity (*i.e.*, posting in Penny Pilot issues only, or cross-asset pricing based only on levels of Retail Orders on the NYSE Arca Equity Market). In an effort to increase the opportunities for OTP Holders to achieve the incentives offered, the Exchange proposes a number of modifications as set forth below.

First, the Exchange proposes to modify the alternative qualification to Tier 7 of the Customer and Professional Customer Monthly Posting Credit Tiers and Qualifications for Executions in Penny Pilot Issues (“Tier 7”). Currently, OTPs are eligible to achieve a per contract credit of \$0.50 associated with Tier 7 provided the OTP has (i) at least 1.00% of Total Industry Customer equity and ETF option average daily volume (“TCADV”) from Customer and Professional Customer Posted Orders in all Issues; or (ii) at least 0.80% of TCADV from Customer and Professional Customer Posted Orders in all Issues

Plus executed ADV of Retail Orders of 0.10% ADV of U.S. Equity Market Share Posted and Executed on NYSE Arca Equity Market. The latter criteria is the cross-asset pricing portion, which the Exchange proposes to modify by eliminating the restriction that executed ADV be Retail Orders such that all Posted Orders executed on the NYSE Arca Equity Market would be included. To account for this expansion, the Exchange also proposes to raise the qualification level to ADV of at least 0.30% ADV of U.S. Equity Market Share.⁴ The per contract credit associated with Tier 7 remains unchanged.

Second, the Exchange proposes to revise one of the alternative additional credits available under the Customer and Professional Customer Incentive Program. Currently, an OTP that has at least 1.00% of TCADV from Customer and Professional Customer posted orders in both Penny and non-Penny Pilot issues (the “threshold qualification”), of which at least 0.25% of TCADV is from Customer and Professional Customer posted orders in non-Penny Pilot issues (the “non-Penny qualification”), will receive an additional \$0.05 posting credit on Customer and Professional Customer volume. The Exchange proposes to make the incentive more achievable by lowering the threshold qualification to at least 0.80% of TCADV, and likewise reducing the non-Penny qualification to at least 0.20% of TCADV. To account for the reduced thresholds, the Exchange proposes to reduce the additional per contract credit from \$0.05 to \$0.03.

Third, the Exchange proposes to revise Tier C and to add new Tier D to the Customer and Professional Customer Posting Credit Tiers in non-Penny Pilot Issues. Currently, to achieve the per contract credit that is available under Tier C, an OTP must have at least 1.50% of TCADV from Customer and Professional Customer Posted Orders in all Issues (the “Tier C threshold qualification”), of which at least 0.30% of TCADV is from Customer and Professional Customer Posted Orders in non-Penny Pilot Issues (the “non-Penny threshold qualification”). The Exchange proposes to reduce the qualifications for this Tier such that the Tier C threshold qualification would be at least 0.80% of TCADV, and the non-Penny threshold qualification would be reduced to at least 0.10% of TCADV. The Exchange also proposes to increase the credit available under Tier C from \$0.90 to

\$0.95, applicable per contract on Customer and Professional Customer Posted Orders in non-Penny Pilot issues. The Exchange also proposes to add an additional tier, Tier D. As proposed, to achieve proposed Tier D, OTPs must have at least 0.80% of TCADV from Customer and Professional Customer Posted Orders in all issues, with an executed ADV of at least 0.30% of U.S. Equity Market Share Posted and Executed on NYSE Arca Equity Market.⁵ OTPs that qualify for proposed Tier D would be eligible for a credit of \$1.02, applicable per contract on Customer and Professional Posted Orders in non-Penny Pilot issues.

Fourth, the Exchange proposes to modify the Super Tier in the Market Maker Monthly Posting Credit Tiers and Qualifications for Execution in Penny Pilot Issues and SPY. Currently, to qualify for the Super Tier, an OTP must have (i) at least 0.55% of TCADV from Market Maker Posted Orders in All Issues, or (ii) at least 1.60% of TCADV from all orders in Penny Pilot Issues, all account types, with at least 0.80% of TCADV from Posted Orders in Penny Pilot Issues (the “alternate threshold”). The Exchange proposes to expand the qualifying orders to be included in the alternate threshold to include all issues—both Penny Pilot and non-Penny Pilot issues. The credits associated with the Super Tier would remain unchanged. The Exchange likewise proposes to modify the Market Maker Incentive for non-Penny Pilot Issues, which mirrors the current qualifications for the Super Tier, to likewise apply to posted orders in all issues.⁶

⁵ Endnote 8 to the Fee Schedule sets forth additional detail regarding meeting the volume requirements of proposed Tier D. See Fee Schedule, Endnote 8 (“The calculations for qualifications for monthly posting credits only include electronic executions, excluding Mini options contracts. Customer equity and ETF option ADV does not include Electronic Complex Order Executions or Mini options contracts executions. QCC orders are neither posted nor taken; thus QCC transactions are not included in the calculation of posted or taken execution volumes. Orders routed to another market for execution are not included in the calculation of taking volume. Total Industry Customer equity and ETF option ADV includes OCC calculated Customer volume of all types, including Complex Order Transactions, QCC transactions, and mini options transactions, in equity and ETF options. An affiliate of an OTP Holder or OTP Firm is as defined in NYSE Arca Rule 1.1(a). For purposes of calculating the executed Average Daily Volume (“ADV”) of Retail Orders of U.S. Equity Market Share on the NYSE Arca Equity Market, a Retail Order must qualify for the Retail Order Tier set forth in the Schedule of Fees and Charges for NYSE Arca Equities, Inc.”).

⁶ The Exchange introduced the Market Maker Incentive for non-Penny Pilot Issues in February 2017 “based on the Super Tier qualification levels.” See Securities Exchange Act Release No. 80029 (February 13, 2017), 82 FR 11085, 11086 (February 17, 2017) (SR-NYSEArca-2017-12). Thus, the

Finally, the Exchange proposes to modify the Take Fee Discount for Professional Customer, Market Maker, Firm, and Broker Dealer Liquidity Removing Orders (the “Take Fee Discount”). Currently, to qualify for the Take Discount, an OTP must have (i) at least 1.00% of TCADV from Customer and Professional Customer Posted Orders in all Issues; or (ii) at least 2.00% of TCADV from Professional Customer, Market Maker, Firm, and Broker Dealer Liquidity Removing Orders in all Issues. The Take Fee Discount currently applies to both non-Penny and Penny Pilot Issues. The Exchange proposes to eliminate the \$0.05 per contract discount applicable to non-Penny Pilot issues. The Exchange also proposes to add a new Take Fee Discount, applicable to Penny Pilot Issues, which is available to OTPs that have at least 0.80% of TCADV from Customer and Professional Customer Posted Orders in all issues, with an executed ADV of at least 0.30% of U.S. Equity Market Share Posted and Executed on NYSE Arca Equity Market.⁷ OTPs that qualify for this proposed Take Fee Discount would receive a per contract discount of \$0.04 on Professional Customer, Market Maker, Firm, and Broker Dealer orders that take liquidity. If an OTP is eligible for more than one discount, the Exchange will apply the most favorable discount.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,⁹ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes the adjustments to qualifications for enhanced posting liquidity credits, including expanding the qualifying order flow and trading activity, are reasonable, equitable and not unfairly discriminatory as they are designed to attract increased Customer (and Professional Customer) business on the Exchange and are achievable in various

Exchange believes it is appropriate to modify this Incentive to remain consistent with the amended Super Tier.

⁷ Endnote 8 to the Fee Schedule sets forth additional detail regarding meeting the volume requirements of the proposed Take Fee Discount. See *supra* note 5.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4) and (5).

⁴ See proposed Fee Schedule, Customer and Professional Customer Posting Credit Tiers In Penny Pilot Issues, Tier 7.

ways. An increase in Customer (and Professional Customer) orders executed on the Exchange benefits all participants by offering greater price discovery, increased transparency, and an increased opportunity to trade on the Exchange. The Exchange also believes that the proposed credits are reasonable because they are within a range of similar credits available on other option exchanges.¹⁰ Additionally, attracting posted Customer and Professional Customer order flow is desirable because it encourages liquidity to be present on the Exchange. The proposed changes are also non-discriminatory because they apply to all similarly-situated OTP Holders, and provide for various incentives that are achievable through different means and different sources of business.

Specifically, the proposed addition of Tier D and the new Take Fee Discount are designed to incentivize market participants to increase the orders sent directly to the Exchange and therefore provide liquidity that supports the quality of price discovery and promotes market transparency. The Exchange believes the proposed change is equitable because it would be available to all similarly situated market participants on an equal basis. Further, the Exchange believes that the proposed Discount is reasonable, equitable, and not unfairly discriminatory because the incentives would be available to all non-Customers on an equal and non-discriminatory basis. The modified incentives are also non-discriminatory because they allow qualification through activity combined with activity of affiliates or Appointed OFP, including activity on the NYSE Arca Equity Market. The Exchange believes the modifications are equitable and not unfairly discriminatory because the changes encourage more participants to qualify for the various incentives, including encouraging more participants to have affiliated or appointed order flow directed to the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,¹¹ 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. Instead, the Exchange believes that the proposed changes would continue to encourage competition, including by attracting additional liquidity to the Exchange, which would continue to make the Exchange a more competitive venue for, among other things, order execution and price discovery. The Exchange does not believe that the proposed change will impair the ability of any market participants or competing order execution venues to maintain their competitive standing in the financial markets. Further, the incentive would be available to all similarly situated participants, and, as such, the proposed change would not impose a disparate burden on competition either among or between classes of market participants and may, in fact, encourage competition.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)¹² of the Act and subparagraph (f)(2) of Rule 19b-4¹³ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁴ of the Act to

determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2017-26 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2017-26. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2017-26, and should be submitted on or before April 11, 2017.

¹⁰ See e.g., NASDAQ Options Market—Fees and Rebates, available here, <http://www.nasdaqtrader.com/Micro.aspx?id=optionsPricing>.

¹¹ 15 U.S.C. 78f(b)(8).

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(2).

¹⁴ 15 U.S.C. 78s(b)(2)(B).

¹⁵ 17 CFR 200.30-3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017-05501 Filed 3-20-17; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80246; File No. SR-BOX-2017-09]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule on the BOX Market LLC ("BOX") Options Facility

March 15, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 7, 2017, BOX Options Exchange LLC (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to amend the Fee Schedule on the BOX Market LLC ("BOX") options facility. While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on March 8, 2017. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at <http://boxexchange.com>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule for trading on BOX. Specifically, the Exchange proposes to revise certain qualification thresholds in Sections I.B.1 of the BOX Fee Schedule, Primary Improvement Order and I.B.2 of the BOX Fee Schedule, the BOX Volume Rebate ("BVR").

Primary Improvement Order

Under the tiered fee schedule for Primary Improvement Orders, the Exchange assesses a per contract execution fee to all Primary Improvement Order executions where the corresponding PIP or COPIP Order is from the account of a Public Customer. Percentage thresholds are calculated on a monthly basis by totaling the Initiating Participant's Primary Improvement Order volume submitted to BOX, relative to the total national Customer volume in multiply-listed options classes. The Exchange proposes to delete current Tier 4 in its entirety and renumber the tiers accordingly. The Exchange also proposes to adjust the percentage threshold in proposed Tier 4. Specifically, the Exchange proposes to change proposed Tier 4 from "0.800% and Above" to "0.500% and Above." The Exchange notes that it is not proposing any changes to the fees within the Primary Improvement Order fee structure and the quantity submitted will continue to be calculated on a monthly basis by totaling the Initiating Participant's Primary Improvement Order volume submitted to BOX, relative to the total national Customer volume in multiply-listed options classes.

BVR

Next, the Exchange proposes to adjust certain percentage thresholds within the BVR. Under the BVR, the Exchange offers a tiered per contract rebate for all Public Customer PIP Orders and COPIP Orders of 100 and under contracts that do not trade solely with their contra order. Percentage thresholds are calculated on a monthly basis by totaling the Participant's PIP and COPIP volume submitted to BOX, relative to the total national Customer volume in multiply-listed options classes. The Exchange proposes to adjust the percentage thresholds in Tiers 3 and 4. Specifically, the Exchange proposes to change Tier 3 from "0.340% to 0.799%" to "0.340% to 0.499%" and Tier 4 from "0.800% and Above" to "0.500% and Above." The Exchange notes that it is not proposing any changes to the fees within the BVR. The quantity submitted will continue to be calculated on a monthly basis by totaling the Participant's PIP and COPIP volume submitted to BOX, relative to the total national Customer volume in multiply-listed options classes.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(4) and 6(b)(5) of the Act,⁵ in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

BOX believes it is reasonable, equitable and not unfairly discriminatory to adjust the monthly Percentage Thresholds of National Customer Volume in Multiply-Listed Options Classes. The volume thresholds with their tiered fees and rebates are meant to incentivize Participants to direct order flow to the Exchange to obtain the benefit of the lower fee or higher rebate, which in turn benefits all market participants by increasing liquidity on the Exchange.

The Exchange believes the proposed amendments to the Primary Improvement Order percentage thresholds are reasonable, equitable and not unfairly discriminatory. The proposed changes to the thresholds are equitable and not unfairly discriminatory as they are available to all BOX Participants that initiate Auction Transactions, and Participants may choose whether or not to take

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ 15 U.S.C. 78f(b)(4) and (5).

advantage of the percentage thresholds and their applicable discounted fees. Further, the Exchange believes that the proposed changes are reasonable and competitive as they will further incentivize Participants to direct order flow to the Exchange, benefiting all market participants.

The Exchange also believes the proposed amendments to the BVR in Section I.B.2 of the BOX Fee Schedule are reasonable, equitable and not unfairly discriminatory. The BVR was adopted to attract Public Customer order flow to the Exchange by offering these Participants incentives to submit their Public Customer PIP and COPIP Orders to the Exchange and the Exchange believes it is appropriate to now amend the BVR. The Exchange believes it is equitable and not unfairly discriminatory to amend the BVR, as all Participants have the ability to qualify for a rebate, and rebates are provided equally to qualifying Participants. Other exchanges employ similar incentive programs;⁶ and the Exchange believes that the proposed changes to the volume thresholds are reasonable and competitive when compared to incentive structures at other exchanges. Finally, the Exchange believes it is reasonable and appropriate to continue to provide incentives for Public Customers, which will result in greater liquidity and ultimately benefit all Participants trading on the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange is simply proposing to amend certain percentage thresholds for Auction Transaction fees and rebates in the BOX Fee Schedule. The Exchange believes that the volume based rebates and fees increase intermarket and intramarket competition by incenting Participants to direct their order flow to the exchange, which benefits all participants by providing more trading opportunities and improves competition on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

⁶ See Section B of the PHLX Pricing Schedule entitled "Customer Rebate Program;" ISE Gemini's Qualifying Tier Thresholds (page 6 of the ISE Gemini Fee Schedule); and CBOE's Volume Incentive Program (VIP).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act⁷ and Rule 19b-4(f)(2) thereunder,⁸ because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-BOX-2017-09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-BOX-2017-09. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and

printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BOX-2017-09, and should be submitted on or before April 11, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017-05496 Filed 3-20-17; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80259; File No. 4-707]

Self-Regulatory Organizations; ISE Mercury, LLC; Notice of Filing of Proposed Minor Rule Violation Plan

March 16, 2017.

Pursuant to Section 19(d)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19d-1(c)(2) thereunder,² notice is hereby given that on March 9, 2017, ISE Mercury, LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed minor rule violation plan ("MRVP") with sanctions not exceeding \$2,500 which would not be subject to the provisions of Rule 19d-1(c)(1) of the Act³ requiring that a self-regulatory organization ("SRO") promptly file notice with the Commission of any final disciplinary action taken with respect to any person or organization.⁴ In accordance with

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(d)(1).

² 17 CFR 240.19d-1(c)(2).

³ 17 CFR 240.19d-1(c)(1).

⁴ The Commission adopted amendments to paragraph (c) of Rule 19d-1 to allow SROs to submit for Commission approval plans for the abbreviated reporting of minor disciplinary infractions. See Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984). Any disciplinary action taken by an SRO against any person for violation of a rule of the SRO which has been designated as a minor rule violation pursuant to such a plan filed with and declared effective by the Commission shall not be considered "final" for purposes of Section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding \$2,500 and the sanctioned person has not

⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

⁸ 17 CFR 240.19b-4(f)(2).

Rule 19d–1(c)(2) under the Act,⁵ the Exchange proposed to designate certain specified rule violations as minor rule violations, and requested that it be relieved of the prompt reporting requirements regarding such violations, provided it gives notice of such violations to the Commission on a quarterly basis.

The Exchange proposes to include in its MRVP the procedures and violations currently included in Exchange Rule 1614 (“Imposition of Fines for Minor Rule Violations”), which has been incorporated by reference from the International Securities Exchange’s rule book.⁶ According to the Exchange’s MRVP, under Rule 1614, the Exchange may impose a fine (not to exceed \$2,500) on any Member, or person associated with or employed by a Member, for any rule listed in Rule 1614(d).⁷ The Exchange shall serve the person against whom a fine is imposed with a written statement setting forth the rule or rules violated, the act or omission constituting each such violation, the fine imposed, and the date by which such determination becomes final or by which such determination must be contested. If the person against whom the fine is imposed pays the fine, such payment shall be deemed to be a waiver of such person’s right to a disciplinary proceeding and any review of the matter under the Exchange rules. Any person against whom a fine is imposed may contest the Exchange’s determination by filing with the Exchange a written answer, at which point the matter shall become a disciplinary proceeding.

The Exchange proposes that, as set forth in Exchange Rule 1614(d), violations of the following rules would be appropriate for disposition under the MRVP: Rule 412 (Position Limits); Rule 1403 (Focus Reports); Rule 1404 (Requests for Trade Data); Rule 723 (Price Improvement Mechanism for Crossing Transactions); Rule 717 (Order Entry); Rule 803 (Quotation Parameters); Rule 805 (Execution of Orders in Appointed Options); Rule 419 (Mandatory Systems Testing); Rule 1100 (Exercise of Options Contracts); Rule

415 (Reports Related to Position Limits); and Rule 804(e) (Continuous Quotes).

Upon the Commission’s declaration of effectiveness of the MRVP, the Exchange will provide to the Commission a quarterly report for any actions taken on minor rule violations under the MRVP. The quarterly report will include: The Exchange’s internal file number for the case, the name of the individual and/or organization, the nature of the violation, the specific rule provision violated, the sanction imposed, the number of times the rule violation occurred, and the date of the disposition.

The Exchange also proposes that, going forward, to the extent that there are any changes to the rules applicable to the Exchange’s MRVP, the Exchange requests that the Commission deem such changes to be modifications to the Exchange’s MRVP.

I. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the Exchange’s proposed MRVP, including whether the proposed MRVP is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File No. 4–707 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 No. 4–707. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed MRVP that are filed with the Commission, and all written communications relating to the proposed MRVP between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission’s Public Reference Room, 100 F Street NE., Washington, DC 20549, on official

business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the proposed MRVP also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. 4–707 and should be submitted on or before April 11, 2017.

II. Date of Effectiveness of the Proposed Minor Rule Violation Plan and Timing for Commission Action

Pursuant to Section 19(d)(1) of the Act and Rule 19d–1(c)(2) thereunder,⁸ after April 11, 2017, the Commission may, by order, declare the Exchange’s proposed MRVP effective if the plan is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act. The Commission in its order may restrict the categories of violations to be designated as minor rule violations and may impose any other terms or conditions to the proposed MRVP, File No. 4–707, and to the period of its effectiveness, which the Commission deems necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2017–05554 Filed 3–20–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a closed meeting on Thursday, March 23, 2017 at 11 a.m.

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 her designee, has certified that, in her opinion, one or

sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies.

⁵ 17 CFR 240.19d–1(c)(2).

⁶ The Exchange received its grant of registration on January 29, 2016, which included approving the rules that govern the Exchange. See Securities Exchange Act Release No. 76998 (Jan. 29, 2016), 81 FR 6066 (Feb. 4, 2016).

⁷ While Rule 1614 allows the Exchange to administer fines up to \$5,000, the Exchange is only seeking relief from the reporting requirements of paragraph (c)(1) of Rule 19d–1 for fines administered under Rule 1614(d) that do not exceed \$2,500.

⁸ 15 U.S.C. 78s(d)(1); 17 CFR 240.19d–1(c)(2).

⁹ 17 CFR 200.30–3(a)(44).

more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(7), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matter at the closed meeting.

Commissioner Stein, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Adjudicatory matters; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

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: March 16, 2017.

Brent J. Fields,

Secretary.

[FR Doc. 2017-05610 Filed 3-17-17; 11:15 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80251; File No. SR-PEARL-2017-11]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend MIAX PEARL Rules 100, 404, 515, 529, 601 and the Title Pages of Chapter VIII and Chapter XI

March 15, 2017.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 3, 2017, MIAX PEARL, LLC (“MIAX PEARL” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to make minor corrective changes to Exchange Rules 100, 404.02(d), 515(f), 529(b)(2)(ii), 601(b), 601(b)(2), 601(b)(4), 601(b)(5), 601(c)(1), 601(c)(1)(ii), 601(c)(2), 601(c)(3), and the title pages to Chapter VIII and Chapter XI.

The text of the proposed rule change is available on the Exchange’s Web site at <http://www.miaxoptions.com/rule-filings/pearl> at MIAX PEARL’s principal office, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make minor corrective changes to Exchange Rule 100, Definitions; Rule 404, Series of Option Contracts Open for Trading; Rule 515, Execution of Orders; Rule 529, Order Routing to Other Exchanges; Rule 601, Obligations of Market Maker Authorized Traders; and the title pages of Chapter VIII and Chapter XI. First, the Exchange proposes to amend Exchange Rule 100, Definitions, to correct a typographical error in the last word of the first sentence in the definition of Priority Customer. Currently, the definition reads, “[t]he term ‘Priority Customer’ means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial accounts(s).” The word accounts should not be plural in this instance and instead should read, “account(s)”. Therefore, the Exchange proposes to amend this rule to replace the word “accounts” with “account.”

Second, the Exchange proposes to amend Exchange Rule 404, Series of Option Contracts Open for Trading,

Interpretations and Policies .02, Short Term Option Series Program, to correct a typographical error in paragraph (d). The fourth sentence in the paragraph begins, “Market makers,” whereas “makers” should be capitalized. Therefore, the Exchange proposes to amend the rule to replace the term “Market makers,” with “Market Makers.”

Third, the Exchange proposes to amend Exchange Rule 515(f) to make a minor grammatical correction by removing a superfluous word from the last sentence which reads, “[u]nexecuted contracts remaining from an ISO order will be immediately canceled. ISO is an acronym for Intermarket Sweep Order. Having the word “order” follow ISO is unnecessary and redundant. Therefore, the Exchange proposes to amend the rule to remove the word “order” from the sentence.

Fourth, the Exchange proposes to amend Exchange Rule 529(b)(2)(ii) to make a minor grammatical correction by removing a superfluous word from the first sentence which reads, “[t]he System will route ISO orders representing Eligible Orders to away markets disseminating prices better than the Exchange’s disseminated market.” ISO is an acronym for Intermarket Sweep Order. Having the word “order” follow ISO is unnecessary and redundant. Therefore, the Exchange proposes to amend the rule to remove the word “order” from the sentence. Additionally, the Exchange proposes to add an “s” to the end of “ISO” to indicate that the reference is not for a singular order.

Fifth, the Exchange proposes to amend Exchange Rule 601(b), 601(b)(2), 601(b)(4), 601(b)(5), 601(c)(1), 601(c)(1)(ii), 601(c)(2), and 601(c)(3), to make minor grammatical corrections. The Exchange proposes to replace the indefinite article “a” in the phrase “a MMAT” with the indefinite article “an” to improve the readability and precision of the rule.

Sixth, the Exchange proposes to amend the title page of Chapter VIII, Records, Reports and Audits, to correct a minor typographical error. The fourth sentence contains the number 2 whereas it should read “MIAX PEARL” instead. Currently, the fourth sentence reads, “[s]olely by way of example, and not in limitation or exhaustion: the defined term “Exchange” in the Chapter VIII Rules shall be read to refer to MIAX PEARL; the defined term “Rule” in the Chapter VIII Rules shall be read to refer to the 2 Rule; [. . .].” Therefore, the Exchange proposes to amend the Rule to replace the number 2 with the words “MIAX PEARL.”

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Finally, the Exchange proposes to amend the title page of Chapter XI, Hearings, Review and Arbitration, to correct a minor typographical error. The fourth sentence contains the letters “MI” whereas it should read “MIAX PEARL” instead. Currently, the fourth sentence reads, “[s]olely by way of example, and not in limitation or in exhaustion: the defined term ‘Exchange’ in Chapter XI Rules shall be read to refer to MI;” The Exchange proposes to amend the Rule to insert the word “the” preceding the word “Chapter,” and to replace “MI” with “MIAX PEARL.” The proposed revised fourth sentence would then read, “[s]olely by way of example, and not in limitation or in exhaustion: the defined term ‘Exchange’ in the Chapter XI Rules shall be read to refer to MIAX PEARL;”.

2. Statutory Basis

MIAX PEARL believes that its proposed rule change is consistent with Section 6(b) of the Act³ in general, and furthers the objectives of Section 6(b)(5) of the Act⁴ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes the proposed changes promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system because they seek to correct typographical and grammatical errors to improve the readability of the rules. The Exchange notes that the proposed changes to Exchange Rule 100, 404.02(d), 515(f), 529(b)(2)(ii), 601(b), 601(b)(2), 601(b)(4), 601(b)(5), 601(c)(1), 601(c)(1)(ii), 601(c)(2), 601(c)(3), and the title pages of Chapter VIII and XI, do not alter the application of each rule. As such, the proposed amendments would foster cooperation and coordination with persons engaged in facilitating transaction in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system. In particular, the Exchange believes that the proposed rule changes will provide greater clarity to Members and the public regarding the Exchange’s Rules,

and it is in the public interest for rules to be accurate and concise so as to eliminate the potential for confusion.

B. Self-Regulatory Organization’s Statement on Burden on Competition

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 changes are not designed to address any competitive issues but rather are designed to add additional clarity and to remedy minor non-substantive issues in the text of various rules identified in this proposal.

The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition as the Rules apply equally to all Exchange Members.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act⁵ and Rule 19b-4(f)(6)⁶ thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-PEARL-2017-11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-PEARL-2017-11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission’s Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-PEARL-2017-11 and should be submitted on or before April 11, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2017-05500 Filed 3-20-17; 8:45 am]

BILLING CODE 8011-01-P

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(5).

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

⁷ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80240; File No. 4–709]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Notice of Filing of Proposed Amended Plan for the Allocation of Regulatory Responsibilities Between the Financial Industry Regulatory Authority, Inc. and BOX Options Exchange LLC

March 14, 2017.

Pursuant to Section 17(d) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 17d–2 thereunder,² notice is hereby given that on January 12, 2017, BOX Options Exchange LLC (“BOX”) and the Financial Industry Regulatory Authority, Inc. (“FINRA”) (together, the “Parties”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) a plan for the allocation of regulatory responsibilities, dated March 2, 2017 (“17d–2 Plan” or the “Plan”). The Commission is publishing this notice to solicit comments on the 17d–2 Plan from interested persons.

I. Introduction

Section 19(g)(1) of the Act,³ among other things, requires every self-regulatory organization (“SRO”) registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO’s own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) or Section 19(g)(2) of the Act.⁴ Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO (“common members”). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act⁵ was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.⁶ With respect to a common member, Section 17(d)(1)

authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d–1 and Rule 17d–2 under the Act.⁷ Rule 17d–1 authorizes the Commission to name a single SRO as the designated examining authority (“DEA”) to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.⁸ When an SRO has been named as a common member’s DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d–1 deals only with an SRO’s obligations to enforce member compliance with financial responsibility requirements. Rule 17d–1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d–2 under the Act.⁹ Rule 17d–2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d–2, the Commission may declare such a plan effective if, after providing for appropriate notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors; to foster cooperation and coordination among the SROs; to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system; and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d–2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

⁷ 17 CFR 240.17d–1 and 17 CFR 240.17d–2, respectively.

⁸ See Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

⁹ See Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

II. The Plan

The proposed 17d–2 Plan is intended to reduce regulatory duplication for firms that are common members of both BOX and FINRA.¹⁰ Pursuant to the proposed 17d–2 Plan, FINRA would assume certain examination and enforcement responsibilities for common members with respect to certain applicable laws, rules, and regulations.

The text of the Plan delineates the proposed regulatory responsibilities with respect to the Parties. Included in the proposed Plan is an exhibit (the “BOX Options Exchange LLC Rules Certification for 17d–2 Agreement with FINRA,” referred to herein as the “Certification”) that lists every BOX rule for which FINRA would bear responsibility under the Plan for overseeing and enforcing with respect to BOX members that are also members of FINRA and the associated persons therewith (“Dual Members”).

Specifically, under the 17d–2 Plan, FINRA would assume examination and enforcement responsibility relating to compliance by Dual Members with the rules of BOX that are substantially similar to the applicable rules of FINRA.¹¹ delineated in the Certification (“Common Rules”). In the event that a Dual Member is the subject of an investigation relating to a transaction on BOX, the plan acknowledges that BOX may, in its discretion, exercise concurrent jurisdiction and responsibility for such matter.¹²

Under the Plan, BOX would retain full responsibility for surveillance, examination, investigation, and enforcement with respect to trading activities or practices involving BOX’s own marketplace, including, without limitation, registration pursuant to its applicable rules of associated persons (*i.e.*, registration rules that are not Common Rules); its duties as a DEA pursuant to Rule 17d–1 under the Act; and any BOX rules that are not Common Rules.¹³

The text of the proposed 17d–2 Plan is as follows:

¹⁰ The proposed 17d–2 Plan refers to these common members as “Dual Members.” See Paragraph 1(c) of the proposed 17d–2 Plan.

¹¹ See paragraph 1(b) of the proposed 17d–2 Plan (defining Common Rules). See also paragraph 1(f) of the proposed 17d–2 Plan (defining Regulatory Responsibilities). Paragraph 2 of the Plan provides that annually, or more frequently as required by changes in either BOX rules or FINRA rules, the parties shall review and update, if necessary, the list of Common Rules. Further, paragraph 3 of the Plan provides that BOX shall furnish FINRA with a list of Dual Members, and shall update the list no less frequently than once each calendar quarter.

¹² See paragraph 6 of the proposed 17d–2 Plan.

¹³ See paragraph 2 of the proposed 17d–2 Plan.

¹ 15 U.S.C. 78q(d).

² 17 CFR 240.17d–2.

³ 15 U.S.C. 78s(g)(1).

⁴ 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2), respectively.

⁵ 15 U.S.C. 78q(d)(1).

⁶ See Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session 32 (1975).

AGREEMENT BETWEEN FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC. AND BOX OPTIONS EXCHANGE LLC PURSUANT TO RULE 17d-2 UNDER THE SECURITIES EXCHANGE ACT OF 1934

This Agreement, by and between the Financial Industry Regulatory Authority, Inc. ("FINRA") and BOX Options Exchange LLC ("BOX"), is made this 2nd day of March, 2017 (the "Agreement"), pursuant to Section 17(d) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 17d-2 thereunder, which permits agreements between self-regulatory organizations to allocate regulatory responsibility to eliminate regulatory duplication. FINRA and BOX may be referred to individually as a "party" and together as the "parties."

Whereas, FINRA and BOX desire to reduce duplication in the examination of their Dual Members (as defined herein) and in the filing and processing of certain registration and membership records; and

Whereas, FINRA and BOX desire to execute an agreement covering such subjects pursuant to the provisions of Rule 17d-2 under the Exchange Act and to file such agreement with the Securities and Exchange Commission (the "SEC" or "Commission") for its approval.

Now, Therefore, in consideration of the mutual covenants contained hereinafter, FINRA and BOX hereby agree as follows:

1. Definitions. Unless otherwise defined in this Agreement or the context otherwise requires, the terms used in this Agreement shall have the same meaning as they have under the Exchange Act and the rules and regulations thereunder. As used in this Agreement, the following terms shall have the following meanings:

(a) "BOX Rules" or "FINRA Rules" shall mean: (i) the rules of BOX, or (ii) the rules of FINRA, respectively, as the rules of an exchange or association are defined in Exchange Act Section 3(a)(27).

(b) "Common Rules" shall mean BOX Rules that are substantially similar to the applicable FINRA Rules and certain provisions of the Exchange Act and SEC rules set forth on *Exhibit 1* in that examination for compliance with such provisions and rules would not require FINRA to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the provision or rule, or a Dual Member's activity, conduct, or output in relation to such provision or rule. Common Rules shall not include any provisions regarding (i) notice, reporting or any other filings made directly to or from BOX, (ii) compliance with other referenced BOX Rules that are not Common Rules, (iii) exercise of discretion including, but not limited to exercise of exemptive authority, by BOX, (iv) prior written approval of BOX and (v) payment of fees or fines to BOX.

(c) "Dual Members" shall mean those BOX members that are also members of FINRA and the associated persons therewith.

(d) "Effective Date" shall be the date this Agreement is approved by the Commission.

(e) "Enforcement Responsibilities" shall mean the conduct of appropriate proceedings, in accordance with FINRA's Code of Procedure (the Rule 9000 Series) and

other applicable FINRA procedural rules, to determine whether violations of Common Rules have occurred, and if such violations are deemed to have occurred, the imposition of appropriate sanctions as specified under FINRA's Code of Procedure and sanctions guidelines.

(f) "Regulatory Responsibilities" shall mean the examination responsibilities and Enforcement Responsibilities relating to compliance by the Dual Members with the Common Rules and the provisions of the Exchange Act and the rules and regulations thereunder, and other applicable laws, rules and regulations, each as set forth on *Exhibit 1* attached hereto.

2. Regulatory and Enforcement Responsibilities. FINRA shall assume Regulatory Responsibilities and Enforcement Responsibilities for Dual Members. Attached as *Exhibit 1* to this Agreement and made part hereof, BOX furnished FINRA with a current list of Common Rules and certified to FINRA that such rules that are BOX Rules are substantially similar to the corresponding FINRA Rules (the "Certification"). FINRA hereby agrees that the rules listed in the Certification are Common Rules as defined in this Agreement. Each year following the Effective Date of this Agreement, or more frequently if required by changes in either the rules of BOX or FINRA, BOX shall submit an updated list of Common Rules to FINRA for review which shall add BOX Rules not included in the current list of Common Rules that qualify as Common Rules as defined in this Agreement; delete BOX Rules included in the current list of Common Rules that no longer qualify as Common Rules as defined in this Agreement; and confirm that the remaining rules on the current list of Common Rules continue to be BOX Rules that qualify as Common Rules as defined in this Agreement. Within 30 days of receipt of such updated list, FINRA shall confirm in writing whether the rules listed in any updated list are Common Rules as defined in this Agreement. Notwithstanding anything herein to the contrary, it is explicitly understood that the term "Regulatory Responsibilities" does not include, and BOX shall retain full responsibility for (unless otherwise addressed by separate agreement or rule) (collectively, the "Retained Responsibilities") the following:

(a) surveillance, examination, investigation and enforcement with respect to trading activities or practices involving BOX's own marketplace;

(b) registration pursuant to its applicable rules of associated persons (i.e., registration rules that are not Common Rules);

(c) discharge of its duties and obligations as a Designated Examining Authority pursuant to Rule 17d-1 under the Exchange Act; and

(d) any BOX Rules that are not Common Rules as provided in paragraph 6.

3. Dual Members. Prior to the Effective Date, BOX shall furnish FINRA with a current list of Dual Members, which shall be updated no less frequently than once each quarter.

4. No Charge. There shall be no charge to BOX by FINRA for performing the Regulatory Responsibilities and Enforcement

Responsibilities under this Agreement except as hereinafter provided. FINRA shall provide BOX with ninety (90) days advance written notice in the event FINRA decides to impose any charges to BOX for performing the Regulatory Responsibilities under this Agreement. If FINRA determines to impose a charge, BOX shall have the right at the time of the imposition of such charge to terminate this Agreement; provided, however, that FINRA's Regulatory Responsibilities under this Agreement shall continue until the Commission approves the termination of this Agreement.

5. Applicability of Certain Laws, Rules, Regulations or Orders. Notwithstanding any provision hereof, this Agreement shall be subject to any statute, or any rule or order of the SEC. To the extent such statute, rule or order is inconsistent with one or more provisions of this Agreement, the statute, rule or order shall supersede the provision(s) hereof to the extent necessary to be properly effectuated and the provision(s) hereof in that respect shall be null and void.

6. Notification of Violations. In the event that FINRA becomes aware of apparent violations of any BOX Rules, which are not listed as Common Rules, discovered pursuant to the performance of the Regulatory Responsibilities assumed hereunder, FINRA shall notify BOX of those apparent violations for such response as BOX deems appropriate. In the event that BOX becomes aware of apparent violations of any Common Rules, discovered pursuant to the performance of the Retained Responsibilities, BOX shall notify FINRA of those apparent violations and such matters shall be handled by FINRA as provided in this Agreement. Apparent violations of Common Rules shall be processed by, and enforcement proceedings in respect thereto shall be conducted by FINRA as provided hereinbefore; provided, however, that in the event a Dual Member is the subject of an investigation relating to a transaction on BOX, BOX may in its discretion assume concurrent jurisdiction and responsibility. Each party agrees to make available promptly all files, records and witnesses necessary to assist the other in its investigation or proceedings.

7. Continued Assistance.

(a) FINRA shall make available to BOX all information obtained by FINRA in the performance by it of the Regulatory Responsibilities hereunder with respect to the Dual Members subject to this Agreement. In particular, and not in limitation of the foregoing, FINRA shall furnish BOX any information it obtains about Dual Members which reflects adversely on their financial condition. BOX shall make available to FINRA any information coming to its attention that reflects adversely on the financial condition of Dual Members or indicates possible violations of applicable laws, rules or regulations by such firms.

(b) The parties agree that documents or information shared shall be held in confidence, and used only for the purposes of carrying out their respective regulatory obligations. Neither party shall assert regulatory or other privileges as against the other with respect to documents or information that is required to be shared pursuant to this Agreement.

(c) The sharing of documents or information between the parties pursuant to this Agreement shall not be deemed a waiver as against third parties of regulatory or other privileges relating to the discovery of documents or information.

8. Statutory Disqualifications. When FINRA becomes aware of a statutory disqualification as defined in the Exchange Act with respect to a Dual Member, FINRA shall determine pursuant to Sections 15A(g) and/or Section 6(c) of the Exchange Act the acceptability or continued applicability of the person to whom such disqualification applies and keep BOX advised of its actions in this regard for such subsequent proceedings as BOX may initiate.

9. Customer Complaints. BOX shall forward to FINRA copies of all customer complaints involving Dual Members received by BOX relating to FINRA's Regulatory Responsibilities under this Agreement. It shall be FINRA's responsibility to review and take appropriate action in respect to such complaints.

10. Advertising. FINRA shall assume Regulatory Responsibility, to the extent applicable, to review the advertising of Dual Members subject to the Agreement, provided that such material is filed with FINRA in accordance with FINRA's filing procedures and is accompanied with any applicable filing fees set forth in FINRA Rules.

11. No Restrictions on Regulatory Action. Nothing contained in this Agreement shall restrict or in any way encumber the right of either party to conduct its own independent or concurrent investigation, examination or enforcement proceeding of or against Dual Members, as either party, in its sole discretion, shall deem appropriate or necessary.

12. Termination. This Agreement may be terminated by BOX or FINRA at any time upon the approval of the Commission after one (1) year's written notice to the other party (or such shorter time as agreed by the parties), except as provided in paragraph 4.

13. Arbitration. In the event of a dispute between the parties as to the operation of this Agreement, BOX and FINRA hereby agree that any such dispute shall be settled by arbitration in Washington, DC in accordance with the rules of the American Arbitration Association then in effect, or such other procedures as the parties may mutually agree upon. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. Each party acknowledges that the timely and complete performance of its obligations pursuant to this Agreement is critical to the business and operations of the other party. In the event of a dispute between the parties, the parties shall continue to perform their respective obligations under this Agreement in good faith during the

resolution of such dispute unless and until this Agreement is terminated in accordance with its provisions. Nothing in this Section 13 shall interfere with a party's right to terminate this Agreement as set forth herein.

14. Separate Agreement. This Agreement is wholly separate from the following agreement: (1) The multiparty Agreement made pursuant to Rule 17d-2 of the Exchange Act among BATS Exchange, Inc., BOX Options Exchange, LLC, Chicago Board Options Exchange, Incorporated, C2 Options Exchange, Incorporated, the International Securities Exchange, LLC, FINRA, Miami International Securities Exchange, LLC, NYSE MKT LLC, the NYSE Arca, Inc., The NASDAQ Stock Market LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, ISE Gemini, LLC, EDGX Exchange, Inc., ISE Mercury, LLC and MIAx PEARL, LLC involving the allocation of regulatory responsibilities with respect to common members for compliance with common rules relating to the conduct by broker-dealers of accounts for listed options or index warrants entered as approved by the SEC on February 2, 2017, and as may be amended from time to time; and (2) the multiparty Agreement made pursuant to Rule 17d-2 of the Exchange Act among NYSE MKT LLC, BATS Exchange, Inc., EDGX Exchange, Inc., BOX Options Exchange LLC, NASDAQ OMX BX, Inc., C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, International Securities Exchange LLC, ISE Gemini, LLC, ISE Mercury, LLC, FINRA, NYSE Arca, Inc., The NASDAQ Stock Market LLC, NASDAQ OMX PHLX, Inc., Miami International Securities Exchange, LLC and MIAx PEARL, LLC involving the allocation of regulatory responsibilities with respect to SRO market surveillance of common members activities with regard to certain common rules relating to listed options approved by the SEC on February 2, 2017, and as may be amended from time to time.

15. Notification of Members. BOX and FINRA shall notify Dual Members of this Agreement after the Effective Date by means of a uniform joint notice.

16. Amendment. This Agreement may be amended in writing provided that the changes are approved by both parties. All such amendments must be filed with and approved by the Commission before they become effective.

17. Limitation of Liability. Neither FINRA nor BOX nor any of their respective directors, governors, officers or employees shall be liable to the other party to this Agreement for any liability, loss or damage resulting from or claimed to have resulted from any delays, inaccuracies, errors or omissions with respect to the provision of Regulatory Responsibilities as provided hereby or for the

failure to provide any such responsibility, except with respect to such liability, loss or damages as shall have been suffered by one or the other of FINRA or BOX and caused by the willful misconduct of the other party or their respective directors, governors, officers or employees. No warranties, express or implied, are made by FINRA or BOX with respect to any of the responsibilities to be performed by each of them hereunder.

18. Relief from Responsibility. Pursuant to Sections 17(d)(1)(A) and 19(g) of the Exchange Act and Rule 17d-2 thereunder, FINRA and BOX join in requesting the Commission, upon its approval of this Agreement or any part thereof, to relieve BOX of any and all responsibilities with respect to matters allocated to FINRA pursuant to this Agreement; provided, however, that this Agreement shall not be effective until the Effective Date.

19. Severability. Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

20. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and such counterparts together shall constitute one and the same instrument.

In Witness Whereof, each party has executed or caused this Agreement to be executed on its behalf by a duly authorized officer as of the date first written above.

BOX OPTIONS EXCHANGE LLC.

By _____

Name

Title

FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.

By _____

Name

Title

EXHIBIT 1

BOX Options Exchange LLC Rules Certification for 17d-2 Agreement With FINRA

BOX Options Exchange LLC ("BOX") hereby certifies that the requirements contained in the rules listed below are identical to, or substantially similar to, the comparable FINRA (NASD) Rule, Exchange Act provision or SEC rule identified ("Common Rules").

BOX RULES	FINRA (NASD) RULES, EXCHANGE ACT PROVISION OR SEC RULE
BOX Rule 3210 (a) and (b)	FINRA Rule 2251 Processing and Forwarding of Proxy and Other Issuer-Related Materials.

BOX RULES	FINRA (NASD) RULES, EXCHANGE ACT PROVISION OR SEC RULE
BOX Rule 10070 Anti-Money Laundering Compliance Program #	FINRA Rule 3310 Anti-Money Laundering Compliance Program.

* FINRA shall not have Regulatory Responsibilities for these rules as they pertain to violations of insider trading activities, which is covered by a separate 17d-2 Agreement by and among BATS BZX Exchange, Inc., BATS BYX Y-Exchange, Inc., Chicago Stock Exchange, Inc., BATS EDGA Exchange, Inc., BATS EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ BX, Inc., NASDAQ PHLX LLC, the NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca Inc., effective August 3, 2016, as may be amended from time to time.

FINRA shall not have any Regulatory Responsibilities regarding (i) notice, reporting or any other filings made directly to or from BOX, (ii) compliance with other referenced BOX Rules that are not Common Rules, (iii) exercise of discretion including, but not limited to exercise of exemptive authority, by BOX, (iv) prior written approval of BOX and (v) payment of fees or fines to BOX.

IV. Solicitation of Comments

In order to assist the Commission in determining whether to approve the proposed 17d-2 Plan and to relieve BOX of the responsibilities which would be assigned to FINRA, interested persons are invited to submit written data, views, and arguments concerning the foregoing. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/other.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number 4-709 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number 4-709. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/other.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the plan also will be available for inspection and copying at the principal offices of BOX and FINRA. All comments received will be posted without change; the Commission does not edit personal

identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number 4-709 and should be submitted on or before April 5, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017-05506 Filed 3-20-17; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80255; File No. SR-FINRA-2017-003]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Adopt the FINRA Rule 6800 Series (Consolidated Audit Trail Compliance Rule)

March 15, 2017.

I. Introduction

On January 31, 2017, Financial Industry Regulatory Authority, Inc. ("FINRA") 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 adopt the FINRA Rule 6800 Series, to implement the compliance rules regarding the National Market System Plan Governing the Consolidated Audit Trail (the "CAT NMS Plan" or "Plan").³ The proposed rule change was published for comment in the **Federal Register** on February 9,

2017.⁴ The Commission received 3 comments in response to the proposed rule change.⁵ On March 15, the Participants⁶ submitted a response to the comment letters.⁷ This order approves the proposed rule change.⁸

II. Background

On September 30, 2014, Bats BYX Exchange, Inc.; Bats BZX Exchange, Inc.; Bats EDGA Exchange, Inc.; Bats EDGX Exchange, Inc.; BOX Options Exchange LLC; C2 Options Exchange, Incorporated; Chicago Board Options Exchange, Incorporated; Chicago Stock Exchange, Inc.; FINRA; International Securities Exchange, LLC; Investors' Exchange LLC; ISE Gemini, LLC; ISE Mercury, LLC; Miami International Securities Exchange LLC; MIAX PEARL, LLC; NASDAQ BX, Inc.; NASDAQ PHLX LLC; The NASDAQ Stock Market LLC; National Stock Exchange, Inc.; New York Stock Exchange LLC; NYSE MKT LLC; and NYSE Arca, Inc. (collectively, the "Participants") filed with the Commission, pursuant to Section 11A of the Exchange Act⁹ and Rule 608 of Regulation NMS thereunder,¹⁰ the CAT NMS Plan.¹¹ The

⁴ Securities Exchange Act Release No. 79961 (February 3, 2017), 82 FR 10073 ("Notice").

⁵ See letter from William H. Herbert, Managing Director, Financial Information Forum, dated March 1, 2017 ("FIF Letter"); letter from Bonnie Wachtel, Wachtel & Co Inc., dated March 2, 2017 ("Wachtel Letter"); and letter from Manisha Kimmel, Chief Regulatory Officer, Wealth Management, Thomson Reuters, dated March 2, 2017 ("Thomson Reuters Letter").

⁶ See *infra* Section II.

⁷ See Letter from Participants to Brent J. Fields, Secretary, Commission, dated March 15, 2017 ("Participants' Response Letter"). The Participants note that because all the Participants filed rules similar to FINRA's proposed 6800 Series, the Participants' Response Letter is submitted on behalf of all Participants and applicable to all the Participants' proposed rules implementing the CAT NMS Plan ("Participant Proposed Compliance Rules"). Participants' Response Letter at 1.

⁸ The Commission notes that for purposes of this Order, unless otherwise specified, capitalized terms used are defined as set forth in the Notice or in the CAT NMS Plan.

⁹ 15 U.S.C. 78k-1.

¹⁰ 17 CFR 242.608.

¹¹ See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30,

Continued

¹⁴ 17 CFR 200.30-3(a)(34).

¹⁵ U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ FINRA originally filed this proposed rule change on January 17, 2017 under File No. SR-FINRA-2017-002; FINRA subsequently withdrew that filing on January 30, 2017 and filed this proposed rule change.

Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act.¹² The Plan was published for comment in the **Federal Register** on May 17, 2016,¹³ and approved by the Commission, as modified, on November 15, 2016.¹⁴

The Plan is designed to create, implement and maintain a consolidated audit trail (“CAT”) that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. Each Participant is required to enforce compliance by its Industry Members, as applicable, with the provisions of the Plan, by adopting a Compliance Rule applicable to their Industry Members.¹⁵ FINRA’s proposed Rule 6800 Series sets forth FINRA’s “Audit Trail Compliance Rule” implementing provisions of the CAT NMS Plan that are applicable to FINRA members.¹⁶

III. Description of the Proposed Rule Change

The proposed Rule 6800 Series includes twelve rules covering the following areas: (1) Definitions; (2) clock synchronization; (3) Industry Member Data reporting; (4) Customer information reporting; (5) Industry Member information reporting; (6) time stamps; (7) clock synchronization rule violations; (8) connectivity and data transmission; (9) development and testing; (10) recordkeeping; (11) timely, accurate and complete data; and (12) compliance dates.

A. Definitions (Rule 6810)

Proposed Rule 6810 sets forth the definitions for the terms used in the

proposed Rule 6800 Series. Each of the defined terms in proposed Rule 6810 is discussed below.

1. Account Effective Date

(a) Customer Information Approach

Rule 613 of Regulation NMS requires that certain data elements be reported to the CAT to enable regulators to identify Customers associated with orders. FINRA notes that Rule 613(c)(7)(i)(A) requires an Industry Member to report the “Customer-ID” for each Customer for the original receipt or origination of an order,¹⁷ and that “Customer-ID” is defined in Rule 613(j)(5) to mean “with respect to a customer, a code that uniquely and consistently identifies such customer for purposes of providing data to the Central Repository.”¹⁸ Rule 613(c)(8) requires Industry Members to use the same Customer-ID for each Customer.¹⁹ FINRA notes that the Commission granted the Participants exemptive relief to permit the use of an alternative approach to the requirement that an Industry Member report a Customer-ID for every Customer upon original receipt or origination.²⁰ The alternative approach is called the “Customer Information Approach.”

FINRA states that under the Customer Information Approach, the CAT NMS Plan requires each Industry Member to assign a unique Firm Designated ID to each Customer, and that for the Firm Designated ID, Industry Members are permitted to use an account number or any other identifier defined by the firm, provided each identifier is unique across the firm for each business date (*i.e.*, a single firm may not have multiple separate customers with the same identifier on any given date).²¹ Prior to their commencement of reporting to the CAT, Industry Members must submit an initial set of Customer information to the Central Repository, including the Firm Designated ID, Customer Identifying Information and Customer Account Information (which may include, as applicable, the Customer’s name, address, date of birth, individual tax payer identifier number (“ITIN”)/social security number (“SSN”), individual’s role in the account (*e.g.*, primary holder, joint holder, guardian, trustee, person with power of attorney)

and Legal Entity Identifier (“LEI”) and/or Large Trader ID (“LTID”)). This process is referred to as the “customer definition process.”

FINRA noted that in accordance with the Customer Information Approach, Industry Members are required to report only the Firm Designated ID for each new order submitted to the Central Repository, rather than the “Customer-ID” with individual order events. Within the Central Repository, each Customer will be uniquely identified by identifiers or a combination of identifiers such as ITIN/SSN, date of birth, and as applicable, LEI and LTID. The Plan Processor will be required to use these unique identifiers to map orders to specific Customers across all Industry Members and Participants. To ensure information identifying a Customer is up to date, Industry Members will be required to submit to the Central Repository daily and periodic updates for reactivated accounts, newly established accounts, and revised Firm Designated IDs or associated reportable Customer information.

(b) Definition of Account Effective Date

In connection with the Customer Information Approach, Industry Members will be required to report “Customer Account Information” to the Central Repository. “Customer Account Information” is defined in Rule 613(j)(4) to “include, but not be limited to, account number, account type, customer type, date account opened, and large trader identifier (if applicable).”²² Therefore, when reporting Customer Account Information, an Industry Member is required to report the date an account was opened. FINRA notes that the Participants requested and received from the Commission an exemption to allow an “Account Effective Date” to be reported in lieu of an account open date in certain limited circumstances.²³ The definition of “Account Effective Date” as set forth in paragraph (a) of proposed Rule 6810 describes those limited circumstances in which an Industry Member may report an “Account Effective Date” rather than the account open date. FINRA states that the proposed definition is the same as the definition of “Account Effective Date” set forth in Section 1.1 of the CAT NMS Plan, provided, however, that specific

2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. See Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015. The CAT NMS Plan was approved by the Commission, with limited changes made by the Commission, on November 15, 2016. See *infra* note 14.

¹² 17 CFR 242.613.

¹³ Securities Exchange Act Release No. 77724 (April 27, 2016), 81 FR 30614 (May 17, 2016).

¹⁴ Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (“Approval Order”).

¹⁵ See 17 CFR 242.613(g)(1).

¹⁶ The Commission notes that the CAT NMS Plan defines an “Industry Member” as a member of a national securities exchange or a member of a national securities association. CAT NMS Plan, *supra* note 11 at Section 1.1. Because FINRA’s proposed Rule 6800 Series implements the CAT NMS Plan, the term “Industry Member” is used throughout Series. For purposes of proposed Rule 6800 Series, the term “Industry Member” means a FINRA member.

¹⁷ 17 CFR 242.613(c)(7)(i)(A).

¹⁸ 17 CFR 242.613(j)(5).

¹⁹ 17 CFR 242.613(c)(8).

²⁰ See Securities Exchange Act Release No. 77265 (March 1, 2016), 81 FR 11856 (March 7, 2016) (“Exemption Order”). See also Letter from Participants to Brent J. Fields, Secretary, Commission, dated January 30, 2015 (“Exemptive Request Letter”).

²¹ See *infra* Section III.A.17 for a discussion of the application of the term “Firm Designated ID.”

²² 17 CFR 242.613(j)(4).

²³ On September 2, 2015, the Participants filed a supplement to the Exemptive Request Letter. See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 2, 2015. This supplement to the Exemptive Request Letter further addressed the use of an “effective date” in lieu of a “date account opened.”

dates have replaced the descriptions of those dates set forth in Section 1.1 of the Plan.

Specifically, paragraph (a)(1) defines “Account Effective Date” to mean, with regard to those circumstances in which an Industry Member has established a trading relationship with an institution but has not established an account with that institution: (1) When the trading relationship was established prior to November 15, 2018 for Industry Members other than Small Industry Members, or prior to November 15, 2019 for Small Industry Members, either (a) the date the relationship identifier was established within the Industry Member; (b) the date when trading began (*i.e.*, the date the first order was received) using the relevant relationship identifier; or (c) if both dates are available, the earlier date will be used to the extent that the dates differ; or (2) when the trading relationship was established on or after November 15, 2018 for Industry Members other than Small Industry Members, or on or after November 15, 2019 for Small Industry Members, the date the Industry Member established the relationship identifier, which would be no later than the date the first order was received.

Paragraph (a)(2) of proposed Rule 6810 states that an “Account Effective Date” means, where an Industry Member changes back office providers or clearing firms prior to November 15, 2018 for Industry Members other than Small Industry Members, or prior to November 15, 2019 for Small Industry Members, the date an account was established at the relevant Industry Member, either directly or via transfer.

Paragraph (a)(3) of proposed Rule 6810 states that an “Account Effective Date” means, where an Industry Member acquires another Industry Member prior to November 15, 2018 for Industry Members other than Small Industry Members, or prior to November 15, 2019 for Small Industry Members, the date an account was established at the relevant Industry Member, either directly or via transfer.

Paragraph (a)(4) of proposed Rule 6810 states that “Account Effective Date” means, where there are multiple dates associated with an account established prior to November 15, 2018 for Industry Members other than Small Industry Members, or prior to November 15, 2019 for Small Industry Members, the earliest available date.

Paragraph (a)(5) of proposed Rule 6810 states that an “Account Effective Date” means, with regard to Industry Member proprietary accounts established prior to November 15, 2018 for Industry Members other than Small

Industry Members, or prior to November 15, 2019 for Small Industry Members: (1) The date established for the account in the Industry Member or in a system of the Industry Member or (2) the date when proprietary trading began in the account (*i.e.*, the date on which the first orders were submitted from the account). In addition, proposed Rule 6810(a)(5) states that with regard to proposed Rule 6810(a)(2)–(5), the Account Effective Date will be no later than the date trading occurs at the Industry Member or in the Industry Member’s system.

2. Active Accounts

Under the Customer Information Approach, Industry Members are required to report Customer Identifying Information and Customer Account Information for only those accounts that are active. Accordingly, paragraph (b) of proposed Rule 6810 defines a “Active Accounts” as an account that has had activity in Eligible Securities within the last six months. FINRA states that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

3. Allocation Report

(a) Allocation Report Approach

Rule 613(c)(7)(vi)(A) of Regulation NMS requires each Industry Member to record and report to the Central Repository “the account number for any subaccounts to which the execution is allocated (in whole or in part).”²⁴ FINRA noted that the Participants requested and received from the Commission exemptive relief from Rule 613 for an alternative to this approach (“Allocation Report Approach”).²⁵ The Allocation Report Approach permits Industry Members to record and report to the Central Repository an Allocation Report that includes, among other things, the Firm Designated ID for any account(s) to which executed shares are allocated when an execution is allocated in whole or part in lieu of requiring the reporting of the account number for any subaccount to which an execution is allocated, as is required by Rule 613.²⁶ Under Rule 613, regulators would be able to link the subaccount to which an allocation was made to a specific order. In contrast, under the Allocation Report Approach, regulators would only be

able to link an allocation to the account to which it was made, and not to a specific order.

(b) Definition of Allocation Report

To assist in implementing the Allocation Report Approach, paragraph (c) of proposed Rule 6810 defines an “Allocation Report.” Specifically, an “Allocation Report” means a report made to the Central Repository by an Industry Member that identifies the Firm Designated ID for any account(s), including subaccount(s), to which executed shares are allocated and provides the security that has been allocated, the identifier of the firm reporting the allocation, the price per share of shares allocated, the side of shares allocated, the number of shares allocated to each account, and the time of the allocation; provided, for the avoidance of doubt, any such Allocation Report shall not be required to be linked to particular orders or executions. FINRA states that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

4. Business Clock

To create the required audit trail, Industry Members are required to record the date and time of various Reportable Events to the Central Repository. Industry Members will use “Business Clocks” to record such dates and times. Accordingly, paragraph (d) of proposed Rule 6810 defines the term “Business Clock” as a clock used to record the date and time of any Reportable Event required to be reported under this Rule 6800 Series. FINRA states that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan, except FINRA proposes to replace the phrase “under SEC Rule 613” at the end of the definition in Section 1.1 of the Plan with the phrase “under this Rule Series.” FINRA represents that this change is intended to recognize that the Industry Members’ obligations with regard to the CAT are set forth in this Rule 6800 Series.

5. CAT

Paragraph (e) of proposed Rule 6810 defines the term “CAT” to mean the consolidated audit trail contemplated by Rule 613. FINRA states that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

6. CAT NMS Plan

Paragraph (f) of proposed Rule 6810 defines the term “CAT NMS Plan” to mean the National Market System Plan Governing the Consolidated Audit Trail, as amended from time to time.

²⁴ 17 CFR 242.613(c)(7)(vi)(A).

²⁵ On April 3, 2015, the Participants filed a supplement related to their Exemptive Request Letter. See Letter from Robert Colby, FINRA, on behalf of the Participants, to Brent J. Fields, Secretary, Commission, dated April 3, 2015. This supplement provided examples of how the proposed relief related to allocations would operate.

²⁶ See Exemptive Request Letter, *supra* note 20, at 26–27; Exemption Order, *supra* note 20.

7. CAT-Order-ID

(a) Daisy Chain Approach

FINRA states that under the CAT NMS Plan, a “daisy chain approach” would be used to link and reconstruct the complete lifecycle of each Reportable Event in CAT. According to this approach, Industry Members would assign their own identifiers to each order event. Within the Central Repository, the Plan Processor would replace the identifier provided by the Industry Member for each Reportable Event with a single identifier, called the CAT Order-ID, for all order events pertaining to the same order. This CAT Order-ID would be used to link the Reportable Events related to the same order.

(b) Definition of CAT-Order-ID

To implement a daisy chain approach, FINRA proposes to define the term “CAT-Order-ID” to mean a unique order identifier or series of unique order identifiers that allows the Central Repository to efficiently and accurately link all Reportable Events for an order, and all orders that result from the aggregation or disaggregation of such order. FINRA states that this is the same definition as set forth in Rule 613(j)(1), and Section 1.1 of the CAT NMS Plan defines “CAT-Order-ID” by reference to Rule 613(j)(1) of Regulation NMS.²⁷

8. CAT Reporting Agent

The CAT NMS Plan permits an Industry Member to use a third party, such as a vendor, to report the required data to the Central Repository on behalf of the Industry Member.²⁸ FINRA states that such a third party, referred to in this proposed Rule 6800 Series as a “CAT Reporting Agent,” would be one type of a Data Submitter,²⁹ as that term is used in the CAT NMS Plan. Therefore, proposed Rule 6810 defines the term “CAT Reporting Agent” to mean a Data Submitter that is a third party that enters into an agreement with an Industry Member pursuant to which the CAT Reporting Agent agrees to fulfill such Industry Member’s obligations under this Rule 6800 Series.³⁰

9. Central Repository

Paragraph (i) of proposed Rule 6810 defines the term “Central Repository” to mean the repository responsible for the receipt, consolidation, and retention of all information reported to the CAT pursuant to Rule 613 of Regulation NMS and the CAT NMS Plan. FINRA states that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan, except FINRA uses the phrase “CAT NMS Plan” in place of the phrase “this Agreement.”

10. Compliance Threshold

Proposed Rule 6810 states that the term “Compliance Threshold” has the meaning set forth in proposed Rule 6893(d), which proposed Rule is described and discussed below. FINRA states that this definition has the same substantive meaning as the definition set forth in Section 1.1 of the CAT NMS Plan.

11. Customer

Industry Members are required to submit to the Central Repository certain information related to their Customers, including Customer Identifying Information and Customer Account Information, as well as data related to their Customer’s Reportable Events. Accordingly, paragraph (k) of proposed Rule 6810 proposes to define the term “Customer.” Specifically, the term “Customer” is defined to mean: (1) the account holder(s) of the account at an Industry Member originating the order; and (2) any person from whom the Industry Member is authorized to accept trading instructions for such account, if different from the account holder(s). FINRA states that this is the same definition as set forth in Rule 613(j)(3), except FINRA proposes to replace the references to a registered broker-dealer or broker-dealer with a reference to an Industry Member for consistency of terms used in the proposed Rule 6800 Series.³¹ FINRA also notes that Section 1.1 of the CAT NMS Plan defines “Customer” by reference to Rule 613(j)(3).

12. Customer Account Information

As discussed above, under the Customer Information Approach, Industry Members are required to report Customer Account Information to the Central Repository as part of the customer definition process. Accordingly, FINRA proposes to define the term “Customer Account

Information” to clarify what customer information would need to be reported to the Central Repository.

Paragraph (l) of proposed Rule 6810 defines the term “Customer Account Information” to include, in part, account number, account type, customer type, date account opened, and large trader identifier (if applicable). Proposed Rule 6810(l), however, provides an alternative definition of “Customer Account Information” in two limited circumstances. First, in those circumstances in which an Industry Member has established a trading relationship with an institution but has not established an account with that institution, the Industry Member will: (1) Provide the Account Effective Date in lieu of the “date account opened”; (2) provide the relationship identifier in lieu of the “account number”; and (3) identify the “account type” as a “relationship.” Second, in those circumstances in which the relevant account was established prior to November 15, 2018 for Industry Members other than Small Industry Members, or prior to November 15, 2019 for Small Industry Members, and no “date account opened” is available for the account, the Industry Member will provide the Account Effective Date in the following circumstances: (1) Where an Industry Member changes back office providers or clearing firms and the date account opened is changed to the date the account was opened on the new back office/clearing firm system; (2) where an Industry Member acquires another Industry Member and the date account opened is changed to the date the account was opened on the post-merger back office/clearing firm system; (3) where there are multiple dates associated with an account in an Industry Member’s system, and the parameters of each date are determined by the individual Industry Member; and (4) where the relevant account is an Industry Member proprietary account. The proposed definition is the same as the definition of “Customer Account Information” set forth in Section 1.1 of the CAT NMS Plan, provided, however, that specific dates have replaced the descriptions of those dates set forth in Section 1.1 of the Plan.

13. Customer Identifying Information

As discussed above, under the Customer Information Approach, Industry Members are required to report Customer Identifying Information to the Central Repository as part of the customer definition process. Accordingly, FINRA proposes to define the term “Customer Account Information” to include, but not be

²⁷ See 17 CFR 242.613(j)(1).

²⁸ See CAT NMS Plan, *supra* note 11 at Appendix C, Section A.1(a).

²⁹ See *infra* Section III.A.14 defining “Data Submitter.”

³⁰ FINRA also notes that this definition is based on FINRA’s definition of a “Reporting Agent” as set forth in FINRA’s Order Audit Trail System (“OATS”) rules. Specifically, Rule 7410(n) defines a “Reporting Agent” as a third party that enters into any agreement with a member pursuant to which the Reporting Agent agrees to fulfill such FINRA member’s reporting obligations under Rule 7450.

FINRA represents that the Reporting Agent for OATS fulfills a similar role to the CAT Reporting Agent.

³¹ 17 CFR 242.613(j)(3).

limited to: Name, address, date of birth, ITIN/SSN, individual's role in the account (e.g., primary holder, joint holder, guardian, trustee, person with the power of attorney). With respect to legal entities, "Customer Identifying Information" includes, but is not limited to, name, address, EIN/LEI or other comparable common entity identifier, if applicable. The definition further notes that an Industry Member that has an LEI for a Customer must submit the Customer's LEI in addition to other information of sufficient detail to identify the Customer. FINRA states that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

14. Data Submitter

The CAT NMS Plan uses the term "Data Submitter" to refer to any person that reports data to the Central Repository.³² Such Data Submitters may include those entities that are required to submit data to the Central Repository (e.g., national securities exchanges, national securities associations and Industry Members), third-parties that may submit data to the CAT on behalf of CAT Reporters (i.e., CAT Reporting Agents), and outside parties that are not required to submit data to the CAT but from which the CAT may receive data (e.g., securities information processors ("SIPs")). To include this term in the proposed Rule 6800 Series, FINRA proposes to define "Data Submitter" to mean any person that reports data to the Central Repository, including national securities exchanges, national securities associations, broker-dealers, the SIPs for the CQS, CTA, UTP and Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA") Plans, and certain other vendors or third parties that may submit data to the Central Repository on behalf of Industry Members.

15. Eligible Security

The reporting requirements of the proposed Rule 6800 Series only apply to Reportable Events in Eligible Securities. Currently, an Eligible Security includes NMS Securities and OTC Equity Securities. Accordingly, paragraph (o) of proposed Rule 6810 defines the term "Eligible Security" to include: (1) All NMS Securities; and (2) all OTC Equity Securities. FINRA states that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

16. Error Rate

(a) Generally

The CAT NMS Plan requires the Plan Processor to: (1) Measure and report errors every business day; (2) provide Industry Members daily statistics and error reports as they become available, including a description of such errors; (3) provide monthly reports to Industry Members that detail an Industry Member's performance and comparison statistics; (4) define educational and support programs for Industry Members to minimize Error Rates; and (5) identify, daily, all Industry Members exceeding the maximum allowable Error Rate. To timely correct data-submitted errors to the Central Repository, the CAT NMS Plan requires that the Central Repository receive and process error corrections at all times. Further, the CAT NMS Plan requires that Industry Members be able to submit error corrections to the Central Repository through a web-interface or via bulk uploads or file submissions, and that the Plan Processor, subject to the Operating Committee's approval, support the bulk replacement of records and the reprocessing of such records. The Participants, furthermore, require that the Plan Processor identify Industry Member data submission errors based on the Plan Processor's validation processes.³³

(b) Definition of Error Rate

To implement the requirements of the CAT NMS Plan related to the Error Rate, FINRA proposes to define the term "Error Rate" to mean the percentage of Reportable Events collected by the Central Repository in which the data reported does not fully and accurately reflect the order event that occurred in the market. FINRA states that this is the same definition as set forth in Rule 613(j)(6), and Section 1.1 of the CAT NMS Plan defines "Error Rate" by reference to Rule 613(j)(6).³⁴

(c) Maximum Error Rate

Under the CAT NMS Plan, the Operating Committee would set the maximum Error Rate that the Central Repository would tolerate from an Industry Member reporting data to the Central Repository.³⁵ The Operating Committee would review and reset the maximum Error Rate, at least annually.³⁶ If an Industry Member reports CAT data to the Central

Repository with errors such that their error percentage exceeds the maximum Error Rate, then such Industry Member would not be in compliance with the CAT NMS Plan or Rule 613.³⁷ FINRA states that, according to the CAT NMS Plan, FINRA or the SEC may take appropriate action against an Industry Member for failing to comply with its CAT reporting obligations.³⁸ The CAT NMS Plan sets the initial Error Rate at 5%.³⁹ FINRA stated that it is anticipated that the maximum Error Rate will be reviewed and lowered by the Operating Committee once Industry Members begin to report to the Central Repository.⁴⁰

17. Firm Designated ID

As discussed above, under the Customer Information Approach, the CAT NMS Plan requires each Industry Member to utilize a unique Firm Designated ID. Industry Members will be permitted to use as the Firm Designated ID an account number or any other identifier defined by the firm, provided each identifier is unique across the firm for each business date. Industry Members will be required to report only the Firm Designated ID for each new order submitted to the Central Repository, rather than the "Customer-ID" with individual order events. Accordingly, FINRA proposes to define the term "Firm Designated ID" in proposed Rule 6810 to mean a unique identifier for each trading account designated by Industry Members for purposes of providing data to the Central Repository, where each such identifier is unique among all identifiers from any given Industry Member for each business date. FINRA states that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan. Industry Members will be permitted to use an account number or any other identifier defined by the firm, provided each identifier is unique across the firm for each business date (i.e., a single firm may not have multiple separate customers with the same identifier on any given date).⁴¹

18. Industry Member

Proposed Rule 6810 defines the term "Industry Member" to mean "a member of a national securities exchange or a

³⁷ CAT NMS Plan, *supra* note 11 at Appendix C, Section A.3(b); 17 CFR 242.613(g)–(h).

³⁸ CAT NMS Plan, *supra* note 11 at Appendix C, Section A.3(b).

³⁹ CAT NMS Plan, *supra* note 11 at Section 6.5(d)(i).

⁴⁰ CAT NMS Plan, *supra* note 11 at Appendix C, Section A.3(b).

⁴¹ See *supra* Section IV for a discussion of the application of the term "Firm Designated ID."

³² See CAT NMS Plan, *supra* note 11 at Appendix C, Section A.1(a).

³³ Approval Order, *supra* note 14 at 84718.

³⁴ 17 CFR 242.613(j)(6).

³⁵ CAT NMS Plan, *supra* note 11 at Section 6.5(d)(i).

³⁶ CAT NMS Plan, *supra* note 11 at Appendix C, Section A.3(b).

member of a national securities association that is required to record and report information pursuant to the CAT NMS Plan and this Rule 6800 Series.” FINRA states that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan; however, FINRA proposes to add the phrase “that is required to record and report information pursuant to the CAT NMS Plan and this Rule 6800 Series” to clarify that FINRA members that do not handle orders in Eligible Securities are not subject to any of the rules in the proposed Rule 6800 Series.

19. Industry Member Data

Proposed Rule 6810 states that the term “Industry Member Data” has the meaning set forth in Rule 6830(a)(2). FINRA states that this definition has the same substantive meaning as the definition set forth in Section 1.1 of the CAT NMS Plan.

20. Initial Plan Processor

Proposed Rule 6810 defines the term “Initial Plan Processor” to mean the first Plan Processor selected by the Operating Committee in accordance with Rule 613, Section 6.1 of the CAT NMS Plan and the National Market System Plan Governing the Process for Selecting a Plan Processor and Developing a Plan for the Consolidated Audit Trail.⁴² FINRA states that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

21. Listed Option or Option

FINRA represented that the reporting requirements of the CAT NMS Plan and proposed Rule 6800 Series apply to Eligible Securities, which includes NMS Securities, which, in turn, includes Listed Options. Certain requirements of proposed Rule 6800 Series apply specifically to Listed Options. Accordingly, “Listed Option” or “Option” has the meaning set forth in

Rule 600(b)(35) of Regulation NMS.⁴³ Rule 600(b)(35) of Regulation NMS defines a listed option as “any option traded on a registered national securities exchange or automated facility of a national securities association.” FINRA states that the proposed definition of “Listed Option” is the same definition as the definition set forth in Section 1.1 of the CAT NMS Plan.

22. Manual Order Event

(a) Manual Order Event Approach

The CAT NMS Plan sets forth clock synchronization and timestamp requirements for Industry Members which reflect exemptions for Manual Order Events granted by the Commission.⁴⁴ Specifically, the Plan requires Industry Members to record and report the time of each Reportable Event using timestamps reflecting current industry standards (which must be at least to the millisecond) or, if an Industry Member’s order handling or execution system uses timestamps in increments finer than milliseconds, such finer increments, when reporting to the Central Repository. For Manual Order Events, however, the Plan provides that such events must be recorded in increments up to and including one second, provided that Industry Members record and report the time the event is captured electronically in an order handling and execution system (“Electronic Capture Time”) in milliseconds. In addition, Industry Members are required to synchronize their respective Business Clocks (other than such Business Clocks used solely for Manual Order Events) at a minimum to within 50 milliseconds of the time maintained by the National Institute of Standards and Technology (“NIST”), and maintain such synchronization. Each Industry Member is required to synchronize its Business Clocks used solely for Manual Order Events, however, at a minimum to within one second of the time maintained by the NIST.

(b) Definition of Manual Order Event

In order to clarify what a Manual Order Event is for clock synchronization and time stamp purposes, FINRA proposes to define the term “Manual Order Event” in proposed Rule 6810. Specifically, the term “Manual Order Event” means a non-electronic communication of order-related information for which Industry Members must record and report the time of the event. FINRA states that this

is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

23. Material Terms of the Order

Proposed Rule 6830 requires Industry Members to record and report to the Central Repository Material Terms of the Order with certain Reportable Events (e.g., for the original receipt or origination of an order, for the routing of an order). Accordingly, FINRA proposes to define the term “Material Terms of the Order” to include: The NMS Security or OTC Equity Security symbol; security type; price (if applicable); size (displayed and non-displayed); side (buy/sell); order type; if a sell order, whether the order is long, short, short exempt; open/close indicator (except on transactions in equities); time in force (if applicable); if the order is for a Listed Option, option type (put/call), option symbol or root symbol, underlying symbol, strike price, expiration date, and open/close (except on market maker quotations); and any special handling instructions. FINRA states that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

24. NMS Security

NMS Securities are one of the types of Eligible Securities for the CAT. Therefore, FINRA proposes to define the term “NMS Security” to mean any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in Listed Options. FINRA states that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

25. NMS Stock

Under the CAT NMS Plan, the Operating Committee may establish different Trading Days for NMS Stocks, as defined in Rule 600(b)(47) of Regulation NMS,⁴⁵ Listed Options, OTC Equity Securities, and any other securities that are included as Eligible Securities from time to time. Accordingly, FINRA proposes to define the term “NMS Stock” to mean any NMS Security other than an option. FINRA states that this is the same definition as set forth in Rule 600(b)(47) of Regulation NMS.⁴⁶

26. Operating Committee

Proposed Rule 6810 defines the term “Operating Committee” to mean the governing body of the CAT NMS, LLC

⁴² See Securities Exchange Act Release Nos. 70892 (November 15, 2013), 78 FR 69910 (November 21, 2013) (Selection Plan Notice); 75192 (June 17, 2015), 80 FR 36028 (June 23, 2015) (Order Approving Amendment No. 1 to the Selection Plan); 75980 (September 24, 2015), 80 FR 58796 (September 30, 2015) (Order Approving Amendment No. 2 to the Selection Plan); 77917 (May 25, 2016), 81 FR 35072 (June 1, 2016) (Notice of Filing and Immediate Effectiveness of Amendment No. 3 to the Selection Plan); 78477 (August 4, 2016), 81 FR 52917 (August 10, 2016) (Notice of Filing and Immediate Effectiveness of Amendment No. 4 to the Selection Plan); *see also* Securities Exchange Act Release Nos. 71596 (February 21, 2014), 79 FR 11152 (February 27, 2014) (Selection Plan Approval Order); 74223 (February 6, 2015), 80 FR 7654 (February 11, 2015) (Notice of Amendment No. 1 to the Selection Plan); 75193 (June 17, 2015), 80 FR 36006 (June 23, 2015) (Notice of Amendment No. 2 to the Selection Plan).

⁴³ 17 CFR 242.600(b)(35).

⁴⁴ See Exemption Order, *supra* note 20.

⁴⁵ 17 CFR 242.600(b)(47).

⁴⁶ 17 CFR 242.600(b)(47).

designated as such and described in Article IV of the CAT NMS Plan. FINRA states that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan, except FINRA proposes to use the phrase “CAT NMS LLC” in place of the phrase “the Company” for clarity.

27. Options Market Maker

(a) Options Market Maker Quote Exemption

Rule 613(c)(7) provides that the CAT NMS Plan must require each Industry Member to record and electronically report to the Central Repository details for each order and each reportable event, including the routing and modification or cancellation of an order.⁴⁷ Rule 613(j)(8) defines “order” to include “any bid or offer.”⁴⁸ Therefore, under Rule 613, the details for each Options Market Maker quotation must be reported to the Central Repository by both the Options Market Maker and the options exchange to which it routes its quote.

The Participants, however, requested and received exemptive relief from Rule 613 of Regulation NMS so that the CAT NMS Plan may permit Options Market Maker quotes to be reported to the Central Repository by the relevant options exchange in lieu of requiring that such reporting be done by both the options exchange and the Options Market Maker, as is required by Rule 613.⁴⁹ In accordance with the exemptive relief, Options Market Makers will be required to report to the options exchange the time at which a quote in a Listed Option is sent to the options exchange. Such time information also will be reported to the Central Repository by the options exchange in lieu of reporting by the Options Market Maker.

(b) Definition of Options Market Maker

To implement the requirements related to Option Market Maker quotes, FINRA proposes to define the term “Options Market Maker” to mean a broker-dealer registered with an exchange for the purpose of making markets in options contracts traded on the exchange. FINRA states that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

28. Order

The proposed Rule 6800 Series requires each Industry Member to record and electronically report to the Central Repository certain details for

each order. Accordingly, FINRA proposes to define the term “Order” with respect to Eligible Securities, to include: (1) Any order received by an Industry Member from any person; (2) any order originated by an Industry Member; or (3) any bid or offer. FINRA states that this is the same definition as set forth in Rule 613(j)(8), except FINRA proposes to replace the phrase “member of a national securities exchange or national securities association” with the term “Industry Member.”⁵⁰ FINRA also notes that Section 1.1 of the CAT NMS Plan defines “Order” by reference to Rule 613(j)(8).

29. OTC Equity Security

OTC Equity Securities are one of the types of Eligible Securities for the CAT. Therefore, FINRA proposes to define the term “OTC Equity Security” to mean any equity security, other than an NMS Security, subject to prompt last sale reporting rules of a registered national securities association and reported to one of such association’s equity trade reporting facilities. FINRA states that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

30. Participant

Proposed Rule 6810 defines the term “Participant” to mean each Person identified as such in Exhibit A of the CAT NMS Plan, as amended, in such Person’s capacity as a Participant in CAT NMS, LLC. FINRA states that this is the same definition in substance as set forth in Section 1.1 of the CAT NMS Plan.

31. Person

Proposed Rule 6810 defines the term “Person” to mean any individual, partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or association and any heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so permits. FINRA states that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

32. Plan Processor

Proposed Rule 6810 defines the term “Plan Processor” to mean the Initial Plan Processor or any other Person selected by the Operating Committee pursuant to Rule 613 and Sections 4.3(b)(i) and 6.1 of the CAT NMS Plan, and with regard to the Initial Plan Processor, the National Market System Plan Governing the Process for Selecting a Plan Processor and Developing a Plan

for the Consolidated Audit Trail, to perform the CAT processing functions required by Rule 613 of Regulation NMS and set forth in the CAT NMS Plan.

33. Received Industry Member Data

Proposed Rule 6810 states that the term “Received Industry Member Data” has the meaning set forth in Rule 6830(a)(2). FINRA represents that this definition has the same substantive meaning as the definition set forth in Section 1.1 of the CAT NMS Plan.

34. Recorded Industry Member Data

Proposed Rule 6810 states that the term “Recorded Industry Member Data” has the meaning set forth in Rule 6830(a)(1). FINRA states that this definition has the same substantive meaning as the definition set forth in Section 1.1 of the CAT NMS Plan.

35. Reportable Event

The proposed Rule 6800 Series requires each Industry Member to record and electronically report to the Central Repository certain details for each Reportable Event. FINRA proposes to define the term “Reportable Event” to include, but not be limited to, the original receipt or origination, modification, cancellation, routing, execution (in whole or in part) and allocation of an order, and receipt of a routed order. FINRA states that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

36. SRO

FINRA proposed to define the term “SRO” to mean any self-regulatory organization within the meaning of Section 3(a)(26) of the Exchange Act.⁵¹ FINRA states that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

37. SRO-Assigned Market Participant Identifier

(a) Existing Identifier Approach

The Participants requested and received exemptive relief from Rule 613 of Regulation NMS so that the CAT NMS Plan may permit the “Existing Identifier Approach,” which would allow an Industry Member to report an existing SRO-Assigned Market Participant Identifier in lieu of requiring the reporting of a universal CAT-Reporter-ID (that is, a code that uniquely and consistently identifies an Industry Member for purposes of providing data to the Central

⁴⁷ 17 CFR 242.613(c)(7).

⁴⁸ 17 CFR 242.613(j)(8).

⁴⁹ See Exemptive Request Letter, *supra* note 20, at 2; Exemption Order, *supra* note 20 at 6.

⁵⁰ See 17 CFR 242.613(j)(8).

⁵¹ See 15 U.S.C. 78c(a)(26).

Repository).⁵² The CAT NMS Plan reflects the Existing Identifier Approach for purposes of identifying each Industry Member associated with an order or Reportable Event. Under the Existing Identifier Approach, Industry Members are required to record and report to the Central Repository an SRO-Assigned Market Participant Identifier for orders and certain Reportable Events to be used by the Central Repository to assign a unique CAT-Reporter-ID to identify Industry Members.

For the Central Repository to link the SRO-Assigned Market Participant Identifier to the CAT-Reporter-ID, each SRO will submit to the Central Repository, on a daily basis, all SRO-Assigned Market Participant Identifiers used by its Industry Members, as well as information to identify each such Industry Member, including CRD number and LEI, if the SRO has collected such LEI of the Industry Member. Additionally, each Industry Member is required to submit to the Central Repository the CRD number of the Industry Member as well as the LEI of the Industry Member (if the Industry Member has an LEI). The Plan Processor will use this information to assign a CAT-Reporter-ID to each Industry Member for internal use within the Central Repository.

(b) Definition of SRO-Assigned Market Participant Identifier

To implement the Existing Identifier Approach, FINRA proposes to define the term “SRO-Assigned Market Participant Identifier” to mean an identifier assigned to an Industry Member by an SRO or an identifier used by a Participant.⁵³ FINRA states that this is the same definition as set forth in Section 1.1 of the CAT NMS Plan.

38. Small Industry Member

FINRA represents that the requirements of the proposed Rule 6800 Series differ to some extent for Small Industry Members versus Industry Members other than Small Industry Members. For example, the compliance dates for reporting data to the CAT are different for Small Industry Members versus other Industry Members. Accordingly, to clarify the requirements that apply to which Industry Members, FINRA proposes to define the term “Small Industry Member” to mean an

Industry Member that qualifies as a small broker-dealer as defined in Exchange Act Rule 0–10(c).⁵⁴ FINRA states that this is the same in substance as the definition of “Small Industry Member” as set forth in Section 1.1 of the CAT NMS Plan. Specifically, Section 1.1 of the CAT NMS Plan defines a “Small Industry Member” as “an Industry Member that qualifies as a small broker-dealer as defined in Rule 613.” The definition of a small broker-dealer under Rule 613, in turn, is a small broker-dealer as defined in Exchange Act Rule 0–10(c).

39. Trading Day

Proposed Rule 6830(b) establishes the deadlines for reporting certain data to the Central Repository using the term “Trading Day.” Accordingly, FINRA proposes that the term “Trading Day” shall have the meaning as is determined by the Operating Committee. For the avoidance of doubt, FINRA represents that the Operating Committee may establish different Trading Days for NMS Stocks, Listed Options, OTC Equity Securities, and any other securities that are included as Eligible Securities from time to time.

B. Clock Synchronization (Rule 6820)

Rule 613(d)(1) of Regulation NMS requires Industry Members to synchronize their Business Clocks to the time maintained by NIST, consistent with industry standards.⁵⁵ To comply with this provision, Section 6.8 of the Plan sets forth the clock synchronization requirements for Industry Members.⁵⁶ To implement these provisions with regard to its Industry Members, FINRA proposes Rule 6820 to require its Industry Members to comply with the clock synchronization requirements of the Plan.

1. Clock Synchronization

Paragraph (a) of proposed Rule 6820 sets forth the manner in which Industry Members must synchronize their Business Clocks. Paragraph (a)(1) of proposed Rule 6820 requires each Industry Member to synchronize its Business Clocks, other than such

Business Clocks used solely for Manual Order Events or used solely for the time of allocation on Allocation Reports, at a minimum to within a fifty (50) millisecond tolerance of the time maintained by the NIST atomic clock, and maintain such synchronization. FINRA states that this is the same requirement as set forth in Section 6.8(a)(ii)(A) of the CAT NMS Plan.

Paragraph (a)(2) of proposed Rule 6820 requires each Industry Member to synchronize (1) its Business Clocks used solely for Manual Order Events and (2) its Business Clocks used solely for the time of allocation on Allocation Reports at a minimum to within a one second tolerance of the time maintained by the NIST atomic clock, and maintain such synchronization. FINRA states that this is the same requirement as set forth in Section 6.8(a)(iii) and (iv) of the CAT NMS Plan. Paragraph (a)(3) of proposed Rule 6820 clarifies that the tolerance described in paragraphs (a)(1) and (2) of proposed Rule 6820 includes all of the following: (1) The time difference between the NIST atomic clock and the Industry Member’s Business Clock; (2) the transmission delay from the source; and (3) the amount of drift of the Industry Member’s Business Clock.

Paragraph (a)(4) of proposed Rule 6820 requires Industry Members to synchronize their Business Clocks every business day before market open to ensure that timestamps for Reportable Events are accurate. In addition, to maintain clock synchronization, Business Clocks must be checked against the NIST atomic clock and re-synchronized, as necessary, throughout the day.

2. Documentation

Paragraph (b) of proposed Rule 6820 sets forth documentation requirements with regard to clock synchronization. Specifically, paragraph (b) requires Industry Members to document and maintain their synchronization procedures for their Business Clocks. The proposed rule requires Industry Members to keep a log of the times when they synchronize their Business Clocks and the results of the synchronization process. This log is required to include notice of any time a Business Clock drifts more than the applicable tolerance specified in paragraph (a) of the proposed rule. Such logs must include results for a period of not less than five years ending on the then current date, or for the entire period for which the Industry Member has been required to comply with this Rule if less than five years. FINRA states that these documentation requirements are the same as those set forth in the

⁵² See Exemptive Request Letter, *supra* note 20, at 19; Exemption Order, *supra* note 20 at 49.

⁵³ FINRA notes that an Industry Member would be permitted to use any existing SRO-Assigned Market Participant Identifier (e.g., FINRA MPID, NASDAQ MPID, NYSE Mnemonic, CBOE User Acronym and CHX Acronym) when reporting order information to the Central Repository, for example.

⁵⁴ 17 CFR 240.0–10(c).

⁵⁵ 17 CFR 242.613(d)(1). Related to the clock synchronization requirements, the Commission notes that the Participants, including FINRA, also filed a request for an exemption from the March 15, 2017 filing deadline requirement set forth Section 6.7(a)(ii) of the CAT NMS Plan and proposed FINRA Rule 6895(b)(1). See *infra* note 75. The Commission granted the Participants’ exemption request. See *infra* note 77.

⁵⁶ In addition, Section 6.7(a)(ii) of the Plan sets forth the timeline for CAT Reporters to comply with the clock synchronization requirements.

“Sequencing orders and Clock Synchronization” section of Appendix C of the CAT NMS Plan.

3. Certification

Paragraph (c) of proposed Rule 6820 sets forth certification requirements with regard to clock synchronization. Specifically, paragraph (c) of proposed Rule 6820 requires each Industry Member to certify to FINRA that its Business Clocks satisfy the synchronization requirements set forth in paragraph (a) of proposed Rule 6820 periodically in accordance with the certification schedule established by the Operating Committee pursuant to the CAT NMS Plan. FINRA states that this requirement is the same requirement as set forth in Section 6.8(a)(ii)(B), (iii) and (iv) of the CAT NMS Plan. FINRA states that it intends to announce to its Industry Members the certification schedule established by the Operating Committee via *Regulatory Notice*.

4. Violation Reporting

Paragraph (d) of proposed Rule 6820 establishes reporting requirements with regard to clock synchronization. Paragraph (d) of proposed Rule 6820 requires Industry Members to report to the Plan Processor and FINRA violations of paragraph (a) of this Rule pursuant to the thresholds set by the Operating Committee pursuant to the CAT NMS Plan. FINRA states that this requirement is the same requirement as set forth in Section 6.8(a)(ii)(C), (iii) and (iv) of the CAT NMS Plan. FINRA intends to announce to its Industry Members the relevant thresholds established by the Operating Committee via *Regulatory Notice*.

C. Industry Member Data Reporting (Rule 6830)

Rule 613(c) of Regulation NMS requires the CAT NMS Plan to set forth certain provisions requiring Industry Members to record and report data to the CAT.⁵⁷ To comply with this provision, Section 6.4 of the CAT NMS Plan sets forth the data reporting requirements for Industry Members. To implement these provisions with regard to its Industry Members, FINRA proposes Rule 6830 to require its Industry Members to comply with the Industry Member Data reporting requirements of the Plan. Proposed Rule 6830 has five sections covering: (1) Recording and reporting Industry Member Data, (2) timing of the recording and reporting, (3) the applicable securities covered by the recording and reporting requirements,

(4) the security symbology to be used in the recording and reporting, and (5) error correction requirements, each of which is described below.

1. Recording and Reporting Industry Member Data

Paragraph (a) of proposed Rule 6830 describes the recording and reporting of Industry Member Data to the Central Repository. Paragraph (a) consists of paragraphs (a)(1)–(a)(3), which cover Recorded Industry Member Data, Received Industry Member Data and Options Market Maker data, respectively. FINRA states that paragraphs (a)(1)–(a)(3) of proposed Rule 6830 set forth the recording and reporting requirements required in Section 6.4(d)(i)–(iii) of the CAT NMS Plan, respectively.

Paragraph (a)(1) requires, subject to paragraph (a)(3) regarding Options Market Makers, each Industry Member to record and electronically report to the Central Repository the following details for each order and each Reportable Event, as applicable (“Recorded Industry Member Data”) in the manner prescribed by the Operating Committee pursuant to the CAT NMS Plan:

- For original receipt or origination of an order: (1) Firm Designated ID(s) for each Customer; (2) CAT-Order-ID; (3) SRO-Assigned Market Participant Identifier of the Industry Member receiving or originating the order; (4) date of order receipt or origination; (5) time of order receipt or origination (using timestamps pursuant to proposed Rule 6860); and (6) Material Terms of the Order;

- for the routing of an order: (1) CAT-Order-ID; (2) date on which the order is routed; (3) time at which the order is routed (using timestamps pursuant to proposed Rule 6860); (4) SRO-Assigned Market Participant Identifier of the Industry Member routing the order; (5) SRO-Assigned Market Participant Identifier of the Industry Member or Participant to which the order is being routed; (6) if routed internally at the Industry Member, the identity and nature of the department or desk to which the order is routed; and (7) Material Terms of the Order;

- for the receipt of an order that has been routed, the following information: (1) CAT-Order-ID; (2) date on which the order is received; (3) time at which the order is received (using timestamps pursuant to proposed Rule 6860); (4) SRO-Assigned Market Participant Identifier of the Industry Member receiving the order; (5) SRO-Assigned Market Participant Identifier of the Industry Member or Participant routing

the order; and (6) Material Terms of the Order;

- if the order is modified or cancelled: (1) CAT-Order-ID; (2) date the modification or cancellation is received or originated; (3) time at which the modification or cancellation is received or originated (using timestamps pursuant to proposed Rule 6860); (4) price and remaining size of the order, if modified; (5) other changes in the Material Terms of the Order, if modified; and (6) whether the modification or cancellation instruction was given by the Customer or was initiated by the Industry Member;

- if the order is executed, in whole or in part: (1) CAT-Order-ID; (2) date of execution; (3) time of execution (using timestamps pursuant to proposed Rule 6860); (4) execution capacity (principal, agency or riskless principal); (5) execution price and size; (6) SRO-Assigned Market Participant Identifier of the Industry Member executing the order; (7) whether the execution was reported pursuant to an effective transaction reporting plan or the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information; and

- other information or additional events as may be prescribed pursuant to the CAT NMS Plan.

Paragraph (a)(2) of proposed Rule 6830 requires, subject to paragraph (a)(3) regarding Options Market Makers, each Industry Member to record and report to the Central Repository the following, as applicable (“Received Industry Member Data” and collectively with the information referred to in Rule 6830(a)(1) “Industry Member Data”) in the manner prescribed by the Operating Committee pursuant to the CAT NMS Plan:

- If the order is executed, in whole or in part: (1) An Allocation Report; (2) SRO-Assigned Market Participant Identifier of the clearing broker or prime broker, if applicable; and (3) CAT-Order-ID of any contra-side order(s);

- if the trade is cancelled, a cancelled trade indicator; and

- for original receipt or origination of an order, the Firm Designated ID for the relevant Customer, and in accordance with proposed Rule 6840, Customer Account Information and Customer Identifying Information for the relevant Customer.

Paragraph (a)(3) of proposed Rule 6830 states that each Industry Member that is an Options Market Maker is not required to report to the Central Repository the Industry Member Data regarding the routing, modification or cancellation of its quotes in Listed Options. Each Industry Member that is

⁵⁷ See 17 CFR 242.613(c).

an Options Market Maker, however, is required to report to the Exchange the time at which its quote in a Listed Option is sent to the Exchange (and, if applicable, any subsequent quote modification time and/or cancellation time when such modification or cancellation is originated by the Options Market Maker). This paragraph implements the Options Market Maker Quote Exemption, as discussed above.

2. Timing of Recording and Reporting

Paragraph (b) of proposed Rule 6830 describes the requirements related to the timing of recording and reporting of Industry Member Data. FINRA states that paragraphs (b)(1)–(b)(3) of proposed Rule 6830 set forth the requirements related to the timing of the recording and reporting requirements required in Section 6.4(b)(i)–(ii) of the CAT NMS Plan.

Paragraph (b)(1) of proposed Rule 6830 requires each Industry Member to record Recorded Industry Member Data contemporaneously with the applicable Reportable Event. Paragraph (b)(2) of proposed Rule 6830 requires each Industry Member to report: (1) Recorded Industry Member Data to the Central Repository by 8:00 a.m. Eastern Time on the Trading Day following the day the Industry Member records such Recorded Industry Member Data; and (2) Received Industry Member Data to the Central Repository by 8:00 a.m. Eastern Time on the Trading Day following the day the Industry Member receives such Received Industry Member Data. Paragraph (b)(3) states that Industry Members may, but are not required to, voluntarily report Industry Member Data prior to the applicable 8:00 a.m. Eastern Time deadline.

3. Applicable Securities

Paragraph (c) of proposed Rule 6830 describes the securities to which the recording and reporting requirements of proposed Rule 6830 apply. FINRA states that paragraphs (c)(1) and (c)(2) of proposed Rule 6830 set forth the description of applicable securities as set forth in Section 6.4(c)(i) and (ii) of the CAT NMS Plan, respectively. Paragraph (c)(1) of proposed Rule 6830 requires each Industry Member to record and report to the Central Repository the Industry Member Data as set forth in paragraph (a) of proposed Rule 6830 for each NMS Security registered or listed for trading on such exchange or admitted to unlisted trading privileges on such exchange. Paragraph (c)(2) of proposed Rule 6830 requires each Industry Member to record and report to the Central Repository the Industry Member Data as set forth in

paragraph (a) of this proposed Rule 6830 for each Eligible Security for which transaction reports are required to be submitted to FINRA.

4. Security Symbolology

Paragraph (d) of proposed Rule 6830 describes the security symbolology that Industry Members are required to use when reporting Industry Member Data to the Central Repository. Paragraph (d)(1) of proposed Rule 6830 requires, for each exchange-listed Eligible Security, each Industry Member to report Industry Member Data to the Central Repository using the symbolology format of the exchange listing the security. FINRA states that this requirement implements the requirement set forth in Section 2 of Appendix D of the CAT NMS Plan to use the listing exchange symbolology when reporting data to the Central Repository for exchange-listed Eligible Securities.

For each Eligible Security that is not exchange-listed, however, FINRA represents that there is no listing exchange to provide the symbolology format. Moreover, to date, the requisite symbolology format has not been determined. Therefore, paragraph (d)(2) of proposed Rule 6830 requires, for each Eligible Security that is not exchange-listed, each Industry Member to report Industry Member Data to the Central Repository using such symbolology format as approved by the Operating Committee pursuant to the CAT NMS Plan. FINRA states that it intends to announce to its Industry Members the relevant symbolology formats established by the Operating Committee via *Regulatory Notice*.

5. Error Correction Timeline

To ensure that the CAT contains accurate data, the CAT NMS Plan requires Industry Members to correct erroneous data submitted to the Central Repository. Therefore, FINRA proposes to adopt paragraph (e) of proposed Rule 6830 which requires that for each Industry Member for which errors in Industry Member Data submitted to the Central Repository have been identified by the Plan Processor or otherwise, such Industry Member submit corrected Industry Member Data to the Central Repository by 8:00 a.m. Eastern Time on T+3. FINRA represents that this requirement implements the error correction requirement set forth in Section 6 of Appendix D of the CAT NMS Plan.

D. Customer Information Reporting (Rule 6840)

Section 6.4(d)(iv) of the CAT NMS Plan requires Industry Members to submit to the Central Repository certain information related to their Customers in accordance with the Customer Information Approach discussed above. FINRA proposes Rule 6840 to implement this provision of the CAT NMS Plan with regard to its Industry Members.

1. Initial Set of Customer Information

Paragraph (a) of proposed Rule 6840 requires each Industry Member to submit to the Central Repository the Firm Designated ID, Customer Account Information and Customer Identifying Information for each of its Customers with an Active Account prior to such Industry Member's commencement of reporting to the Central Repository and in accordance with the deadlines set forth in Rule 6880.

2. Daily Updates to Customer Information

Paragraph (b) of proposed Rule 6840 requires each Industry Member to submit to the Central Repository any updates, additions or other changes to the Firm Designated ID, Customer Account Information and Customer Identifying Information for each of its Customers with an Active Account on a daily basis.

3. Periodic Updates To Complete Set of Customer Information

Paragraph (c) of proposed Rule 6840 requires each Industry Member, on a periodic basis as designated by the Plan Processor and approved by the Operating Committee, to submit to the Central Repository a complete set of Firm Designated IDs, Customer Account Information and Customer Identifying Information for each of its Customers with an Active Account. This periodic refresh is intended to ensure that the Central Repository has the most current information identifying a Customer. FINRA states that it intends to announce to its Industry Members when such a periodic refresh is required by the Plan Processor and the Operating Committee via *Regulatory Notice*.

4. Error Correction Timeline

Paragraph (d) of proposed Rule 6840 addresses the correction of erroneous Customer data reported to the Central Repository to ensure an accurate audit trail. Paragraph (d) requires, for each Industry Member for which errors in Firm Designated ID, Customer Account Information and Customer Identifying Information for each of its Customers

with an Active Account submitted to the Central Repository have been identified by the Plan Processor or otherwise, such Member to submit corrected data to the Central Repository by 5:00 p.m. Eastern Time on T+3. FINRA states that this requirement implements the error correction requirement set forth in Appendix C of the CAT NMS Plan.

E. Industry Member Information Reporting (Rule 6850)

Section 6.4(d)(vi) of the CAT NMS Plan requires Industry Members to submit to the Central Repository information sufficient to identify such Industry Member, including CRD number and LEI, if such LEI has been obtained, in accordance with the Existing Identifier Approach discussed above. Proposed Rule 6850 requires each Industry Member to submit to the Central Repository information sufficient to identify such Industry Member, including CRD number and LEI, if such LEI has been obtained, prior to such Industry Member's commencement of reporting to the Central Repository and in accordance with the deadlines set forth in Rule 6880, and keep such information up to date as necessary. FINRA states that this provision of the CAT NMS Plan with regard to its Industry Members information reporting.

F. Time Stamps (Rule 6860)

Rule 613(d)(3) of Regulation NMS sets forth requirements for time stamps used by CAT Reporters in recording and reporting data to the CAT.⁵⁸ To comply with this provision, Section 6.8(b) of the Plan sets forth time stamp requirements for Industry Members. To implement this provision with regard to its Industry Members, FINRA proposes new Rule 6860 to require its Industry Members to comply with the time stamp requirements of the Plan.

1. Millisecond Time Stamps

Paragraph (a) of proposed Rule 6860 sets forth the time stamp increments to be used by Industry Members in their CAT reporting. Paragraph (a)(1) of proposed Rule 6860 requires each Industry Member to record and report Industry Member Data to the Central Repository with time stamps in milliseconds, subject to paragraphs (a)(2) and (b) of proposed Rule 6860. To the extent that any Industry Member's order handling or execution systems utilize time stamps in increments finer than milliseconds, paragraph (a)(2) of proposed Rule 6860 requires such

Industry Member to record and report Industry Member Data to the Central Repository with time stamps in such finer increment, subject to paragraph (b) of proposed Rule 6860 regarding Manual Order Events and Allocation Reports.

2. One Second Time Stamps/Electronic Order Capture

Paragraph (b) of proposed Rule 6860 sets forth the permissible time stamp increments for Manual Order Events and Allocation Reports. Specifically, paragraph (b)(1) of proposed Rule 6860 permits each Industry Member to record and report Manual Order Events to the Central Repository in increments up to and including one second, provided that each Industry Member is required to record and report the Electronic Capture Time in milliseconds. In addition, paragraph (b)(2) of proposed Rule 6860 permits each Industry Member to record and report the time of Allocation Reports in increments up to and including one second.

G. Time Stamp and Clock Synchronization Rule Violations (Rule 6865)

Proposed Rule 6865 describes potential violations of the time stamp and clock synchronization time period requirements set forth in the proposed Rule 6800 Series. Proposed Rule 6865 states that an Industry Member that engages in a pattern or practice of reporting Reportable Events with time stamps generated by Business Clocks that are not synchronized according to the requirements set forth in this Rule Series without reasonable justification or exceptional circumstances may be considered in violation of this Rule. FINRA states that this provision implements the requirements of Section 6.8 of the CAT NMS Plan which requires the Compliance Rule to provide that a pattern or practice of reporting events outside of the required clock synchronization time period without reasonable justification or exceptional circumstances may be considered a violation of Rule 613 of Regulation NMS or the CAT NMS Plan.

H. Connectivity and Data Transmission (Rule 6870)

Proposed Rule 6870 addresses connectivity and data transmission requirements related to the CAT.

1. Data Transmission

Paragraph (a) of proposed Rule 6870 describes the format(s) for reporting Industry Member Data to the Central Repository. Specifically, paragraph (a) of proposed Rule 6870 requires each

Industry Member to transmit data as required under the CAT NMS Plan to the Central Repository utilizing such format(s) as may be provided by the Plan Processor and approved by the Operating Committee. FINRA states that this provision implements the formatting requirements as set forth in Section 6.4(a) of the CAT NMS Plan.

2. Connectivity

Paragraph (b) of proposed Rule 6870 addresses connectivity requirements related to the CAT. Paragraph (b) of proposed Rule 6870 requires each Industry Member to connect to the Central Repository using a secure method(s), including, but not limited to, private line(s) and virtual private network connection(s). FINRA states that this provision implements the connectivity requirements set forth in Section 4 of Appendix D to the CAT NMS Plan.

3. CAT Reporting Agent

Paragraph (c) permits Industry Members to enter into an agreement with CAT Reporting Agents to fulfill their data reporting obligations related to the CAT.⁵⁹ Any such agreement must be evidenced in writing, which specifies the respective functions and responsibilities of each party to the agreement that are required to effect full compliance with the requirements of the proposed Rule 6800 Series. Paragraph (c)(2) of proposed Rule 6870 requires that all written documents evidencing an agreement with a CAT Reporting Agent be maintained by each party to the agreement. Paragraph (c)(3) states that each Industry Member remains primarily responsible for compliance with the requirements of the proposed Rule 6800 Series, notwithstanding the existence of an agreement described in paragraph (c) of proposed Rule 6870.

I. Development and Testing (Rule 6880)

FINRA proposes Rule 6880 to address requirements for Industry Members related to CAT development and testing.

1. Development

Paragraph (a) of proposed Rule 6880 sets forth the testing requirements and deadlines for Industry Members to develop and commence reporting to the Central Repository. FINRA states that these requirements are set forth in Appendix C to the CAT NMS Plan.

Paragraph (a)(1) sets forth the deadlines related to connectivity and

⁵⁸ 17 CFR 242.613(d)(3).

⁵⁹ FINRA represents that paragraph (c) is based on FINRA Rule 7450(c), which permits OATS Reporting Members to enter into agreements with Reporting Agents to fulfill the OATS obligations of the OATS Reporting Member.

acceptance testing. Industry Members (other than Small Industry Members) are required to begin connectivity and acceptance testing with the Central Repository no later than August 15, 2018, and Small Industry Members are required to begin connectivity and acceptance testing with the Central Repository no later than August 15, 2019.

Paragraph (a)(2) sets forth the deadlines related to reporting Customer and Industry Member information. Paragraph (a)(2)(i) requires Industry Members (other than Small Industry Members) to begin reporting Customer and Industry Member information, as required by Rules 6840(a) and 6850, respectively, to the Central Repository for processing no later than October 15, 2018. Paragraph (a)(2)(ii) requires Small Industry Members to begin reporting Customer and Industry Member information, as required by Rules 6840(a) and 6850, respectively, to the Central Repository for processing no later than October 15, 2019.

Paragraph (a)(3) sets forth the deadlines related to the submission of order data. Under paragraph (a)(3)(i), Industry Members (other than Small Industry Members) are permitted, but not required, to submit order data for testing purposes beginning no later than May 15, 2018. In addition, Industry Members (other than Small Industry Members) are required to participate in the coordinated and structured testing of order submission, which will begin no later than August 15, 2018. Under paragraph (a)(3)(ii), Small Industry Members are permitted, but not required, to submit order data for testing purposes beginning no later than May 15, 2019. In addition, Small Industry Members are required to participate in the coordinated and structured testing of order submission, which will begin no later than August 15, 2019.

Paragraph (a)(4) states that Industry Members are permitted, but not required to, submit Quote Sent Times on Options Market Maker quotes to Exchanges, beginning no later than October 15, 2018, for testing purposes.

2. Testing

Paragraph (b) of proposed Rule 6880 implements the requirement under the CAT NMS Plan that Industry Members participate in required industry testing with the Central Repository. Specifically, proposed Rule 6880 requires that each Industry Member participate in testing related to the Central Repository, including any industry-wide disaster recovery testing, pursuant to the schedule established pursuant to the CAT NMS Plan. FINRA

states that it intends to announce to its Industry Members the schedule established pursuant to the CAT NMS Plan via *Regulatory Notice*.

J. Recordkeeping (Rule 6890)

Proposed Rule 6890 sets forth the recordkeeping obligations related to the CAT for Industry Members. Proposed Rule 6890 requires each Industry Member to maintain and preserve records of the information required to be recorded under the proposed Rule 6800 Series for the period of time and accessibility specified in Exchange Act Rule 17a-4(b).⁶⁰ The records required to be maintained and preserved under the proposed Rule 6800 Series may be immediately produced or reproduced on “micrographic media” as defined in Rule 17a-4(f)(1)(i)⁶¹ or by means of “electronic storage media” as defined in Rule 17a-4(f)(1)(ii)⁶² that meet the conditions set forth in Rule 17a-4(f)⁶³ and be maintained and preserved for the required time in that form. Proposed Rule 6890 is based on Rule 7440(a)(5), which sets forth the recordkeeping requirements related to OATS.

K. Timely, Accurate and Complete Data (Rule 6893)

1. General

FINRA notes that Rule 613 of Regulation NMS and the CAT NMS Plan emphasize the importance of the timeliness, accuracy, completeness and integrity of the data submitted to the CAT.⁶⁴ Accordingly, paragraph (a) of proposed Rule 6893 requires that Industry Members record and report data to the Central Repository as required by the proposed Rule 6800 Series in a manner that ensures the timeliness, accuracy, integrity and completeness of such data. FINRA states that proposed Rule 6893 implements the Plan’s requirement with respect to the importance of timely, accurate and complete data with regard to Industry Members.

2. LEIs

In addition, without limiting the general requirement as set forth in paragraph (a), paragraph (b) of proposed Rule 6893 requires Industry Members to accurately provide the LEIs in their records as required by the proposed Rule 6800 Series and states that Industry Members may not knowingly submit inaccurate LEIs to the Central

Repository. FINRA notes that paragraph (b) notes, however, that this requirement does not impose any additional due diligence obligations on Industry Members with regard to LEIs for CAT purposes. Accordingly, FINRA states that this provision does not impose any due diligence obligations beyond those that may exist today with respect to information associated with an LEI. Although Industry Members will not be required to perform additional due diligence with regard to the LEIs for CAT purposes, Industry Members will be required to accurately provide the LEIs in their records and may not knowingly submit inaccurate LEIs to the CAT. FINRA believes that paragraph (b) is consistent with the Approval Order for the CAT NMS Plan regarding an Industry Member’s obligations regarding LEIs.⁶⁵

3. Compliance With Error Rate

Paragraph (c) states that, if an Industry Member reports data to the Central Repository with errors such that its error percentage exceeds the maximum Error Rate established by the Operating Committee pursuant to the CAT NMS Plan, then such Industry Member would not be in compliance with the Rule 6800 Series. As discussed above, the initial maximum Error Rate is 5%, although the Error Rate is expected to be reduced over time. FINRA states that it intends to announce to its Industry Members changes to the Error Rate established pursuant to the CAT NMS Plan via *Regulatory Notice*.

4. Compliance Thresholds

Paragraph (d) of proposed Rule 6893 addresses compliance thresholds related to reporting data to the CAT. Proposed Rule 6893 states that each Industry Member is required to meet a separate compliance threshold which will be an Industry Member-specific rate that may be used as the basis for further review or investigation into the Industry Member’s performance with regard to the CAT (the “Compliance Thresholds”). FINRA notes that Compliance Thresholds will compare an Industry Member’s error rate to the aggregate Error Rate over a period of time to be defined by the Operating Committee. Compliance Thresholds will be set by the Operating Committee, and will be calculated at intervals to be set by the Operating Committee.⁶⁶ Compliance Thresholds will include compliance with the data reporting and clock synchronization requirements.

⁶⁰ 17 CFR 240.17a-4(b).

⁶¹ 17 CFR 240.17a-4(f)(1)(i).

⁶² 17 CFR 240.17a-4(f)(1)(ii).

⁶³ 17 CFR 240.17a-4(f).

⁶⁴ See 17 CFR 242.613(e)(4)(i)(D)(ii); and CAT NMS Plan, *supra* note 11 at Section 6.5(d).

⁶⁵ See Approval Order, *supra* note 14, at 84745.

⁶⁶ See CAT NMS Plan, *supra* note 11 at Appendix C.

Proposed Rule 6893 states that an Industry Member's performance with respect to its Compliance Threshold will not signify, as a matter of law, that such Industry Member has violated this proposed rule series.

L. Compliance Dates (Rule 6895)

1. General

Proposed Rule 6895 sets forth the compliance dates for the various provisions of the proposed Rule 6800 Series. Paragraph (a) of proposed Rule 6895 states that, except as set forth in paragraphs (b) and (c) of this Rule or otherwise set forth in this Rule Series, the compliance date for the proposed Rule 6800 Series will be the date of Commission approval of the proposed rule change.

2. Clock Synchronization

Paragraph (b) of proposed Rule 6895 establishes the compliance dates for the clock synchronization requirements as set forth in proposed Rule 6820. Paragraph (b)(1) states that each Industry Member shall comply with Rule 6820 with regard to Business Clocks that capture time in milliseconds commencing on or before March 15, 2017. Paragraph (b)(2) states that each Industry Member shall comply with Rule 6820 with regard to Business Clocks that do not capture time in milliseconds commencing on or before February 19, 2018. FINRA states that the compliance date set forth in paragraph (b)(1) reflects the exemptive relief requested by the Participants with regard to the clock synchronization requirements related to Business Clocks that do not capture time in milliseconds.⁶⁷

3. CAT Data Reporting

Paragraph (c) of proposed Rule 6895 establishes the compliance dates for the data recording and reporting requirements for Industry Members. Paragraph (c)(1) requires each Industry Member (other than Small Industry Members) to record and report the Industry Member Data to the Central Repository by November 15, 2018. Paragraph (c)(2) requires that each Industry Member that is a Small Industry Member to record and report the Industry Member Data to the Central Repository by November 15, 2019.

FINRA states that such compliance dates are consistent with the compliance dates set forth in Rule 613(a)(3)(v) and (vi),⁶⁸ and Section 6.7(a)(v) and (vi) of the CAT NMS Plan.

IV. Summary of Comments

As noted above, the Commission received three comment letters on the proposed rule change and a response letter from the Participants.⁶⁹ Two commenters raised concerns about the clock synchronization requirements for Allocation Reports.⁷⁰ One commenter noted that the CAT NMS Plan states that the Participants have not yet determined how the "time of allocation" will be defined and that the Participants stated they would address this in the Technical Specifications.⁷¹ Given that the time of allocation had not yet been defined, this commenter stated that "it was not possible to ensure clock synchronization requirements on Allocation Reports at this time."⁷² Another commenter asked for clarification whether the Clock Synchronization Exemption Request, as discussed below, filed by the Participants extends to time stamps required for Allocation Reports, and for clarification regarding when time stamps on manual orders and electronic capture of manual orders need to be captured.⁷³

The Participants noted in their Response Letter that Section 6.7(a)(ii) of the CAT NMS Plan requires that Industry Members must synchronize their Business Clocks and certify that they have satisfied applicable Business Clock synchronization requirements by March 15, 2017.⁷⁴ However, the Participants noted that, on January 17, 2017, they filed with the Commission a request for exemptive relief from Section 6.7(a)(ii) of the CAT NMS Plan (the "Clock Synchronization Exemption Request").⁷⁵ The Clock Synchronization Exemption Request requested that the Commission permit the Participants to extend the Business Clock synchronization compliance date in Section 6.7(a)(ii) of the CAT NMS Plan from March 15, 2017 to February 19, 2018 for Industry Members' Business Clocks that do not capture time in

milliseconds.⁷⁶ On March 2, 2017, the Commission granted the Exemption Request.⁷⁷

The Participants also noted that the Operating Committee of the CAT NMS Plan recently approved guidance that clarifies that, for purposes of the initial March 15, 2017 Business Clock synchronization and certification deadlines, "Business Clocks" include those clocks that currently capture time in milliseconds and that are used to record time related to "Reportable Events," as defined under the Plan, including, without limitation, the original receipt or origination, modification, cancellation, routing, execution (in whole or in part) and allocation of an order, and receipt of a routed order, in Eligible Securities (*i.e.*, NMS Securities and OTC Equity Securities).⁷⁸ The Participants represented that each Participant has, or will, issue this guidance to its members. The Participants further stated in their response letter that to align the compliance rule with the Exemption Request, Business Clocks used solely for the time of allocation on Allocation Reports must comply with the March 15, 2017 synchronization deadline to the extent that such Business Clocks currently capture time in milliseconds.⁷⁹

With respect to time stamps on manual orders and electronic capture of manual orders the Participants acknowledged in their response letter that additional information will be provided in Technical Specifications prepared by the Plan Processor and approved by the Operating Committee.⁸⁰ The Participants noted that the Technical Specifications also will define the "time of the allocation." The Participants stated that as a result, they cannot issue additional information or definitions at this time since the development and construction of the CAT System and Central Repository are underway. The Participants represented that they intend to work with the Plan Processor to define various terms, including "time of the allocation," and to provide Technical Specifications approved by the Operating Committee before

⁶⁷ *Id.*

⁷⁷ See Order Granting Limited Exemptive Relief, Pursuant to Rule 608(e) of the Securities Exchange Act of 1934, from the Clock Synchronization Compliance Deadline Specified in Section 6.7(a)(ii) of the National Market System Plan Governing the Consolidated Audit Trail, Securities Exchange Act Release No. 80142 (March 2, 2017), 82 FR 13034 (March 8, 2017) ("Clock Synchronization Exemption Order").

⁷⁸ Participants' Response Letter at 2.

⁷⁹ *Id.* at 3.

⁸⁰ *Id.*

⁶⁸ 17 CFR 242.613(a)(3)(v), (vi).

⁶⁹ See *supra* note 7.

⁷⁰ Thomson Reuters Letter at 1; FIF Letter at 1.

⁷¹ Thomson Reuters Letter at 1.

⁷² Thomson Reuters Letter at 1–2. See also FIF Letter at 2.

⁷³ FIF Letter at 1, 2.

⁷⁴ Participants' Response Letter at 2.

⁷⁵ See Letter from Participants to Brent J. Fields, Secretary, Commission, dated January 17, 2017 ("Clock Synchronization Exemption Request Letter").

⁶⁷ See *infra* notes 75 and 77, and accompanying text (discussing the Participants' Clock Synchronization Exemption Request and Order Granting Limited Exemptive Relief, Pursuant to Rule 608(e) of the Securities Exchange Act of 1934, from the Clock Synchronization Compliance Deadline Specified in Section 6.7(a)(ii) of the National Market System Plan Governing the Consolidated Audit Trail).

Industry Members will be required to report to the Central Repository on November 15, 2018 (or November 15, 2019 for Small Industry Members) or comply with the February 19, 2018 Business Clock synchronization requirement.

One commenter discussed several concerns related to the clock synchronization requirements of proposed FINRA Rule 6820(b).⁸¹ This commenter noted that “retention of a complete log of clock synchronization events is an additional business cost without providing compensatory regulatory benefit.”⁸² This commenter urged FINRA to collect clock synchronization data based on the data received as a result of the requirements of FINRA Rule 4590 to see if such a log of clock synchronization is “required to effectively surveil for compliance with clock synchronization standards” and requested that the Commission require FINRA to assess the effectiveness of the logging requirement.⁸³ This commenter also noted that there is a two year difference in the log retention requirements between FINRA Rule 4590 and proposed Rule 6820(b) and stated that the extra two years of log retention represents an additional business cost for storage and clock management.⁸⁴

In response, the Participants stated that they believe that it is appropriate for Industry Members to maintain a log of all clock synchronization events in order to demonstrate the Industry Members’ compliance with the Proposed Compliance Rule and the CAT NMS Plan and to retain such log for five-years.⁸⁵ The Participants noted that the Business Clock synchronization log was discussed and considered in the CAT NMS Plan Proposing and Adopting Releases, and that the Commission considered an alternative where Industry Members would record only exceptions to the clock synchronization requirement. Because the CAT NMS Plan contains the requirement that logs be created and retained for five years, the Participants stated that the retention period set forth in the Participants’ Proposed Compliance Rules, including proposed FINRA Rule 6820, is consistent with the data retention period applicable to the Central Repository as set forth in Rule 613(e)(8).

With respect to the clock synchronization procedures in FINRA’s proposed Rule 6800 Series, one commenter also stated that proposed

Rule 6820 “does not contain any definition of clock synchronization certification procedures and schedules, reporting procedures for violation notification or any specifics regarding documentation requirements.”⁸⁶ This commenter requested that the date for compliance with the clock synchronization procedures be delayed, and requested that there be the adoption of “one set of procedures for clock synchronization management and reporting to regulators be adopted across FINRA and CAT.”⁸⁷

In response, the Participants stated that they agree it would be helpful to provide Industry Members with additional guidance regarding Industry Members’ compliance with the clock synchronization and certification requirements set forth in the CAT NMS Plan and the Proposed Compliance Rules.⁸⁸ Accordingly, the Participants stated that they have issued, or intend to issue, to their members guidance approved by the Operating Committee regarding clock synchronization and certification procedures and schedules, and documentation requirements (*i.e.*, regarding the logging of clock synchronization events). The Participants represented that they intend to issue this guidance prior to the initial March 15, 2017 compliance deadline. The Participants also noted that thereafter the Participants will issue additional guidance approved by the Operating Committee regarding the reporting of violations of applicable clock synchronization thresholds. Accordingly, the Participants stated that they believe that the Proposed Compliance Rules need not be amended at this time.

Two commenters also discussed the application of the Firm Designated ID requirement in the CAT NMS Plan. Both commenters noted that the Proposed Compliance Rules require each Industry Member to provide a Firm Designated ID “for each Customer,” whereas a “Firm Designated ID,” in relevant part, is defined as a “unique identifier for each trading account. Both commenters requested that the Participants amend the language of the Proposed Compliance Rules to reflect the Exemption Order.⁸⁹

In response the Participants stated that they recognize that the definition of Firm Designated ID and the reporting requirements set forth in Section 6.3 of the CAT NMS Plan, as well as the

parallel provisions in the proposed Participant Compliance Rules, including FINRA’s definition of “Firm Designated ID” in Rule 6810 are somewhat unclear.⁹⁰ The Participants noted that the Customer Information Approach is intended to require that each broker-dealer assign a unique Firm Designated ID at the account level, rather than the customer level. Accordingly, the Participants state that Section 6.3(d)(i)(A) of the CAT NMS Plan, which refers to the assignment of a “Firm Designated ID(s) for each Customer,” should not be interpreted to mean that each Customer must have a unique Firm Designated ID, rather, a Firm Designated ID must be assigned at the account level, so that multiple Customers may have the same Firm Designated ID. The Participants further stated that they will consider issuing additional guidance, subject to the approval of the Operating Committee of the CAT NMS Plan, to Industry Members on this issue and, as necessary, whether to amend the CAT NMS Plan to clarify the use of Firm Designated IDs.

One commenter suggested that the Participants consider firms that are exempt from reporting to OATS as “Small Industry Members,” stating that “this should be so easy and so obviously warranted (given the huge incremental cost of first-time order reporting for those firms that choose to remain independent and comply) that we cannot imagine any objection.”⁹¹ This commenter also requested that a cost and benefit analysis should be performed to review the impact of the CAT on firms currently exempt from OATS.⁹²

In response, the Participants stated they believe that the definition of Small Industry Member for purposes of the CAT NMS Plan and Participant Compliance Rules is appropriate and need not be amended.⁹³ The Participants noted that as a threshold matter, this definition was created and adopted by the Commission rather than the Participants, and that the definition of “Small Industry Member” in the CAT NMS Plan refers to the definition of

⁹⁰ Participants’ Response Letter at 5. The Participants noted that Bats BZX Exchange, Inc.’s proposed Rule 4.7(a)(1)(A)(i) and 4.7(a)(2)(C) refers to “Customer” rather than “account.” *See, e.g.*, Bats BZX Exchange, Inc.’s Proposed Compliance Rule Notice of Filing of a Proposed Rule Change to Adopt Rules 4.5 Through 4.16 to Implement the Compliance Rule Regarding the National Market System Plan Governing the Consolidated Audit Trail, Securities Exchange Act Release No. 79927 (February 2, 2017), 82 FR 9874 (February 8, 2017).

⁹¹ Wachtel Letter at 1.

⁹² Wachtel Letter at 1, 3.

⁹³ Participants’ Response Letter at 6.

⁸¹ FIF Letter at 2.

⁸² FIF Letter at 2.

⁸³ FIF Letter at 2.

⁸⁴ FIF Letter at 2.

⁸⁵ Participants’ Response Letter at 4.

⁸⁶ FIF Letter at 3.

⁸⁷ FIF Letter at 3.

⁸⁸ Participants’ Response Letter at 5.

⁸⁹ FIF Letter at 3–4; Thomson Reuters Letter at 2–3.

“small broker-dealer” in Rule 613 of Regulation NMS. Rule 613(a)(3)(v) and (vi) define “small broker-dealer” by using the definition set forth in Rule 0–10(c) under the Exchange Act.⁹⁴ In adopting Rule 613, the Participants noted that the Commission explained that defining “small broker-dealer” by reference to Rule 0–10(c) “is appropriate because it is an existing regulatory standard that is an indication of small entities for which regulators should be sensitive when imposing regulatory burden.”⁹⁵ The Participants stated that they cannot modify the definition of “Small Industry Member” because it is based on the definition of small broker-dealer in Rule 613 and that the Commission would have to effectuate any change to the requirement that broker-dealers (other than “small broker-dealers”) must report to the CAT no later than two years after the Effective Date.⁹⁶ The Participants also noted that after the CAT is operational and the Central Repository begins to collect data, the Participants will conduct various assessments, as set forth in Section 6.6 of the CAT NMS Plan, regarding the operations and efficiency of the Plan Processor, CAT and Central Repository. As necessary, the Participants will consider whether to amend any requirements in the CAT NMS Plan or Proposed Compliance Rules, provided that such amendments are necessary or appropriate and comply with Rule 613 of Regulation NMS.

V. Discussion and Commission Findings

After carefully considering the proposed rule change, the comments submitted, and the Participants’ response to the comments,⁹⁷ the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national

securities association.⁹⁸ Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,⁹⁹ which requires, among other things, that FINRA’s rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. In addition, the Commission finds that the proposed rule change is consistent with Section 15A(b)(9) of the Act,¹⁰⁰ which requires that FINRA rules not impose any burden on competition that is not necessary or appropriate.

Rule 613(g) of Regulation NMS provides that each national securities exchange and national securities association shall file with the Commission pursuant to section 19(b)(2) of the Act and Rule 19b–4 on or before 60 days from approval of the CAT NMS Plan a proposed rule change to require its members to comply with the requirements of this section and the national market system plan approved by the Commission. In addition, Rule 608(c) of Regulation NMS provides that “[e]ach self-regulatory organization shall comply with the terms of any effective national market system plan of which it is a sponsor or participant. Each self-regulatory organization also shall, absent reasonable justification or excuse, enforce compliance with any such plan by its members and persons associated with its members.”¹⁰¹ FINRA, as a Participant in the Plan, has an obligation to comply, and enforce compliance by its members, with the terms of the Plan. Accordingly, FINRA filed this proposed rule change to adopt the FINRA Rule 6800 Series, which would impose compliance obligations on FINRA members. As discussed below, the Commission also believes the proposal is consistent with the Act because it is designed to assist FINRA in meeting its regulatory obligations pursuant to Rule 608 of Regulation NMS and the Plan.

A. Definitions (Rule 6810)

The Commission finds that proposed FINRA Rule 6810 is consistent with the

Act as it implements the CAT NMS Plan. With the exception of the term “CAT Reporting Agent,” the definitions in proposed Rule 6810 are consistent with the definitions of Article I, Section 1.1 of the CAT NMS Plan. With respect to the inclusion of a definition for “CAT Reporting Agent,” FINRA notes that the CAT NMS Plan permits an Industry Member to use a third party, such as a vendor, to report the required data to the Central Repository on behalf of an Industry Member, and that as defined, a “CAT Reporting Agent” would be one type of Data Submitter, which term is defined in the CAT NMS Plan.

The Commission notes that two commenters discussed the need for further clarification on the application of the term “Firm Designated ID.” The Participants responded that the Customer Information Approach is intended to require that each broker-dealer assign a unique Firm Designated ID at the account level, rather than the customer level.¹⁰² Accordingly, a Firm Designated ID must be assigned at the account level, so multiple Customers may be associated with the same Firm Designated ID. The Commission believes that the definition of the term Firm Designated ID and its applicability to accounts is consistent with the Customer Information Approach and the CAT NMS Plan.

B. Clock Synchronization (Rule 6820)

The Commission finds that proposed Rule 6820 is consistent with the Act as it implements the clock synchronization provisions of the CAT NMS Plan. The Commission notes that proposed Rule 6820 sets out the clock synchronization requirements for FINRA industry members and that these clock synchronization requirements, including the synchronization standards, tolerance levels, documentation, certification and violation reporting are consistent with and implement the clock synchronization requirements of the CAT NMS Plan.

As noted above, two commenters raised concerns about the clock synchronization requirements in proposed Rule 6820, including whether the synchronization requirements of the rule apply to Business Clocks that capture Manual Order Events; the definition of “time of allocation,” the necessity of the clock synchronization log; and the details concerning the clock synchronization certification. The Participants responded by clarifying the applicability of the clock synchronization requirements to

⁹⁴ Rule 0–10(c) defines a “small broker-dealer” as one that has total capital of less than \$500,000 on the date in the prior fiscal year as of which its audited financial statements were filed (or on the last business day of the preceding fiscal year if not required to file such statements), and those not affiliated with any other person that is not a small business or small organization. See Rule 0–10(c).

⁹⁵ See Approval Order, *supra* note 14 at 45722, 45804.

⁹⁶ Participants’ Response Letter at 6. The Participants added that “[s]eparately, the Commission explained that the CAT NMS Plan ‘attempts to mitigate its impact on [OATS-exempt or excluded broker-dealers or limited purpose broker-dealers] by proposing to follow a cost allocation formula that should charge lower fees to smaller broker-dealers.’” Accordingly, the Participants stated that they do not believe that an additional cost-benefit analysis is necessary at this time. Participants’ Response Letter at 7.

⁹⁷ See *supra* note 7.

⁹⁸ In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁹⁹ 15 U.S.C. 78o–3(b)(6).

¹⁰⁰ 15 U.S.C. 78o–3(b)(9).

¹⁰¹ 17 CFR 242.608(c).

¹⁰² Participants’ Response Letter 5.

Allocation Reports, and by stating that the Participants intend to work with the Plan Processor to define various terms, including “time of allocation,” and to provide Technical Specifications approved by the Operating Committee—relating to time stamps on manual orders and electronic capture of manual orders, as well as the “time of allocation”—before Industry Members will be required to report to the Central Repository on November 15, 2018 (or November 15, 2019 for Small Industry Members) or comply with the February 19, 2018 Business Clock synchronization requirement.¹⁰³ The Participants also provided further details about the utility of the synchronization logs and discussed the clock synchronization certification requirements. The Commission believes that the Participants’ response is reasonable and consistent with the Act.

C. Industry Member Data Reporting (Rule 6830)

The Commission finds that proposed Rule 6830—which sets forth the data reporting requirements for Industry Members—is consistent with the Act as it implements the data reporting requirements for Industry Members that are required by the CAT NMS Plan. As noted above, proposed Rule 6830 is divided into five sections which address (1) recording and reporting Industry Member Data, (2) timing of the recording and reporting, (3) the applicable securities covered by the recording and reporting requirements, (4) the security symbology to be used in the recording and reporting,¹⁰⁴ and (5) error correction requirements.

D. Customer Information Reporting (Rule 6840)

The Commission finds that proposed Rule 6840—which sets forth the requirements regarding the data reported to the CAT in order to identify Customers—is consistent with the Act as it implements the reporting provisions of the CAT NMS Plan relating to the identification of Customers.

¹⁰³ Participants’ Response Letter at 3. *See also* Clock Synchronization Exemption Request Letter, *supra* note 75, and Clock Synchronization Order, *supra* note 77.

¹⁰⁴ The Commission notes that, with respect to the security symbology that must be reported by an Industry Member for an Eligible Security that is not Exchange-listed, proposed Rule 6830(d)(2) states that an Industry Member should use the symbology format approved by the Operating Committee. FINRA represents that for such securities, there is no listing exchange to provide the symbology format and that the requisite symbology format has not been determined at this time.

E. Industry Member Information Reporting (Rule 6850)

The Commission finds that proposed Rule 6850—which sets forth the requirements for Industry Members regarding the data that they must report to identify such Industry Member, including the timeframe for reporting such identifying information—is consistent with the Act as it implements the Industry Member reporting provisions of the CAT NMS Plan.

F. Time Stamps (Rule 6860)

The Commission finds that proposed Rule 6860—which sets forth the time stamp increments to be used by Industry Members in their CAT Reporting—is consistent with the Act as it implements the time stamp provisions of the CAT NMS Plan. In general, proposed Rule 6860(a)(1) requires Industry Members to record and report Industry Member Data to the Central Repository in milliseconds, but paragraph (a)(2) provides that, to the extent any Industry Member’s order handling or execution systems utilize time stamps in increments finer than milliseconds, such Industry Member is to record and report Industry Member Data to the Central Repository with time stamps in such finer increment. Proposed Rule 6860(b) addresses the need for Industry Members to capture Manual Order Events in increments up to and including one second, provided that each Industry Member is required to record and report the Electronic Capture Time in milliseconds.

G. Time Stamp and Clock Synchronization Rule Violations (Rule 6865)

The Commission finds that proposed Rule 6865 is consistent with the Act as it implements the clock synchronization rule violation provisions of the CAT NMS Plan. The Commission notes that proposed Rule 6865 describes potential violations of clock synchronization as well as the time stamp time period requirements set forth in the CAT NMS Plan, and specifically states that an Industry Member that engages in a pattern or practice of reporting Reportable Events with time stamps generated by Business Clocks that are not synchronized according to the requirements set forth in the Rule 6800 Series without reasonable justification or exceptional circumstances may be considered in violation of this Rule.

H. Connectivity and Data Transmission (Rule 6870)

The Commission finds that proposed Rule 6870—which addresses connectivity and data transmission

requirements related to the CAT—is consistent with the Act as it implements the connectivity and data transmission provisions of the CAT NMS Plan. Proposed Rule 6870(a) requires each Industry Member to transmit data as required under the CAT NMS Plan to the Central Repository utilizing such format(s) as may be provided by the Plan Processor and approved by the Operating Committee, and proposed Rule 6870(b) requires each Industry Member to connect to the Central Repository using a secure method(s), including, but not limited to, private line(s) and virtual private network connection(s). Proposed Rule 6870(c) permits Industry Members to use CAT Reporting Agents to fulfill their data reporting obligations related to the CAT. The Commission notes that Rule 6870(c) is substantively similar to FINRA Rule 7450(c), in that proposed Rule 6870(c), like FINRA Rule 7450(c), permits OATS Reporting Members to enter into agreements with Reporting Agents to fulfill the OATS obligations of the OATS Reporting Member, specifies responsibilities and procedures for maintaining such agreements between the OATS Reporting Member and the Reporting Members, and clarifies that an OATS Reporting Member remains primarily responsible for compliance with the OATS reporting rules.

I. Development and Testing (Rule 6880)

The Commission finds that proposed Rule 6880 is consistent with the Act as it implements the development and testing provisions of the CAT NMS Plan. Proposed Rule 6880(a)(1) addresses Industry Members’ connectivity and testing requirements, including connectivity and acceptance testing timelines. Proposed Rule 6880(a)(2) addresses the requirements relating to Industry Members’ reporting of Customer and Industry Member information. Proposed Rule 6880(a)(3)–(4) addresses the submission of order data, including the Quote Sent time to be reported by Options Market Makers. Proposed Rule 6880(b) requires that each Industry Member shall participate in the testing related to the Central Repository, including any industry-wide disaster recovery testing.

J. Recordkeeping (Rule 6890)

The Commission finds that proposed Rule 6890 is consistent with the Act. The Commission notes that proposed Rule 6890 requires each Industry Member to maintain and preserve, and specifies the manner in which such records must be maintained and preserved, information required to be recorded under the proposed Rule 6800

Series for the period of time and accessibility specified in Rule 17a-4(b).¹⁰⁵ Because proposed Rule 6890 incorporate Rule 17a-4(b) and implements the recordkeeping provision of the CAT NMS Plan, the Commission finds that proposed Rule 6890 is consistent with the Act.

K. Timely, Accurate and Complete Data (Rule 6893)

The Commission finds that proposed Rule 6893 is consistent with the Act as it implements the requirements for reporting timely, accurate and complete data to the CAT as set forth in the CAT NMS Plan. FINRA notes that proposed Rule 6893 implements the requirement in Rule 613 and the CAT NMS Plan that data reported to the CAT be timely, accurate and complete. Specifically, proposed Rule 6893(a) requires that Industry Members record and report data to the Central Repository as required by the proposed Rule 6800 Series in a manner that ensures the timeliness, accuracy, integrity and completeness of such data. Proposed Rule 6893(b) requires Industry Members to accurately provide the LEIs in their records as required by the proposed Rule 6800 Series and states that Industry Members may not knowingly submit inaccurate LEIs to the Central Repository. Paragraph (b) notes, however, that this requirement does not impose any additional due diligence obligations on Industry Members with regard to LEIs for CAT purposes. Proposed Rule 6893(c) and (d) require Industry Members to be in compliance with the Error Rate as set forth in the CAT NMS Plan and the Compliance Thresholds as discussed in the CAT NMS Plan and determined by the Operating Committee. Proposed Rule 6893 implements the CAT NMS Plan's provisions.

L. Compliance Dates (Rule 6895)

The Commission finds that the compliance dates in proposed Rule 6895 are consistent with the Act, as they implement the compliance dates for reporting data to the CAT as set forth in the CAT NMS Plan and an exemptive order issued by the Commission. Proposed Rule 6895(a) states that, except as set forth in paragraphs (b) and (c) of the Rule or otherwise set forth in this Rule Series, the compliance date for the proposed Rule 6800 Series will be the date of Commission approval of the proposed rule change.

Proposed Rule 6895(b)(1) states that each Industry Member that captures time in milliseconds shall comply with Rule 6820 with regard to Business Clocks on or before March 15, 2017. Paragraph (b)(2) states that each Industry Member that does not capture time in milliseconds shall comply with Rule 6820 with regard to Business Clocks on or before February 19, 2018. The Commission notes that the compliance date set forth in proposed Rule 6895(b)(2) reflects the exemptive relief requested by the Participants and granted by the Commission with regard to the clock synchronization requirements related to Business Clocks that do not capture time in milliseconds.¹⁰⁶

Proposed Rule 6895(c)(1) requires each Industry Member (other than Small Industry Members) to record and report the Industry Member Data to the Central Repository by November 15, 2018. Proposed rule 6895(c)(2) requires that each Industry Member that is a Small Industry Member to record and report the Industry Member Data to the Central Repository by November 15, 2019.¹⁰⁷ Proposed Rule 6895(c)(1) and (c)(2) implement the CAT NMS Plan's provisions regarding the reporting of Industry Member data to the Central Repository.

The Commission notes that one commenter also requested that FINRA classify all firms currently exempt from reporting to OATS to be classified as a "Small Industry Member" as defined by the CAT NMS Plan.¹⁰⁸ The commenter notes that some OATS exempt firms would be classified as Large Industry Members but really should be subject to the three year implementation timeframe for Small Industry Members. The Participants responded that the definition of "Small Industry Member" is appropriate because it is an existing regulatory standard. The Commission believes that the proposed rule change's use of the "Small Industry Member" definition is consistent with the CAT NMS Plan.

The Commission notes that a commenter suggested that a cost/benefit analysis be performed to review the impact of CAT on firms currently exempt from reporting to OATS. The Participants responded the Commission had already undertaken into account the impact of CAT on firms currently exempt from OATS. The Commission likewise notes that it took into account

the impact of the Plan on firms currently exempt from reporting to OATS when it approved the CAT NMS Plan.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-FINRA-2017-003) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰⁹

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2017-05504 Filed 3-20-17; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549-0213

ACTION: Notice.

[SEC File No. TM-S7-11-10, OMB Control No. 3235-0671]

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of an amendment to a collection of information in connection with an National Market System (NMS) Plan filed with the Commission under Rule 613 (17 CFR 242.613), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 613 of Regulation NMS (17 CFR part 242) required national securities exchanges and national securities associations ("Participants") to jointly submit to the Commission a national market system ("NMS") plan to govern the creation, implementation, and maintenance of a consolidated audit trail ("CAT") and Central Repository for the collection of information for NMS securities. On February 27, 2015, the Participants submitted the CAT NMS Plan to the Commission.¹

¹⁰⁹ 17 CFR 200.30-3(a)(12).

¹ See Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. The Participants filed the CAT NMS Plan on September 30, 2014. See Letter from the Participants, to Brent J. Fields, Secretary, Commission, dated September 30, 2014. The CAT

¹⁰⁵ 17 CFR 240.17a-4(b). FINRA also notes that proposed Rule 6890 is based on Rule 7440(a)(5), which sets forth the recordkeeping requirements related to OATS.

¹⁰⁶ See *supra* note 77.

¹⁰⁷ Such compliance dates are consistent with the compliance dates set forth in SEC Rule 613(a)(3)(v) and (vi), and Sections 6.7(a)(v) and (vi) of the CAT NMS Plan.

¹⁰⁸ Wachtel Letter at 1.

On April 27, 2016, the Commission published a notice soliciting comments from the public (“CAT NMS Plan Notice”).² On November 15, 2016, the Commission approved the CAT NMS Plan (“CAT NMS Plan Order”), including the information collections proposed in the CAT NMS Plan Notice and certain additional information collections that are the subject of this Notice.³ This Notice addresses only the new information collections noticed in the CAT NMS Plan Order, which are: (1) A one-time independent audit of the fees, costs, and expenses incurred by the Participants on behalf of CAT NMS, LLC prior to the Effective Date⁴ of the Plan;⁵ (2) a one-time assessment of the clock synchronization standards in the Plan before reporting begins for Industry Members, which assessment shall take into account the diversity of CAT Reporters and systems;⁶ (3) a one-time report that discusses the Participants’ assessment of implementing coordinated surveillance;⁷ (4) a one-time report discussing the feasibility and advisability of allowing Industry Members to bulk download the Raw Data that it has submitted to the Central Repository;⁸ (5) a one-time assessment of the nature and extent of errors in the Customer information submitted to the Central Repository and whether the correction of certain data fields over others should be prioritized;⁹ (6) a one-

NMS Plan filed on February 27, 2015, was an amendment to and replacement of the Initial CAT NMS Plan (the “Amended and Restated CAT NMS Plan”). On December 24, 2015, the Participants submitted an Amendment to the Amended and Restated CAT NMS Plan. See Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015 (the “Amendment”). On February 9, 2016, the Participants filed with the Commission an identical, but unmarked, version of the Amended and Restated CAT NMS Plan, dated February 27, 2015, as modified by the Amendment, as well as a copy of the request for proposal issued by the Participants to solicit Bids from parties interested in serving as the Plan Processor for the consolidated audit trail. Unless the context otherwise requires, the “CAT NMS Plan” shall refer to the Amended and Restated CAT NMS Plan, as modified by the Amendment.

² See Securities Exchange Act Release No. 77724 (April 27, 2016), 81 FR 30613 (May 17, 2016). The burdens associated with the CAT NMS Plan Notice were submitted under OMB number 3235–0671 which relates to the NMS Plan required to be filed under Rule 613.

³ See Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016), available at <https://www.sec.gov/rules/sro/nms/2016/34-79318.pdf>.

⁴ The “Effective Date” is the date the Commission approved the CAT NMS Plan, which was November 15, 2016. See *id.*

⁵ See CAT NMS Plan Order, *supra* note at 84940.

⁶ *Id.*

⁷ *Id.* at 84940–84941.

⁸ *Id.* at 84941.

⁹ *Id.*

time report on the impact of tiered fees on market liquidity, including an analysis of the impact of the tiered-fee structure on Industry Members provision of liquidity;¹⁰ (7) an assessment of the projected impact of any Material Systems Change on the Maximum Error Rate, prior to the implementation of such Material Systems Change;¹¹ and (8) an annual requirement that that the CAT LLC financials be (i) in compliance with GAAP, (ii) be audited by an independent public accounting firm, and (iii) be made publicly available.¹²

The Commission believes that these audits, reports, and assessments of various aspects of the CAT NMS Plan are necessary to achieving the CAT NMS Plan’s objective of improving the quality of the data available to regulators in four areas that affect the ultimate effectiveness of core regulatory efforts—completeness, accuracy, accessibility and timeliness.¹³

The new information collections further require that each Participant conduct background checks for its employees and contractors that will use the CAT System.¹⁴ The Commission believes that these background checks are necessary to ensure that only authorized and qualified persons are using the CAT System.

There are 21 respondents that require an aggregate total of 8,269,747.99 hours to comply with the collection of information, as amended. The Commission further estimates that the aggregate cost to comply with the collection of information, as amended, is \$534,465,565.81.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this amendment at the following Web site: www.reginfo.gov. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: [¹⁰ *Id.* at 84941–84942.](mailto:Shagufta_</p>
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¹¹ *Id.* at 84942. The Commission believes that four assessments would be filed annually.

¹² *Id.*

¹³ See Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722 (August 1, 2012) (“Rule 613 Adopting Release”), at 45727 (discussing four “qualities” of trade and order data that impact the effectiveness of core Participant and Commission regulatory efforts: accuracy, completeness, accessibility, and timeliness).

¹⁴ See CAT NMS Plan Order, *supra* note at 84942.

Ahmed@omb.eop.gov; and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or by sending an email to: PRA_Mailbox@sec.gov. Comments must be submitted to OMB within 30 days of this notice.

Dated: March 16, 2017.

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2017–05539 Filed 3–20–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32533; File No. 812–14255]

Allianz Funds Multi-Strategy Trust and Allianz Global Investors U.S. LLC

March 15, 2017.

AGENCY: Securities and Exchange Commission (“Commission”).

ACTION: Notice.

Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the “Act”) for an exemption from sections 12(d)(1)(A), (B), and (C) of the Act and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (2) of the Act. The requested order would permit certain registered open-end investment companies to acquire shares of certain registered open-end investment companies, registered closed-end investment companies, business development companies, as defined in section 2(a)(48) of the Act, and unit investment trusts (collectively, “Underlying Funds”) that are within and outside the same group of investment companies as the acquiring investment companies, in excess of the limits in section 12(d)(1) of the Act.

APPLICANTS: Allianz Funds Multi-Strategy Trust (the “Trust”), a Massachusetts business trust that is registered under the Act as an open-end management investment company with multiple series, and Allianz Global Investors U.S. LLC (the “Applying Manager”), a Delaware limited liability company registered as an investment adviser under the Investment Advisers Act of 1940.

FILING DATES: The application was filed on December 23, 2013 and amended on July 30, 2015, May 2, 2016, February 3, 2017, March 8, 2017 and March 13, 2017.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will

be issued unless the Commission orders 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 April 10, 2017 and should be accompanied by proof of service on the 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, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: Allianz Funds Multi-Strategy Trust and Allianz Global Investors U.S. LLC, 1633 Broadway, New York, New York 10019; and George B. Raine, Ropes & Gray LLP, Prudential Tower, 800 Boylston St., Boston, MA 02148.

FOR FURTHER INFORMATION CONTACT: Mark N. Zaruba, Senior Counsel, at (202) 551–6878, or Robert Shapiro, 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 Web site 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 to permit (a) a Fund¹ (each a "Fund of Funds") to acquire shares of Underlying

Funds² in excess of the limits in sections 12(d)(1)(A) and (C) of the Act and (b) the Underlying Funds that are registered open-end investment companies or series thereof, their principal underwriters and any broker or dealer registered under the Securities Exchange Act of 1934 to sell shares of the Underlying Fund to the Fund of Funds in excess of the limits in section 12(d)(1)(B) of the Act.³ Applicants also request an order of exemption under sections 6(c) and 17(b) of the Act from the prohibition on certain affiliated transactions in section 17(a) of the Act to the extent necessary to permit the Underlying Funds to sell their shares to, and redeem their shares from, the Funds of Funds.⁴ Applicants state that such transactions will be consistent with the policies of each Fund of Funds and each Underlying Fund and with the general purposes of the Act and will be based on the net asset values of the Underlying Funds.

2. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the application. Such terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over an Underlying Fund that is not in the same "group of investment companies" as the Fund of Funds 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), (B), and (C) of the Act.

3. Section 12(d)(1)(f) 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. 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.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2017–05507 Filed 3–20–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80253; File No. SR–FICC–2017–004]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Describe the Intraday Mark-to-Market Charge

March 15, 2017.

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 March 7, 2017, Fixed Income Clearing Corporation ("FICC") 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 clearing agency. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to the Mortgage-Backed

¹ Applicants request that the order apply to each existing and future series of the Trust and to each existing and future registered open-end investment company or series thereof that is advised by the Applying Manager or its successor or by any other investment adviser controlling, controlled by or under common control with the Applying Manager or its successor and is part of the same "group of investment companies" as the Trust (each, a "Fund"). For purposes of the requested order, "successor" is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization. For purposes of the request for relief, the term "group of investment companies" means any two or more registered investment companies, including closed-end investment companies and business development companies, that hold themselves out to investors as related companies for purposes of investment and investor services.

² Certain of the Underlying Funds have obtained exemptions from the Commission necessary to permit their shares to be listed and traded on a national securities exchange at negotiated prices and, accordingly, to operate as an exchange-traded fund ("ETF").

³ Applicants do not request relief for Funds of Funds to invest in reliance on the order in business development companies and registered closed-end investment companies that are not listed and traded on a national securities exchange.

⁴ A Fund of Funds generally would purchase and sell shares of an Underlying Fund that operates as an ETF through secondary market transactions rather than through principal transactions with the Underlying Fund. Applicants nevertheless request relief from section 17(a) to permit a Fund of Funds to purchase or redeem shares from the ETF. A Fund of Funds will purchase and sell shares of an Underlying Fund that is a closed-end fund through secondary market transactions at market prices rather than through principal transactions with the closed-end fund. Accordingly, applicants are not requesting section 17(a) relief with respect to transactions in shares of closed-end funds (including business development companies).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

Securities Division (“MBSD”) Clearing Rules (“MBSD Rules”)³ in order to provide transparency in the MBSD Rules with respect to the existing intraday Mark-to-Market charge by codifying FICC’s current practices with respect to the assessment and collection of the intraday Mark-to-Market charge.⁴ This charge is imposed on certain Clearing Members that experience an adverse intraday Mark-to-Market change that meets certain criteria described below. The charge is designed to mitigate FICC’s exposure resulting from large intraday Mark-to-Market fluctuations to Clearing Members’ portfolios that are not otherwise covered by Clearing Members’ Required Fund Deposits.

In order to provide transparency with respect to the existing intraday Mark-to-Market charge by codifying FICC’s existing practices with respect to the charge, FICC is proposing to amend MBSD Rule 1 (Definitions) to add the defined term “Intraday Mark-to-Market Charge” and to amend Section 2(c) of MBSD Rule 4 (Clearing Fund and Loss Allocation) to include the Intraday Mark-to-Market Charge.

In addition, the proposed rule change would delete the term “End of Day Charge” from the MBSD Rules because it is no longer used, as further discussed below. To effectuate this change, the proposed rule change would delete the definition of End of Day Charge from Rule 1 (Definitions) and would amend Section 2 of MBSD Rule 4 (Clearing Fund and Loss Allocation) to delete the reference to the End of Day Charge.

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would provide transparency in the MBSD Rules with respect to the assessment and collection of the existing Intraday Mark-to-Market Charge, which FICC currently may impose on a Clearing Member on an intraday basis under certain circumstances described below. Once imposed, payment of this charge is due within one hour after notice from FICC to an affected Clearing Member.⁵ The proposed rule change would also eliminate references to the End of Day Charge from the MBSD Rules.

(i) Background—The Required Fund Deposit and Mark-to-Market

The Required Fund Deposit serves as each Clearing Member’s margin. The objective of the Required Fund Deposit is to mitigate potential losses to FICC associated with liquidation of the Clearing Member’s portfolio in the event that FICC ceases to act for a Clearing Member (hereinafter referred to as a “default”). FICC determines Required Fund Deposit amounts using a number of component charges calculated and assessed daily, the largest of which is the VaR Charge that is a risk-based margin methodology intended to capture market price risk. The methodology uses historical market moves to project or forecast the potential gains or losses on the liquidation of a defaulting Clearing Member’s portfolio, assuming that a portfolio would take three days to liquidate or hedge in normal market conditions. The projected liquidation gains or losses are used to determine the Clearing Member’s VaR Charge, which is calculated to cover projected liquidation losses at a 99 percent confidence level. The aggregate of all Clearing Members’ Required Fund Deposits constitutes the Clearing Fund of MBSD, which FICC would be able to access in the event a defaulting Clearing Member’s own Required Fund Deposit is insufficient to satisfy losses to FICC caused by the liquidation of that Clearing Member’s portfolio.

MBSD calculates the full suite of components that comprise the Required Fund Deposit and imposes the Required Fund Deposit once per day, at the start of the day, based on a Clearing Member’s prior end-of-day positions. Generally, the second largest component of the daily Required Fund Deposit is a start-of-day Mark-to-Market amount,

which is designed to mitigate the risk arising out of the value change between the contract/settlement value of a Clearing Member’s open positions and the market value at the end of the prior day.

(ii) Overview—The Intraday Mark-to-Market Charge

During each trading day, a Clearing Member’s exposure may change due to the settlement of existing transactions and new trade activities. In addition, the value of the Clearing Member’s portfolio may change due to market influences. Normally, the start-of-day Mark-to-Market component of the daily Required Fund Deposit covers FICC’s exposure to a Clearing Member due to market moves and/or trading and settlement activity because it brings the portfolio of outstanding positions up to the market value at the end of the prior day. However, because the start-of-day Mark-to-Market component of the Required Fund Deposit is calculated only once daily using the prior end-of-day positions and prices, it does not cover a Clearing Member’s exposure arising out of intraday changes to position and market value in the Clearing Member’s portfolio that result in an adverse change to the Clearing Member’s Mark-to-Market (“MTM Exposure”). FICC manages this intraday risk exposure by observing snapshots of Clearing Members’ portfolios and monitoring intraday changes to each Clearing Member’s Mark-to-Market versus the Mark-to-Market that was part of the Required Fund Deposit at the start of the day or, if applicable, any subsequently collected Mark-to-Market amount. FICC then collects an Intraday Mark-to-Market Charge from Clearing Members to cover significant risk exposures that warrant the collection of intraday margin, as further described below.

(iii) The Parameter Breaks

FICC’s current practice with respect to the assessment of the Intraday Mark-to-Market Charge entails tracking three criteria (each, a “Parameter Break”) for each Clearing Member. The Parameter Breaks help FICC determine whether a Clearing Member’s MTM Exposure poses a risk to FICC that is significant enough to warrant an Intraday Mark-to-Market Charge. The objective of the Parameter Breaks is to ensure that FICC is able to limit exposure to intraday Mark-to-Market fluctuations that (a) are of a large dollar amount (the “Dollar Threshold”), (b) exhaust a significant portion of a Clearing Member’s VaR Charge (the “Percentage Threshold”) and (c) are experienced by Clearing Members with backtesting deficiencies

³ The MBSD Rules are available at <http://www.dtcc.com/legal/rules-and-procedures>.

Capitalized terms used herein and not otherwise defined shall have the meaning assigned to such terms in the MBSD Rules.

⁴ The intraday Mark-to-Market charge is currently described in Section 2(a) of Rule 4 of the MBSD Rules.

⁵ MBSD Rule 4, Section 2.

that bring backtesting results for that Clearing Member below the 99 percent confidence target (the "Coverage Target"), indicating that a Clearing Member's activity was not sufficiently covered by margin.

1. The Dollar Threshold

The purpose of the Dollar Threshold is to identify those Clearing Members whose MTM Exposures represent a large portion of the Clearing Fund. FICC believes that such Clearing Members pose an increased risk of loss to FICC because the coverage provided by the Clearing Fund, which is designed to cover the aggregate losses of all Clearing Members' portfolios, would be substantially impacted by large MTM Exposures. More specifically, if a Clearing Member were to default and the Clearing Member's Required Fund Deposit was not sufficient to satisfy losses to FICC caused by the liquidation of the Clearing Member's portfolio, FICC would be able to access the funds held by it in the Clearing Fund to satisfy such losses. However, because the Clearing Fund must be available to satisfy potential losses to FICC that may arise from any Clearing Member defaults, FICC would be exposed to a significant risk of loss if Clearing Members' MTM Exposures accounted for a substantial portion of the Clearing Fund. The Dollar Threshold is set to an amount that would ensure that the aggregate MTM Exposures of all of its Clearing Members at such threshold would not exceed 5 percent of the Clearing Fund. FICC believes that the availability of 95 percent of the Clearing Fund to satisfy all other liquidation losses arising out of a Clearing Member's default is sufficient to mitigate the risks posed to FICC by such losses. FICC assesses the sufficiency of the Dollar Threshold on an annual basis and may adjust the Dollar Threshold if it determines that such an adjustment is necessary to provide reasonable coverage. Currently, the Dollar Threshold is an adverse intraday Mark-to-Market change in a Clearing Member's portfolio that equals or exceeds \$1,000,000 when compared to the Clearing Member's start-of-day Mark-to-Market requirement including, if applicable, any subsequently collected Mark-to-Market amount.

2. The Percentage Threshold

The purpose of the Percentage Threshold is to identify those Clearing Members whose MTM Exposures deplete a significant portion of such Clearing Members' daily VaR Charge. FICC believes that Clearing Members that experience such MTM Exposures pose an increased risk of loss to FICC

because the coverage provided by the VaR Charge, which is designed to cover estimated losses to a portfolio over a specified time period at least 99 percent of the time, would be depleted by a significant MTM Exposure that could cause the Clearing Member's Required Fund Deposit to be unable to absorb further intraday losses to the Clearing Member's portfolio. The Percentage Threshold is designed to provide FICC with a reasonable cushion to allow the VaR Charge collected at the start of day to function as expected. More specifically, the VaR Charge is designed to cover potential losses over a three-day time period for a Clearing Member at least 99 percent of the time, assuming normal market conditions. When a Clearing Member's MTM Exposure meets or exceeds a certain percentage as compared to its daily VaR Charge, the value of the Clearing Member's portfolio is trending towards a loss outside of the expected value as determined by such VaR Charge. The Percentage Threshold is calculated to equal a percentage of the daily VaR Charge that FICC has determined would leave it with a sufficient amount of a Clearing Member's remaining VaR Charge after accounting for potential losses arising from the Clearing Member's MTM Exposure. FICC assesses the sufficiency of the Percentage Threshold on an annual basis and may adjust the Percentage Threshold if it determines that such an adjustment is necessary to provide reasonable coverage.⁶ Currently, the Percentage Threshold is an adverse intraday Mark-to-Market change in a Clearing Member's portfolio that equals or exceeds 30 percent of the VaR Charge collected as part of the Clearing Member's daily Required Fund Deposit.

3. The Coverage Target

The purpose of the Coverage Target is to identify those Clearing Members that have experienced backtesting deficiencies that bring the results for that Clearing Member below the 99 percent confidence target (*i.e.*, greater than two deficiency days in a rolling 12-month period) as reported in the most current month. FICC believes that such Clearing Members pose an increased risk of loss to FICC because such backtesting deficiencies demonstrate that FICC's risk-based margin model did not perform as expected for the Clearing Member. More specifically, FICC employs daily backtesting to determine the adequacy of each Clearing Member's

Required Fund Deposit. FICC compares the Required Fund Deposit for each Clearing Member with the simulated liquidation gains/losses using the actual positions in the Clearing Member's portfolio and the actual historical security returns. FICC investigates the cause(s) of any deficiencies. As a part of this process, FICC pays particular attention to deficiencies that cause a Clearing Member's backtesting coverage to fall below the Coverage Target. Such deficiencies are evidence that the model used to calculate the Clearing Member's Required Fund Deposit did not calculate an amount sufficient to cover the Clearing Member's risk to FICC, as would otherwise be expected of the Required Fund Deposit. The Coverage Target is designed to provide coverage to FICC for intraday Mark-to-Market fluctuations in the portfolio of a Clearing Member for whom the Required Fund Deposit model is not performing as expected. FICC believes that a MTM Exposure for Clearing Members that fall below the Coverage Target may expose FICC to heightened risk, requiring an Intraday Mark-to-Market Charge to cover that risk.

(iv) Assessment and Collection of the Intraday Mark-to-Market Charge

FICC's current practice is to review intraday snapshots of each Clearing Member's portfolios to determine whether the Clearing Member has experienced a MTM Exposure that warrants FICC assessing an Intraday Mark-to-Market Charge. More specifically, if a Clearing Member's MTM Exposure breaches all three Parameter Breaks, the Clearing Member will be subject to the Intraday Mark-to-Market Charge and FICC will collect the charge subject to waivers or changes to the amount of the calculated charge, as described below. However, where FICC determines that certain market conditions exist, including but not limited to (i) sudden swings in an equity index in either direction that exceed certain threshold amounts determined by FICC and (ii) moves in U.S. Treasury yields and mortgage-backed security spreads outside of historically observed market moves, FICC does not require that the Coverage Target be breached; rather, FICC imposes the Intraday Mark-to-Market Charge if only the Dollar Threshold and Percentage Threshold are breached,⁷ subject to waivers and

⁶ In 2014, FICC lowered the Percentage Threshold from 40 percent to 30 percent of the VaR Charge after conducting a study that determined that a Percentage Threshold of 40 percent did not provide a sufficient cushion against potential losses.

⁷ FICC has determined that, because a Clearing Member's backtesting coverage may not accurately reflect the risks posed by a Clearing Member under certain market conditions, Clearing Members with backtesting coverage that meets or exceeds the Coverage Target may nonetheless pose increased

changes to the amount of the calculated charge, as described below. Moreover, during such market conditions, the Dollar Threshold and Percentage Threshold may be reduced if FICC determines that such reduction is appropriate in order to accelerate collection of anticipated additional margin from Clearing Members whose portfolios may present relatively greater risks to FICC on an overnight basis. Any such reduction would not cause the Dollar Threshold to be less than \$250,000 and the Percentage Threshold to be less than 5 percent.

Irrespective of market conditions, FICC may impose the Intraday Mark-to-Market Charge on Clearing Members that (i) are approaching but have not yet breached the Percentage Threshold (but are at 20 percent or greater of the daily VaR Charge) and (ii) have a MTM Exposure that exceeds a certain dollar amount ("Surveillance Threshold") that is set by FICC per Clearing Member based on the Clearing Member's internal Credit Risk Rating Matrix ("CRRM") rating and/or the Clearing Member's Watch List status, if the Corporation determines that the size of such Clearing Member's Mark-to-Market change exposes the Corporation to increased risk. FICC links the Surveillance Thresholds to a Clearing Member's CRRM rating and Watch List status because a Clearing Member with a weaker internal rating is likely to pose a greater risk of default. Clearing Members with weaker internal credit ratings are assigned lower Surveillance Thresholds than Clearing Members with stronger internal credit ratings. The Surveillance Thresholds are intended as a tool to aid FICC in identifying Clearing Members whose MTM Exposures may necessitate the collection of an Intraday Mark-to-Market Charge. The current Surveillance Thresholds are: (a) \$50 million for Clearing Members with a CRRM rating of "1" or "2" and for non-rated Clearing Members that are not on the Watch List; (b) \$25 million for Clearing Members with a CRRM rating of "3"; (c) \$15 million for Clearing Members with a CRRM rating of "4"; (d) \$10 million for Clearing Members with a CRRM rating of "5" or "6" and for non-rated Clearing Members that are on the Watch List; and (e) \$5 million for Clearing Members with a CRRM rating of "7."

Although FICC generally collects the Intraday Mark-to-Market Charge under

the conditions described above, FICC retains the discretion to waive or alter such Intraday Mark-to-Market Charge in circumstances where it determines that the MTM Exposure and/or the breaches of the Parameter Breaks do not accurately reflect FICC's risk exposure to the Clearing Member's intraday Mark-to-Market fluctuation (e.g., a Clearing Member's breach of the Coverage Target Parameter Break is based on a shortened backtesting look-back period and large Mark-to-Market fluctuations arising out of trade errors). Based on FICC's assessment of the impact of these circumstances and FICC's actual risk exposure to a Clearing Member, FICC may, in its discretion, waive or alter (decrease or increase) an Intraday Mark-to-Market Charge for a Clearing Member. Given the variability of the factors that result in breaches of the Parameter Breaks, FICC believes that it is important to maintain such discretion in order to limit the imposition of the Intraday Mark-to-Market Charge to those Clearing Members with MTM Exposures that pose a significant level of risk to FICC. Such Intraday Mark-to-Market Charge would not reduce a Clearing Member's Required Fund Deposit below the amount reported at the start of day. Any increase to the Intraday Mark-to-Market Charge would not cause the Intraday Mark-to-Market Charge to be greater than two times its calculated amount.

(v) Communication With Clearing Members and Imposition of the Intraday Mark-to-Market Charge

If FICC determines that FICC should collect an Intraday Mark-to-Market Charge from a Clearing Member, FICC notifies the Clearing Member during the trading day of its requirement to pay the Intraday Mark-to-Market Charge and the amount due. Affected Clearing Members are required to pay the amount due within one hour after FICC has provided the Clearing Member with notification that such payment is due (as long as notification is provided at least one hour prior to the close of the cash Fedwire operated by the Federal Reserve Bank of New York).

(vi) Proposal To Delete the End of Day Charge

Currently, MBSD Rule 4 states that the Required Fund Deposit is equal to the greater of: (i) The Minimum Charge, or (ii) the End of Day Charge,⁸ plus the

VaR Charge, the Deterministic Risk Component,⁹ and the special charge, if applicable. The End of Day Charge is comprised of the VaR Charge plus components that are identical to the components in the Deterministic Risk Component and is therefore duplicative and unnecessary. Therefore, FICC is proposing to delete the term and the reference to the End of Day Charge in order to help ensure that the MBSD Rules are accurate and clear.

2. Statutory Basis

Section 17A(b)(3)(F) of the Securities Exchange Act of 1934, as amended (the "Act"), requires, in part, that the MBSD Rules promote the prompt and accurate clearance and settlement of securities transactions.¹⁰ The proposed rule changes with respect to the Intraday Mark-to-Market Charge would provide transparency in the MBSD Rules regarding the existing Intraday Mark-to-Market Charge by codifying FICC's current practices with respect to the assessment and collection of the charge. In addition, the proposed rule change associated with the deletion of the End of Day Charge would delete provisions that are not used to ensure that the MBSD Rules remain accurate and clear. Collectively, the proposed changes would ensure that the MBSD Rules remain transparent, accurate and clear, which would enable all stakeholders to readily understand their rights and obligations in connection with MBSD's clearance and settlement of securities transactions. Therefore, FICC believes that the proposed rule changes would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.

Rule 17Ad-22(b)(1) under the Act requires a clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to measure its credit exposures to its participants at least once a day and limit its exposures to potential losses from defaults by its participants under normal market conditions, so that the operations of the clearing agency would not be disrupted and non-defaulting participants would not be exposed to losses that they

principal and interest. See MBSD Rule 1, *supra* note 3.

⁹ The "Deterministic Risk Component" means with respect to the margin portfolio of a Clearing Member, the calculation equaling: (i) The Mark-to-Market Debit; minus (ii) the Mark-to-Market Credit; plus (iii) a cash obligation item debit; minus (iv) a cash obligation item credit; plus or minus (v) accrued principal and interest. See MBSD Rule 1, *supra* note 3.

¹⁰ 15 U.S.C. 78q-1(b)(3)(F).

risk to FICC. Therefore, FICC imposes the Intraday Mark-to-Market Charge on Clearing Members that breach the Dollar Threshold and Percentage Threshold, despite the fact that such Members may not have breached the Coverage Target during certain market conditions.

⁸ The "End of Day Charge" means with respect to each Clearing Member, the calculation equaling: (i) The VaR Charge; plus (ii) the Mark-to-Market Debit; minus (iii) the Mark-to-Market Credit; plus (iv) a cash obligation item debit; minus (v) a cash obligation item credit; plus or minus (vi) accrued

cannot anticipate or control.¹¹ FICC's Intraday Mark-to-Market Charge is calculated and imposed to cover credit exposures estimated by FICC based on significant intraday Mark-to-Market changes to a Clearing Member's portfolio, as well as the Clearing Member's trailing 12-month backtesting results, with the goal of ensuring that FICC is not exposed to increased risk from large intraday Mark-to-Market changes to the Clearing Member's portfolio. Therefore, FICC believes that management of its credit exposures to Clearing Members through this charge is consistent with Rule 17Ad-22(b)(1) under the Act.

Rule 17Ad-22(b)(2) under the Act requires a clearing agency to maintain and enforce written policies and procedures reasonably designed to use margin requirements to limit its credit exposures to participants under normal market conditions.¹² When applicable, the Intraday Mark-to-Market Charge is a component of a Clearing Member's Required Fund Deposit, or margin, and is intended to maintain coverage of FICC's credit exposures to such Clearing Member at a confidence level of at least 99 percent. The Intraday Mark-to-Market Charge therefore limits FICC's exposures to Clearing Members under normal market conditions. Moreover, by incorporating the Intraday Mark-to-Market Charge into the MBSD Rules more clearly, the proposed change demonstrates that FICC has rule provisions that are reasonably designed to use margin requirements to limit its credit exposures to its Clearing Members under normal market conditions. Therefore, FICC believes that the proposed rule change is also consistent with Rule 17Ad-22(b)(2) under the Act.

The proposed rule changes with respect to the Intraday Mark-to-Market Charge have also been designed to be consistent with Rules 17Ad-22(e)(4) and (e)(6) under the Act, which were recently adopted by the U.S. Securities and Exchange Commission ("Commission").¹³ Rule 17Ad-22(e)(4) will require FICC to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage

its credit exposures to participants and those exposures arising from its payment, clearing, and settlement processes.¹⁴ The proposed rule change codifies MBSD's practices associated with the Intraday Mark-to-Market Charge, which address the identification, measurement, monitoring and management of credit exposures that may arise from intraday changes that occur to a Clearing Member's portfolio because of settlement of existing transactions and new trade activities. Moreover, by incorporating the Intraday Mark-to-Market Charge into the MBSD Rules more clearly, the proposed change would enable FICC to have rule provisions that are reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to Clearing Members and those exposures arising from its payment, clearing, and settlement processes, which FICC believes is consistent with Rule 17Ad-22(e)(4).

Rule 17Ad-22(e)(6) will require FICC 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 is monitored by management on an ongoing basis and regularly reviewed, tested, and verified.¹⁵ The Intraday Mark-to-Market Charge is a risk-based margining system with parameters that are regularly reviewed by FICC. Therefore, FICC believes the proposed rule change is consistent with Rule 17Ad-22(e)(6).

(B) Clearing Agency's Statement on Burden on Competition

FICC does not believe that the proposed rule change associated with the Intraday Mark-to-Market Charge would impact competition.¹⁶ The proposed rule change would increase the transparency of the MBSD Rules with respect to this existing charge by codifying FICC's current practices with respect to the assessment and imposition of the charge. As such, FICC believes that the proposed rule change will not impact Clearing Members or have any impact on competition.

FICC does not believe that the proposed rule change to delete the End of Day Charge would impact competition. Changes to the applicable provisions would not impact Clearing Members because the End of Day Charge is not used by MBSD in the calculation of a Clearing Member's Required Fund Deposit. As such, FICC believes that the

deletion of these provisions will not impact competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FICC has not received any written comments relating to this proposal. FICC will notify the Commission of any written comments 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) of the Act and paragraph (f) of Rule 19b-4 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.

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-FICC-2017-004 on the subject line.

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-FICC-2017-004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

¹¹ 17 CFR 240.17Ad-22(b)(1).

¹² 17 CFR 240.17Ad-22(b)(2).

¹³ 17 CFR 240.17Ad-22(e)(4) and (6). The Commission adopted amendments to Rule 17Ad-22, including the addition of new section 17Ad-22(e), on September 28, 2016. See Exchange Act Release No. 34-78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7-03-14). FICC is a "covered clearing agency" as defined in Rule 17Ad-22(a)(5) and must comply with new section (e) of Rule 17Ad-22 by April 11, 2017. *Id.*

¹⁴ 17 CFR 240.17Ad-22(e)(4).

¹⁵ 17 CFR 240.17Ad-22(e)(6).

¹⁶ 15 U.S.C. 78q-1(b)(3)(I).

public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FICC and on DTCC's Web site (<http://dtcc.com/legal/sec-rule-filings.aspx>). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FICC-2017-004 and should be submitted on or before April 11, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2017-05502 Filed 3-20-17; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80249; File No. SR-ISE-2017-23]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Schedule of Fees

March 15, 2017.

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 March 10, 2017, the International Securities Exchange, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Schedule of Fees to: (i) Eliminate the

Priority Customer complex order rebate for orders in the NASDAQ 100 Index option ("NDX") and in the Mini Nasdaq 100 Index option ("MNX"); (ii) increase the Non-Priority Customer License Surcharge for Index Options for NDX and MNX options, and (iii) waive the Marketing Fees for NDX and MNX, as described further below.

The text of the proposed rule change is available on the Exchange's Web site at www.ise.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: (i) Eliminate the Priority Customer complex order rebate for orders in NDX and MNX; (ii) increase the Non-Priority Customer License Surcharge for Index Options for NDX and MNX, and (iii) waive marketing fees for NDX and MNX.³ The Exchange notes that both NDX and MNX are transitioning to be exclusively listed on the Exchange and its affiliated markets in 2017.⁴

Eliminate Rebate for Priority Customer Complex Orders in Non-Select Symbols for Orders in NDX and MNX

Currently, the Exchange provides rebates to Priority Customer⁵ complex orders that trade with non-Priority

Customer complex orders in the complex order book or trade with quotes and orders on the regular order book.⁶ Rebates are tiered based on a member's ADV executed during a given month as follows: 0 to 14,999 contracts ("Tier 1"), 15,000 to 44,999 contracts ("Tier 2"), 45,000 to 59,999 contracts ("Tier 3"), 60,000 to 74,999 contracts ("Tier 4"), 75,000 to 99,999 contracts ("Tier 5"), 100,000 to 124,999 contracts ("Tier 6"), 125,000 to 224,999 contracts ("Tier 7"), and 225,000 or more contracts ("Tier 8"). In Non-Select Symbols,⁷ including NDX and MNX, the rebate is \$0.40 per contract for Tier 1, \$0.60 per contract for Tier 2, \$0.70 per contract for Tier 3, \$0.75 per contract for Tier 4, \$0.75 per contract for Tier 5, \$0.80 per contract for Tier 6, \$0.81 per contract for Tier 7, and \$0.85 per contract for Tier 8. The Exchange now proposes to add note 4 to Section II of the Schedule of Fees to provide that no Priority Customer complex order rebates will be paid for orders in NDX or MNX.

Increase Non-Priority Customer License Surcharge for Index Options for NDX and MNX

The purpose of the second proposed change is to raise revenue for the Exchange by increasing the Non-Priority Customer License Surcharge for options on NDX and MNX. Currently, a number of Non-Select Symbols are index options that are traded on the Exchange pursuant to license agreements for which the Exchange charges license surcharges. The Exchange charges the following license surcharges for all orders other than Priority Customer orders: \$ 0.10 per contract for options on BKX, and \$ 0.22 per contract for options on NDX and MNX. The license surcharge fees, which are charged by the Exchange to defray the licensing costs, are charged in addition to transaction fees. The Exchange is now proposing to amend Section IV.B of the Schedule of Fees to increase the Non-Priority Customer License Surcharge for Index Options for NDX and MNX from \$ 0.22 per contract to \$ 0.25 per contract.

Waive the Marketing Fee for NDX and MNX Options

Currently, the Exchange administers a Marketing Fee program that helps Market Makers establish Marketing Fee

³ The Exchange initially filed the proposed pricing change on March 1, 2017 (SR-ISE-2017-21). On March 10, 2017, the Exchange withdrew that filing and submitted this filing.

⁴ The Exchange and its affiliates will exclusively list NDX and MNX in the near future upon expiration of open expiries in these products on other markets.

⁵ A "Priority Customer" is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in ISE Rule 100(a)(37A).

⁶ These rebates are provided per contract per leg if the order trades with non-Priority Customer orders in the complex order book, or trades with quotes and orders on the regular order book.

⁷ "Select Symbols" are options overlying all symbols listed on the ISE that are in the Penny Pilot Program. "Non-Select Symbols" are options overlying all symbols, excluding Select Symbols. NDX and MNX are Non-Select Symbols.

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

arrangements with Electronic Access Members (“EAMs”) in exchange for those EAMs routing some or all of their order flow to the Market Maker. This Marketing Fee program is funded through a fee of \$ 0.70 per contract, which is paid by ISE Market Makers for each regular Priority Customer contract executed in Non-Select Symbols.⁸ The fee is waived in FX Options, Flash Orders, and for Complex Orders in all symbols. The Exchange now proposes to amend Section IV.D of the Schedule of Fees to similarly waive the fee for NDX and MNX options.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁰ 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 any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹¹

Likewise, in *NetCoalition v. Securities and Exchange Commission*¹² (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of

market data fees against a challenge claiming that Congress mandated a cost-based approach.¹³ As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”¹⁴

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”¹⁵ Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange notes that the proposed rule changes are reasonable, equitable and not unfairly discriminatory as NDX and MNX transition to exclusively listed products. Similar to other proprietary products, the Exchange seeks to recoup the operational costs¹⁶ for listing proprietary products. Also, pricing by symbol is a common practice on many U.S. options exchanges as a means to incentivize order flow to be sent to an exchange for execution in particular products. Other options exchanges price by symbol.¹⁷

Eliminate Rebate for Priority Customer Complex Orders in Non-Select Symbols for Orders in NDX and MNX

The Exchange’s proposal to eliminate the rebate for Priority Customer complex orders in Non-Select Symbols for orders in NDX and MNX is reasonable because even after elimination of the rebate, Priority Customer complex orders in NDX and MNX will not be assessed any Complex Order transaction fees.¹⁸ By contrast,

Public Customer executions on the C2 Options Exchange in another broad-based index option, the option on the Russell 2000 Index (RUT), are subject to a \$0.15 per contract transaction fee.¹⁹

The Exchange’s proposal to eliminate the rebate for Priority Customer complex orders in Non-Select Symbols for orders in NDX and MNX is an equitable allocation and is not unfairly discriminatory because the Exchange will eliminate the rebate for all similarly-situated members.

Increase Non-Priority Customer License Surcharge for Index Options for NDX and MNX

The Exchange believes that its proposal to increase the Non-Priority Customer License Surcharge for Index Options for NDX and MNX is reasonable because it is in line with the options surcharge of \$0.25 for transactions in NDX and MNX on NASDAQ PHLX and is in fact lower than the \$0.45 C2 Options Exchange surcharge applicable to non-public customer transactions in RUT, which is another broad-based index option and similar proprietary product.²⁰

The Exchange believes that its proposal to increase the Non-Priority Customer License Surcharge for Index Options for NDX and MNX is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the increase to all similarly-situated members. The Exchange believes it is equitable and not unfairly discriminatory to assess this increased surcharge on all participants except Priority Customers because the Exchange seeks to encourage Priority Customer order flow and the liquidity such order flow brings to the marketplace, which in turn benefits all market participants.

opportunity to either transact options overlying NDX and MNX or separately execute options overlying PowerShares QQQ Trust (“QQQ”), an exchange-traded fund that, like MNX and NDX options, is based on the Nasdaq-100 Index. Offering products such as QQQ provides market participants with a variety of choices in selecting the product they desire as alternatives to NDX and MNX. By comparison, a market participant may trade options overlying RUT or separately the market participant has the choice of trading iShares Russell 2000 Index Fund (“IWM”) Exchange-Traded Fund Shares options, which are also multiply listed. When exchanges are able to recoup costs associated with offering proprietary products, it incentivizes growth and competition for the innovation of additional products.

¹⁹ See C2 Options Exchange, Incorporated Fees Schedule, Section 1.C.

²⁰ See C2 Options Exchange, Incorporated Fees Schedule, Section 1.D.

⁸ The Marketing Fee is rebated proportionately to the members that paid the fee such that on a monthly basis the Marketing Fee fund balance administered by a Primary Market Maker for a Group of options established under Rule 802(b) does not exceed \$100,000 and the Marketing Fee fund balance administered by a preferred Competitive Market Maker for such a Group does not exceed \$100,000. A preferred Competitive Market Maker that elects not to administer a fund will not be charged the Marketing Fee. The Exchange assesses an administrative fee of 0.45% on the total amount of the funds collected each month.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4) and (5).

¹¹ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

¹² *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010).

¹³ See *NetCoalition*, at 534–535.

¹⁴ *Id.* at 537.

¹⁵ *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

¹⁶ By way of example, in analyzing an obvious error, the Exchange would have additional data points available in establishing a theoretical price for a multiply listed option as compared to a proprietary product, which requires additional analysis and administrative time to comply with Exchange rules to resolve an obvious error.

¹⁷ See pricing for RUT on CBOE’s Fees Schedule.

¹⁸ Further, the Exchange notes that with its products, market participants are offered an

Waive the Marketing Fee for NDX and MNX

The Exchange believes that its proposal to waive the Marketing Fee for NDX and MNX is reasonable because the purpose of a Marketing Fee is to attract order flow to the Exchange. Because NDX and MNX are no longer widely traded on many competing options exchanges, a Marketing Fee whose purpose is to attract order flow to the Exchange is no longer necessary to attract order flow to ISE.

The Exchange believes that its proposal to waive the Marketing Fee for NDX and MNX is an equitable allocation and is not unfairly discriminatory because the Exchange will waive the Marketing Fee for all similarly-situated members.

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 it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

The proposed amendments to the fees will eliminate the rebate for Priority Customer complex orders in Non-Select Symbols for orders in NDX and MNX, increase the Non-Priority Customer License Surcharge for Index Options for NDX and MNX, and waive the Marketing Fee for NDX and MNX. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial

markets or will impose any inter-market burden on competition for the reasons stated above.²¹

In terms of intra-market competition, the elimination of the rebate for Priority Customer complex orders for orders in NDX and MNX will result in total fees for orders in NDX and MNX becoming more uniform across all classes of market participants, while still permitting Priority Customers to transact in NDX and MNX free of any transaction charge. Removing the rebate will also enhance the Exchange's ability to offer other rebates or reduced fees that could incentivize behavior that would enhance market quality on the Exchange, which would benefit all members.²² Likewise, the increase in the Non-Priority Customer License Surcharge for Index Options for NDX and MNX will impact all Non-Priority Customers equally, and will raise revenue for the Exchange without negatively impacting Priority Customers whose orders may enhance market quality for all Exchange members. Finally, the waiver of the Marketing Fee for NDX and MNX will reduce an existing disparity between ISE Market Makers, who currently are subject to the fee, and other Exchange members.

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,²³ and Rule 19b-4(f)(2)²⁴ 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: (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.

²¹ See footnote 18 above.

²² The Exchange offers rebates to market participants to encourage certain behavior on the Exchange such as adding more liquidity in a certain product.

²³ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁴ 17 CFR 240.19b-4(f)(2).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-ISE-2017-23 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2017-23. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2017-23 and should be submitted on or before April 11, 2017.

²⁵ 17 CFR 200.30-3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017-05499 Filed 3-20-17; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80247; File No. SR-BOX-2017-08]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend BOX Rule 7170 (Nullification and Adjustment of Options Transactions) To Add IM-7170-4

March 15, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 3, 2017, BOX Options Exchange LLC (the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend BOX Rule 7170 (Nullification and Adjustment of Options Transactions) to add IM-7170-4. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission’s Public Reference Room and also on the Exchange’s Internet Web site at <http://boxexchange.com>.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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 BOX Rule 7170 (Nullification and Adjustment of Options Transactions) to add IM-7170-4. This is filing is based on a proposal recently submitted by Chicago Board Options Exchange, Incorporated (“CBOE”) and approved by the Commission.³

Last year, the Exchange and other options exchanges adopted a new, harmonized rule related to the adjustment and nullification of erroneous options transactions, including a specific provision related to coordination in connection with large-scale events involving erroneous options transactions.⁴ The Exchange believes that the changes the options exchanges implemented with the new, harmonized rule have led to increased transparency and finality with respect to the adjustment and nullification of erroneous options transactions. However, as part of the initial initiative, the Exchange and other options exchanges deferred a few specific matters for further discussion.

Specifically, the options exchanges have been working together to identify ways to improve the process related to the adjustment and nullification of erroneous options transactions as it relates to complex orders⁵ and stock-option orders. The goal of the process that the options exchanges have undertaken is to further harmonize rules related to the adjustment and nullification of erroneous options transactions. As described below, the Exchange believes that the changes the options exchanges and BOX have agreed to propose will provide transparency and finality with respect to the adjustment and nullification of erroneous complex order and stock-option order transactions. Particularly, the proposed changes seek to achieve consistent results for participants across U.S. options exchanges while maintaining a fair and orderly market, protecting investors and protecting the public interest.

The Proposed Rule is the culmination of this coordinated effort and reflects discussions by the options exchanges whereby the exchanges that offer complex orders and/or stock-option orders will universally adopt new provisions that the options exchanges collectively believe will improve the handling of erroneous options transactions that result from the execution of complex orders and stock-option orders.⁶

The Exchange believes that the Proposed Rule supports an approach consistent with long-standing principles in the options industry under which the general policy is to adjust rather than nullify transactions. The Exchange acknowledges that adjustment of transactions is contrary to the operation of analogous rules applicable to the equities markets, where erroneous transactions are typically nullified rather than adjusted and where there is no distinction between the types of market participants involved in a transaction. For the reasons set forth below, the Exchange believes that the distinctions in market structure between equities and options markets continue to support these distinctions between the rules for handling obvious errors in the equities and options markets.

Various general structural differences between the options and equities markets point toward the need for a different balancing of risks for options market participants and are reflected in this proposal. Option pricing is formulaic and is tied to the price of the underlying stock, the volatility of the underlying security and other factors. Because options market participants can generally create new open interest in response to trading demand, as new open interest is created, correlated trades in the underlying or related series are generally also executed to hedge a market participant’s risk. This pairing of open interest with hedging interest differentiates the options market specifically (and the derivatives markets broadly) from the cash equities markets. In turn, the Exchange believes that the hedging transactions engaged in by market participants necessitates protection of transactions through adjustments rather than nullifications when possible and otherwise appropriate.

The options markets are also quote driven markets dependent on liquidity providers to an even greater extent than equities markets. In contrast to the approximately 7,000 different securities

³ See Securities Exchange Act Release No. 80040 (February 14, 2017), 82 FR 11248 (February 21, 2017) (Order Approving SR-CBOE-2016-088).

⁴ See Securities Exchange Act Release No. 74911 (May 8, 2015), 80 FR 27717 (May 14, 2015) (SR-BOX-2015-18) (the “Initial Filing”).

⁵ See Rule 7240(a)(5) (defining complex orders).

⁶ The Exchange notes that it does not offer stock-option orders and will not adopt the CBOE provisions around stock-option orders.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

traded in the U.S. equities markets each day, there are more than 500,000 unique, regularly quoted option series. Given this breadth in options series the options markets are more dependent on liquidity providers than equities markets; such liquidity is provided most commonly by registered market makers but also by other professional traders. With the number of instruments in which registered market makers must quote and the risk attendant with quoting so many products simultaneously, the Exchange believes that those liquidity providers should be afforded a greater level of protection. In particular, the Exchange believes that liquidity providers should be allowed protection of their trades given the fact that they typically engage in hedging activity to protect them from significant financial risk to encourage continued liquidity provision and maintenance of the quote-driven options markets.

In addition to the factors described above, there are other fundamental differences between options and equities markets which lend themselves to different treatment of different classes of participants that are reflected in this proposal. For example, there is no trade reporting facility in the options markets. Thus, all transactions must occur on an options exchange. This leads to significantly greater retail customer participation directly on exchanges than in the equities markets, where a significant amount of retail customer participation never reaches the Exchange but is instead executed in off-exchange venues such as alternative trading systems, broker-dealer market making desks and internalizers. In turn, because of such direct retail customer participation, the exchanges have taken steps to afford those retail customers—generally Priority Customers—more favorable treatment in some circumstances.

Complex Orders

As more fully described below, the Proposed Rule applies much of the Current Rule to Complex Orders.⁷ The Proposed Rule deviates from the Current Rule only to account for the unique qualities of Complex Orders. The Proposed Rule reflects the fact that Complex Orders can execute against other Complex Orders or can execute against individual simple orders in the leg markets. When a Complex Order executes against the leg markets there may be different counterparties on each

leg of the Complex Order, and not every leg will necessarily be executed at an erroneous price.

First, proposed IM-7170-4(a) governs the review of Complex Orders that are executed against individual legs (as opposed to a Complex Order that executes against another Complex Order).⁸ Proposed IM-7170-4(a) provides:

If a Complex Order executes against individual legs and at least one of the legs qualifies as an Obvious or Catastrophic Error under this Rule 7170, then the leg(s) that is an Obvious or Catastrophic Error will be adjusted in accordance with paragraphs (c)(4)(A) or (d)(3), respectively, regardless of whether one of the parties is a Customer. However, any Customer order subject to this paragraph (a) will be nullified if the adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price on the Complex Order or individual leg(s). If any leg of a Complex Order is nullified, the entire transaction is nullified.

As previously noted, at least one of the legs of the Complex Order must qualify as an obvious or catastrophic error under the Current Rule in order for the Complex Order to receive obvious or catastrophic error relief. Thus, when the Exchange is notified (within the timeframes set forth in paragraph (c)(2) or (d)(2)) of a Complex Order that is a possible obvious error or catastrophic error, the Exchange will first review the individual legs of the Complex Order to determine if one or more legs qualify as an obvious or catastrophic error.⁹ If no leg qualifies as an obvious or catastrophic error, the transaction stands—no adjustment and no nullification.

Reviewing the legs to determine whether one or more legs qualify as an obvious or catastrophic error requires the Exchange to follow the Current Rule. In accordance with paragraphs (c)(1) and (d)(1) of the Current Rule, the Exchange compares the execution price of each individual leg to the Theoretical Price of each leg (as determined by

paragraph (b) of the Current Rule). If the execution price of an individual leg is higher or lower than the Theoretical Price for the series by an amount equal to at least the amount shown in the obvious error table in paragraph (c)(1) of the Current rule or the catastrophic error table in paragraph (d)(1) of the Current Rule, the individual leg qualifies as an obvious or catastrophic error, and the Exchange will take steps to adjust or nullify the transaction.¹⁰

To illustrate, consider a Customer submits a Complex Order to the Exchange consisting of leg 1 and leg 2—Leg 1 is to buy 100 ABC calls and leg 2 is to sell 100 ABC puts. Also, consider that Market-Maker 1 is quoting the ABC calls \$1.00–1.20 and Market-Maker 2 is quoting the ABC puts \$2.00–2.20. If the Complex Order executes against the quotes of Market-Makers 1 and 2, the Customer buys the ABC calls for \$1.20 and sells the ABC puts for \$2.00. As with the obvious/catastrophic error reviews for simple orders, the execution price of leg 1 is compared to the Theoretical Price¹¹ of Leg 1 in order to determine if Leg 1 is an obvious error under paragraph (c)(1) of the Current Rule or a catastrophic error under paragraph (d)(1) of the Current Rule. The same goes for Leg 2. The execution price of Leg 2 is compared to the Theoretical Price of Leg 2. If it is determined that one or both of the legs are an obvious or catastrophic error, then the leg (or legs) that is an obvious or catastrophic error will be adjusted in accordance with paragraphs (c)(4)(A) or (d)(3) of the Current Rule, regardless of whether one of the parties is a Customer.¹² Although a single-legged execution that is deemed to be an obvious error under the Current Rule is nullified whenever a Customer is involved in the transaction, the Exchange believes adjusting execution prices is generally better for the marketplace than nullifying executions because liquidity providers often execute hedging transactions to offset options positions. When an options transaction is nullified the hedging position can adversely affect the liquidity provider. With regards to Complex Orders that execute against individual legs, the additional rationale

⁸ The leg market consists of quotes and/or orders in single options series. A Complex Order may be received by the Exchange electronically, and the legs of the Complex Order may have different counterparties. For example, Market-Maker 1 may be quoting in ABC calls and Market-Maker 2 may be quoting in ABC puts. A Complex Order to buy the ABC calls and puts may execute against the quotes of Market-Maker 1 and Market-Maker 2.

⁹ Because a Complex Order can execute against the leg market, the Exchange may also be notified of a possible obvious or catastrophic error by a counterparty that received an execution in an individual options series. If upon review of a potential obvious error the Exchange determines an individual options series was executed against the leg of a Complex Order, proposed IM-7170-4 will govern.

¹⁰ Only the execution price on the leg (or legs) that qualifies as an obvious or catastrophic error pursuant to any portion of Proposed IM-7170-4 will be adjusted. The execution price of a leg (or legs) that does not qualify as an obvious or catastrophic error will not be adjusted.

¹¹ See Rule 7170(b) (defining the manner in which Theoretical Price is determined).

¹² See Rule 7170(a)(1) (defining Customer for purposes of Rule 7170 as not including a broker-dealer, Professional Customer, or Voluntary Professional Customer).

⁷ In order for a Complex Order to qualify as an obvious or catastrophic error at least one of the legs must itself qualify as an obvious or catastrophic error under the Current Rule. See Proposed IM-7170-4 (a)–(b).

for adjusting erroneous execution prices when possible is the fact that the counterparty on a leg that is not executed at an obvious or catastrophic error price cannot look at the execution price to determine whether the execution may later be nullified (as opposed to the counterparty on single-legged order that is executed at an obvious error or catastrophic error price).

Paragraph (c)(4)(A) of the Current Rule mandates that if it is determined that an obvious error has occurred, the execution price of the transaction will be adjusted pursuant to the table set forth in (c)(4)(A). Although for simple orders paragraph (c)(4)(A) is only applicable when no party to the transaction is a Customer, for the purposes of Complex Orders paragraph (a) of IM-7170-4 will supersede that limitation; therefore, if it is determined that a leg (or legs) of a Complex Order is an obvious error, the leg (or legs) will be adjusted pursuant to (c)(4)(A), regardless of whether a party to the transaction is a Customer. The Size Adjustment Modifier defined in subparagraph (a)(4) will similarly apply (regardless of whether a Customer is on the transaction) by virtue of the application of paragraph (c)(4)(A).¹³ The Exchange notes that adjusting all market participants is not unique or novel. When the Exchange determines that a simple order execution is a Catastrophic Error pursuant to the Current Rule, paragraph (d)(3) already provides for adjusting the execution price for all market participants, including Customers.

Furthermore, as with the Current Rule, Proposed IM-7170-4(a) provides protection for Customer orders, stating that where at least one party to a Complex Order transaction is a Customer, the transaction will be nullified if adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price on the Complex Order or individual leg(s). For example, assume Customer enters a Complex Order to buy leg 1 and leg 2.

- Assume the NBBO for leg 1 is \$0.20–1.00 and the NBBO for leg 2 is \$0.50–1.00 and that these have been the NBBOs since the market opened.

- A split-second prior to the execution of the Complex Order a Customer enters a simple order to sell the leg 1 options series at \$1.30, and the

simple order enters the Exchange's book so that the BBO is \$0.20–\$1.30. The limit price on the simple order is \$1.30.

- The Complex Order executes leg 1 against the Exchange's best offer of \$1.30 and leg 2 at \$1.00 for a net execution price of \$2.30.

- However, leg 1 executed on a wide quote (the NBBO for leg 1 was \$0.20–1.00 at the time of execution, which is wider than \$0.75).¹⁴ Leg 2 was not executed on a wide quote (the market for leg 2 was \$0.50–1.00); thus, leg 2 execution price stands.

- The Exchange determines that the Theoretical Price for leg 1 is \$1.00, which was the best offer prior to the execution. Leg 1 qualifies as an obvious error because the difference between the Theoretical Price (\$1.00) and the execution price (\$1.30) is larger than \$0.25.¹⁵

- According to Proposed IM-7170-4(a) Customers will also be adjusted in accordance with Rule 7170(c)(4)(A), which for a buy transaction under \$3.00 calls for the Theoretical Price to be adjusted by adding \$0.15¹⁶ to the Theoretical Price of \$1.00. Thus, adjust execution price for leg 1 would be \$1.15.

- However, adjusting the execution price of leg 1 to \$1.15 violates the limit price of the Customer's sell order on the simple order book for leg 1, which was \$1.30.

- Thus, the entire Complex Order transaction will be nullified¹⁷ because the limit price of a Customer's sell order would be violated by the adjustment.¹⁸

As the above example demonstrates, incoming Complex Orders may execute against resting simple orders in the leg market. If a Complex Order leg is deemed to be an obvious error, adjusting the execution price of the leg may violate the limit price of the resting order, which will result in nullification if the resting order is for a Customer. In contrast, IM-7170-2 provides that if an adjustment would result in an execution price that is higher than an erroneous buy transaction or lower than an erroneous sell transaction the execution will not be adjusted or nullified.¹⁹ If the adjustment of a Complex Order would violate the Complex Order Customer's

limit price, the transaction will be nullified.

As previously noted, paragraph (d)(3) of the Current Rule already mandates that if it is determined that a catastrophic error has occurred, the execution price of the transaction will be adjusted pursuant to the table set forth in (d)(3). For purposes of Complex Orders under Proposed IM-7170-4(a), if one of the legs of a Complex Order is determined to be a Catastrophic Error under paragraph (d)(3), all market participants will be adjusted in accordance with the table set forth in (d)(3). Again, however, where at least one party to a Complex Order transaction is a Customer, the transaction will be nullified if adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price on the Complex Order or individual leg(s). Again, if any leg of a Complex Order is nullified, the entire transaction is nullified.

Other than honoring the limit prices established for Customer orders, the Exchange has proposed to treat Customers and non-Customers the same in the context of the Complex Orders that trade against the leg market. When Complex Orders trade against the leg market, it is possible that at least some of the legs will execute at prices that would not be deemed obvious or catastrophic errors, which gives the counterparty in such situations no indication that the execution will later be adjusted or nullified. The Exchange believes that treating Customers and non-Customers the same in this context will provide additional certainty to non-Customers (especially Market-Makers) with respect to their potential exposure and hedging activities, including comfort that even if a transaction is later adjusted, such transaction will not be fully nullified. However, as noted above, under the Proposed Rule where at least one party to the transaction is a Customer, the trade will be nullified if the adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price on the Complex Order or individual leg(s). The Exchange has retained the protection of a Customer's limit price in order to avoid a situation where the adjustment could be to a price that a Customer would not have expected, and market professionals such as non-Customers would be better prepared to recover in such situations. Therefore, adjustment for non-Customers is more appropriate.

Second, proposed IM-7170-4(b) governs the review of Complex Orders

¹³ See Rule 7170(c)(4)(A) (stating that any non-Customer Obvious Error exceeding 50 contracts will be subject to the Size Adjustment Modifier defined in sub-paragraph (a)(4)).

¹⁴ See Rule 7170(b)(3).

¹⁵ See Rule (c)(1).

¹⁶ See Rule 7170(c)(4)(A).

¹⁷ If any leg of a Complex Order is nullified, the entire transaction is nullified. See Proposed IM-7170-4(a).

¹⁸ The simple order in this example is not an erroneous sell transaction because the execution price was not erroneously low. See Rule 7170(a)(2).

¹⁹ See IM-7170-2.

that are executed against other Complex Orders. Proposed IM-7170-4(b) provides:

If a Complex Order executes against another Complex Order and at least one of the legs qualifies as an Obvious Error under paragraph (c)(1) or a Catastrophic Error under paragraph (d)(1), then the leg(s) that is an Obvious or Catastrophic Error will be adjusted or busted in accordance with paragraph (c)(4) or (d)(3), respectively, so long as either: (i) The width of the National Spread Market for the Complex Order strategy just prior to the erroneous transaction was equal to or greater than the amount set forth in the wide quote table of paragraph (b)(3) or (ii) the net execution price of the Complex Order is higher (lower) than the offer (bid) of the National Spread Market for the Complex Order strategy just prior to the erroneous transaction by an amount equal to at least the amount shown in the table in paragraph (c)(1). If any leg of a Complex Order is nullified, the entire transaction is nullified. For purposes of Rule 7170, the National Spread Market for a Complex Order strategy is determined by the National Best Bid/Offer of the individual legs of the strategy.

As described above in relation to Proposed IM-7170-4(a), the first step is for the Exchange to review (upon receipt of a timely notification in accordance with paragraphs (c)(2) or (d)(2) of the Current Rule) the individual legs to determine whether a leg or legs qualifies as an obvious or catastrophic error. If no leg qualifies as an obvious or catastrophic error, the transaction stands—no adjustment and no nullification.

Unlike Proposed IM-7170-4(a), the Exchange is also proposing to compare the net execution price of the entire Complex Order package to the National Spread Market (“NSM”) for the Complex Order strategy.²⁰ Complex Orders are exempt from the order protection rules of the options exchanges.²¹ Thus, depending on the manner in which the systems of an options exchange are calibrated, a Complex Order can execute without regard to the prices offered in the Complex Order books or the leg markets of other options exchanges. In certain situations, reviewing the execution prices of the legs in a vacuum would make the leg appear to be an obvious or catastrophic error, even though the net execution price on the Complex Order is not an erroneous price. For example, assume the Exchange receives a

Complex Order to buy ABC calls and sell ABC puts.

- If the BBO for the ABC calls is \$5.50–7.50 and the BBO for ABC puts is \$3.00–4.50, then the Exchange’s spread market is \$1.00–4.50.²²
- If the NBBO for the ABC calls is \$6.00–6.50 and the NBBO for the ABC puts is \$3.50–4.00, then the NSM is \$2.00–3.00.
- If the Customer buys the calls at \$7.50 and sells the puts at \$4.00, the Complex Order Customer receives a net execution price of \$3.00 (debit), which is the expected net execution price as indicated by the NSM offer of \$3.00.

If the exchange were to solely focus on the \$7.50 execution price of the ABC calls or the \$4.00 execution price of the ABC puts, the execution would qualify as an obvious or catastrophic error because the execution price on the legs was outside the NBBO, even though the net execution price is accurate. Thus, the additional review of the NSM to determine if the Complex Order was executed at a truly erroneous price is necessary. The same concern is not present when a Complex Order executes against the leg market under IM-7170-4(a) because the Exchange is modifying its system in order to ensure the leg will execute at or within the NBBO of the leg markets.²³

In order to incorporate NSM, IM-7170-4(b) provides that if the Exchange determines that a leg or legs does qualify as on obvious or catastrophic error, the leg or legs will be adjusted or busted in accordance with paragraph (c)(4) or (d)(3) of the Current Rule, so long as either: (i) The width of the NSM for the Complex Order strategy just prior to the erroneous transaction was equal to or greater than the amount set forth in the wide quote table of paragraph (b)(3) of the Current Rule or (ii) the net execution price of the Complex Order is higher (lower) than the offer (bid) of the NSM for the Complex Order strategy just prior to the erroneous transaction by an amount equal to at least the amount shown in the table in paragraph (c)(1) of the Current Rule.

²² The Complex Order is to buy ABC calls and sell ABC puts. The Exchange’s best offer for ABC puts is \$7.50 and Exchange’s best bid for is \$3.00. If the Customer were to buy the Complex Order strategy, the Customer would receive a debit of \$4.50 (buy ABC calls for \$7.50 minus selling ABC puts for \$3.00). If the Customer were to sell the Complex Order strategy the Customer would receive a credit of \$1.00 (selling the ABC calls for \$5.50 minus buying the ABC puts for \$4.50). Thus, the Exchange’s spread market is \$1.00–4.50.

²³ The proposed rule change to modify Exchange systems to ensure the legs of a Complex Order will execute against legs in the simple order market within the NBBO of the simple order market will be in a separate filing.

For example, assume an individual leg or legs qualifies as an obvious or catastrophic error and the width of the NSM of the Complex Order strategy just prior to the erroneous transaction is \$6.00–9.00. The Complex Order will qualify to be adjusted or busted in accordance with paragraph (c)(4) of the Current Rule because the wide quote table of paragraph (b)(3) of the Current Rule indicates that the minimum amount is \$1.50 for a bid price between \$5.00 to \$10.00. If the NSM were instead \$6.00–7.00 the Complex Order strategy would not qualify to be adjusted or busted pursuant to .07(b)(i) because the width of the NSM is \$1.00, which is less than the required \$1.50. However, the execution may still qualify to be adjusted or busted in accordance with paragraph (c)(4) or (d)(3) of the Current Rule pursuant to IM-7170-4(b)(ii). Focusing on the NSM in this manner will ensure that the obvious/catastrophic error review process focuses on the net execution price instead of the execution prices of the individual legs, which may have execution prices outside of the NBBO of the leg markets.

Again, assume an individual leg or legs qualifies as an obvious or catastrophic error as described above. If the NSM is \$6.00–7.00 (not a wide quote pursuant to the wide quote table in paragraph (b)(3) of the Current Rule) but the execution price of the entire Complex Order package (*i.e.*, the net execution price) is higher (lower) than the offer (bid) of the NSM for the Complex Order strategy just prior to the erroneous transaction by an amount equal to at least the amount in the table in paragraph (c)(1) of the Current Rule, then the Complex Order qualifies to be adjusted or busted in accordance with paragraph (c)(4) or (d)(3) of the Current Rule. For example, if the NSM for the Complex Order strategy just prior to the erroneous transaction is \$6.00–7.00 and the net execution price of the Complex Order transaction is \$7.75, the Complex Order qualifies to be adjusted or busted in accordance with paragraph (c)(4) of the Current Rule because the execution price of \$7.75 is more than \$0.50 (*i.e.*, the minimum amount according to the table in paragraph (c)(1) when the price is above \$5.00 but less than \$10.01) from the NSM offer of \$7.00. Focusing on the NSM in this manner will ensure that the obvious/catastrophic error review process focuses on the net execution price instead of the execution prices of the individual legs, which may have execution prices outside of the NBBO of the leg markets.

Although the Exchange believes adjusting execution prices is generally

²⁰ NSM is the derived net market for a Complex Order package. For example, if the NBBO of Leg 1 is \$1.00–2.00 and the NBBO of Leg 2 is \$5.00–7.00, then the NSM for a Complex Order to buy Leg 1 and buy Leg 2 is \$6.00–9.00.

²¹ See Rule 15010(b)(7). All options exchanges have the same order protection rule.

better for the marketplace than nullifying executions because liquidity providers often execute hedging transactions to offset options positions, the Exchange recognizes that Complex Orders executing against other Complex Orders is similar to simple orders executing against other simple orders because both parties are able to review the execution price to determine whether the transaction may have been executed at an erroneous price. Thus, for purposes of Complex Orders that meet the requirements of IM-7170-4(b), the Exchange proposes to apply the Current Rule and adjust or bust obvious errors in accordance with paragraph (c)(4) (as opposed to applying paragraph (c)(4)(A) as is the case under IM-7170-4(a)) and catastrophic errors in accordance with (d)(3).

Therefore, for purposes of Complex Orders under Proposed IM-7170-4(b), if one of the legs is determined to be an obvious error under paragraph (c)(1), all Customer transactions will be nullified, unless a Participant submits 200 or more Customer transactions for review in accordance with (c)(4)(C).²⁴ For purposes of Complex Orders under Proposed IM-7170-4(b), if one of the legs is determined to be a catastrophic error under paragraph (d)(3) and all of the other requirements of IM-7170-4(b) are met, all market participants will be adjusted in accordance with the table set forth in (d)(3). Again, however, pursuant to paragraph (d)(3) where at least one party to a Complex Order transaction is a Customer, the transaction will be nullified if adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price on the Complex Order or individual leg(s). Also, if any leg of a Complex Order is nullified, the entire transaction is nullified.

Implementation Date

In order to ensure that the other options exchanges are able to adopt rules consistent with this proposal and to coordinate effectiveness of such harmonized rules, the Exchange proposed to delay the effectiveness of this proposal to April 17, 2017.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),²⁵ in general, and Section 6(b)(5)

of the Act,²⁶ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

As described above, the Exchange and other options exchanges are seeking to adopt harmonized rules related to the adjustment and nullification of erroneous options transactions. The Exchange believes that the Proposed Rule will provide greater transparency and clarity with respect to the adjustment and nullification of erroneous options transactions. Particularly, the proposed changes seek to achieve consistent results for participants across U.S. options exchanges while maintaining a fair and orderly market, protecting investors and protecting the public interest. Based on the foregoing, the Exchange believes that the proposal is consistent with Section 6(b)(5) of the Act²⁷ in that the Proposed Rule will foster cooperation and coordination with persons engaged in regulating and facilitating transactions.

The Exchange believes the various provisions allowing or dictating adjustment rather than nullification of a trade are necessary given the benefits of adjusting a trade price rather than nullifying the trade completely. Because options trades are used to hedge, or are hedged by, transactions in other markets, including securities and futures, many Participants, and their customers, would rather adjust prices of executions rather than nullify the transactions and, thus, lose a hedge altogether. As such, the Exchange believes it is in the best interest of investors to allow for price adjustments as well as nullifications.

The Exchange does not believe that the proposal is unfairly discriminatory, even though it differentiates in many places between Customers and non-Customers. As with the Current Rule, Customers are treated differently, often affording them preferential treatment. This treatment is appropriate in light of the fact that Customers are not necessarily immersed in the day-to-day trading of the markets, are less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their

trading accounts. At the same time, the Exchange reiterates that in the U.S. options markets generally there is significant retail customer participation that occurs directly on (and only on) options exchanges such as the Exchange. Accordingly, differentiating among market participants with respect to the adjustment and nullification of erroneous options transactions is not unfairly discriminatory because it is reasonable and fair to provide Customers with additional protections as compared to non-Customers.

The Exchange believes that its proposal to adopt the ability to adjust a Customer's execution price when a Complex Order is deemed to be an Obvious or Catastrophic Error is consistent with the Act. A Complex Order that executes against individual leg markets may receive an execution price on an individual leg that is not an Obvious or Catastrophic error but another leg of the transaction is an Obvious or Catastrophic Error. In such situations where the Complex Order is executing against at least one individual or firm that is not aware of the fact that they have executed against a Complex Order or that the Complex Order has been executed at an erroneous price, the Exchange believes it is more appropriate to adjust execution prices if possible because the derivative transactions are often hedged with other securities. Allowing adjustments instead of nullifying transactions in these limited situations will help to ensure that market participants are not left with a hedge that has no position to hedge against.

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 this regard and as indicated above, the Exchange notes that the proposed rule change is substantially similar to a filing submitted by CBOE that was recently approved by the Commission.²⁸

The Exchange believes the proposal will not impose a burden on intermarket competition but will rather alleviate any burden on competition because it is the result of a collaborative effort by all options exchanges to harmonize and improve the process related to the adjustment and nullification of erroneous options transactions. The Exchange does not believe that the rules applicable to such process is an area where options exchanges should

²⁴ Rule 7170(c)(4)(C) also requires the orders resulting in 200 or more Customer transactions to have been submitted during the course of 2 minutes or less.

²⁵ 15 U.S.C. 78f(b).

²⁶ 15 U.S.C. 78f(b)(5).

²⁷ 15 U.S.C. 78f(b)(5).

²⁸ See *supra*, note 3.

compete, but rather, that all options exchanges should have consistent rules to the extent possible. Particularly where a market participant trades on several different exchanges and an erroneous trade may occur on multiple markets nearly simultaneously, the Exchange believes that a participant should have a consistent experience with respect to the nullification or adjustment of transactions. The Exchange understands that all other options exchanges that trade complex orders and/or stock-option orders intend to file proposals that are substantially similar to this proposal.

The Exchange does not believe that the proposed rule change imposes a burden on intramarket competition because the provisions apply to all market participants equally within each participant category (*i.e.*, Customers and non-Customers). With respect to competition between Customer and non-Customer market participants, the Exchange believes that the Proposed Rule acknowledges competing concerns and tries to strike the appropriate balance between such concerns. For instance, the Exchange believes that protection of Customers is important due to their direct participation in the options markets as well as the fact that they are not, by definition, market professionals. At the same time, the Exchange believes due to the quote-driven nature of the options markets, the importance of liquidity provision in such markets and the risk that liquidity providers bear when quoting a large breadth of products that are derivative of underlying securities, that the protection of liquidity providers and the practice of adjusting transactions rather than nullifying them is of critical importance. As described above, the Exchange will apply specific and objective criteria to determine whether an erroneous transaction has occurred and, if so, how to adjust or nullify a transaction.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received 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 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 Act²⁹ and Rule 19b-4(f)(6) thereunder.³⁰

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-BOX-2017-08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-BOX-2017-08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

²⁹ 15 U.S.C. 78s(b)(3)(A).

³⁰ 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.

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BOX-2017-08, and should be submitted on or before April 11, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³¹

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2017-05497 Filed 3-20-17; 8:45 am]

BILLING CODE 8011-01-P

SURFACE TRANSPORTATION BOARD

[Docket No. EP 290 (Sub-No. 5) (2017-2)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board approves the second quarter 2017 Rail Cost Adjustment Factor (RCAF) and cost index filed by the Association of American Railroads. The second quarter 2017 RCAF (Unadjusted) is 0.904. The second quarter 2017 RCAF (Adjusted) is 0.377. The second quarter 2017 RCAF-5 is 0.358.

DATES: *Effective Date:* April 1, 2017.

FOR FURTHER INFORMATION CONTACT: Pedro Ramirez, (202) 245-0333. Federal Information Relay Service (FIRS) for the hearing impaired (800) 877-8339.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision, which is available on our Web site, <http://www.stb.gov>. Copies of the decision may be purchased by contacting the Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245-0238. Assistance for the hearing

³¹ 17 CFR 200.30-3(a)(12).

impaired is available through FIRS at (800) 877-8339.

This action is categorically excluded from environmental review under 49 CFR 1105.6(c).

Decided: March 16, 2017.

By the Board, Board Members Begeman, Elliott, and Miller.

Raina S. Contee,
Clearance Clerk.

[FR Doc. 2017-05553 Filed 3-20-17; 8:45 am]

BILLING CODE 4915-01-P

SURFACE TRANSPORTATION BOARD

Release of Waybill Data

The Surface Transportation Board has received a request from a professor at Carnegie Mellon University. (WB17-14-2/23/17) for permission to use certain unmasked data from the Board's 1984-2015 Carload Waybill Samples. A copy of this request may be obtained from the Office of Economics.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Alexander Dusenberry, (202) 245-0319.

Brendetta S. Jones,
Clearance Clerk.

[FR Doc. 2017-05513 Filed 3-20-17; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2016-0342]

Hours of Service of Drivers: American Concrete Pumping Association (ACPA); Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; grant of application for exemption.

SUMMARY: FMCSA announces its decision to grant the American Concrete Pumping Association (ACPA) and others an exemption from the 30-minute rest break requirement in the Agency's hours-of-service (HOS) regulations for commercial motor vehicle (CMV) drivers. The exemption enables all concrete pump operators, concrete pumping companies, and drivers who

operate concrete pumps in interstate commerce to count on-duty time while attending equipment but performing no other work-related activity, toward the 30-minute rest break provision of the HOS regulations. FMCSA has analyzed the exemption application and the public comments and has determined that the exemption, subject to the terms and conditions imposed, will achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

DATES: The exemption is effective on March 21, 2017 and expires on March 21, 2019.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver, and Vehicle Safety Standards; Telephone: (614) 942-6477. Email: MCPSPD@dot.gov.

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and public comments, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period of the exemption, and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Request for Exemption

The American Concrete Pumping Association (ACPA) represents more than 600 member companies who employ over 7,000 workers nationwide. The exemption would be applied to all interstate concrete pumper trucks and their operators, regardless of the motor carrier or membership in ACPA.

Although many of the trucks operate intrastate and would therefore not be covered by an FMCSA exemption, an unknown number of the pumping trucks are operated in metropolitan areas and do routinely cross State lines.¹

ACPA requests an exemption from the 30-minute rest break provision in 49 CFR 395.3(a)(3)(ii). The exemption would apply industry-wide to all concrete pump operators, concrete pumping companies and drivers who deliver, set-up, and operate concrete pumps in interstate commerce across the United States. ACPA requests the exemption because it states that the mandatory 30-minute rest break increases the risk of dangerous conditions on job sites. A mandatory break during which the concrete pump operator is considered to be "off duty" would require the pump to be shut down and likely cleaned out. Stopping the flow of concrete through the pump creates the risk of introducing air in the pump's pipe system which in turn could cause hose-whipping that can injure not only the pump operator, but any personnel within reach of the hose. Concrete pump operators also already take rest breaks throughout the typical day that reflect the work flow at the job site, so an additional 30-minute rest break does not enhance job safety.

ACPA added that concrete is a perishable product. The perishable nature of concrete also creates difficult schedule coordination issues due to concrete being needed on a just-in-time basis. Concrete pump operators cannot plan the timing of the 30-minute break, as they cannot interrupt their work activity without the threat of failure—failure to accept and deliver concrete within its perishable limits and failure to comply with their contracts. Once the ingredients of ready-mixed concrete have been combined, there is a brief window during which the product can be pumped (roughly 90 minutes before the concrete hardens). Should the concrete pump operator be required to take the 30-minute rest break, it would cause a ripple effect on the ready-mixed concrete trucks in line to supply the pump. Such a delay could cost thousands of dollars to rectify and could potentially violate a delivery contract, according to ACPA. Once the concrete pump starts to receive a delivery, it must be completed without disruption

¹ FMCSA does not have jurisdiction over intrastate transportation; however, most States have commercial motor vehicle statutes and regulations that are compatible with Federal regulations. An FMCSA exemption only applies to interstate transportation, although some States honor them for intrastate traffic.

to conduct a safe and structurally sound pour.

Further details regarding this industry's safety controls can be found in the application for exemption, which can be accessed in the docket identified at the beginning of this notice. ACPA asserted that granting this exemption would achieve the same level of safety provided by the rule requiring the 30-minute rest break. The Association stated that the concrete pumping industry has a "solid" safety record, and that concrete pump operators already receive numerous other breaks throughout the workday. ACPA's Operation Certification Program ensures, encourages, and educates the industry on safe pumping and placement procedures, and these safety practices allow concrete operators to maintain their safety record through careful training and well-developed safety guidelines. The proposed exemption would be effective for 2 years.

Public Comments

On October 25, 2016, FMCSA published notice of this application, and requested public comment (81 FR 73465); four responses were submitted. Comments in favor of the proposed exemption were submitted by the Western States Trucking Association (WSTA) (formerly known as the California Construction Trucking Association (CCTA)); and the National Ready Mixed Concrete Association (NRMCA). Comments in opposition to the proposed exemption were submitted by the International Brotherhood of Teamsters (IBT). One individual commenter took no formal position on the exemption request.

WSTA stated that it "is supportive of FMCSA granting the exemption requested by the ACPA from the 30-minute rest break provision in 49 CFR 395.3(a)(3)(ii). Concrete is a perishable commodity and as such once the pump-operator begins pumping concrete, needing to comply with the 30-minute break requirement can have significant negative ramifications for both the product and machinery." WSTA added that the ready-mixed concrete drivers delivering product to a work site that is dependent on the pump operator performing their job function are already exempted from the 30-minute break requirements. WSTA referenced their prior support of the ready-mixed concrete request several years earlier, and further noted that in those same comments they had requested FMCSA to expand the 30-minute break exemption to operators of concrete pumpers.

NRMCA also supported the ACPA exemption request. As the representative of one of the primary material suppliers discharging into concrete pumps, NRMCA asserted that all the claims made and scenarios outlined by ACPA are legitimate and thus valid reasons for granting the requested exemption. NRMCA confirmed ACPA's concerns about ready mixed concrete being a perishable product and thus requiring a 30-minute break to be taken at a likely improbable time risks worker safety, equipment malfunctions and the delicate coordination required between ready mixed concrete deliveries and the concrete pump operators. Due to the nature of concrete pump operators' schedules and inherent work practices, NRMCA agreed that requiring a 30-minute break for concrete pump operators would not provide an increased level of safety on our nation's roadways, but in turn would likely create a potentially unsafe work environment.

The International Brotherhood of Teamsters (IBT) opposed the proposed exemption. IBT strongly objected to allowing this class of drivers to use 30 minutes of on-duty "waiting time" to satisfy the requirement for the rest break. IBT cites ACPA's argument that the 30-minute rest break would require the concrete pump to be shut down and cleaned out. Stopping the concrete flow, according to ACPA, creates the risk of introducing air into the pipe system and the attendant risk of hose whipping. ACPA stated, according to the IBT, that a hose whipping violently could injure the pump operator and any other workers within reach of the discharge hose. However, IBT contends that ACPA failed to provide any data supporting the contention that this is a frequent occurrence that has caused accidents and even deaths. IBT states that the rest break provision has been in effect since 2011, more than sufficient time to collect data to support ACPA's claims of a safer workplace if the exemption was granted.

FMCSA Decision

FMCSA has evaluated ACPA's application and the public comments and decided to grant the exemption. The Agency believes that the exempted concrete pump drivers will likely achieve a level of safety that is equivalent to or greater than, the level of safety achieved without the exemption [49 CFR 381.305(a)]. It is important to note that the Agency is not granting a complete exemption from the 30-minute rest break provision required by 49 CFR 395.3(a)(iii)(2). Instead,

FMCSA is granting an exemption for concrete pump operators and drivers who remain with the CMV (*i.e.*, wait) while not performing any other work-related activities to count that time toward the 30-minute break. The only subject of the exemption is the duty status of the driver while "waiting" with the vehicle during a required rest break. Like drivers of trucks carrying certain kinds of explosives (§ 395.1(q)) drivers of concrete pump trucks will be allowed to use the 30-minute on-duty periods in attendance of the vehicles, while performing no other work, to meet the requirement for a rest break. A similar exemption from the 30-minute rest break was granted to the National Ready Mixed Concrete Association (NRMCA) on April 2, 2015 [80 FR 17819]. The Agency grants the exemption request subject to the terms and conditions in this notice.

Terms and Conditions of the Exemption

(1) Drivers who deliver, set-up, and operate concrete pumps in interstate commerce across the United States, and all concrete pump operators and concrete pumping companies and drivers, are exempt from the requirement for a 30-minute rest break in Section 395.3(a)(3)(ii), in that they may count "waiting" periods when they are performing no work activity as the required 30-minute break.

(2) Drivers must have a copy of this exemption document in their possession while operating under the terms of the exemption. The exemption document must be presented to law enforcement officials upon request.

(3) All motor carriers operating under this exemption must have a "Satisfactory" safety rating with FMCSA, or be "unrated." Motor carriers with "Conditional" or "Unsatisfactory" FMCSA safety ratings are prohibited from using this exemption.

Period of the Exemption

This exemption from the requirements of 49 CFR 395.3(a)(3)(ii) is granted for the period from March 21, 2017 through March 21, 2019.

Extent of the Exemption

This exemption is limited to the provisions of 49 CFR 395.3(a)(3)(ii). These drivers must comply with all other applicable provisions of the FMCSRs.

Preemption

In accordance with 49 U.S.C. 31313(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation applicable

to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

Notification to FMCSA

Any motor carrier utilizing this exemption must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of the motor carrier's CMVs operating under the terms of this exemption. The notification must include the following information:

- (a) Identity of the exemption: "ACPA"
- (b) Name of operating motor carrier and USDOT number,
- (c) Date of the accident,
- (d) City or town, and State, in which the accident occurred, or closest to the accident scene,
- (e) Driver's name and license number and State of issuance
- (f) Vehicle number and State license plate number,
- (g) Number of individuals suffering physical injury,
- (h) Number of fatalities,
- (i) The police-reported cause of the accident,
- (j) Whether the driver was cited for violation of any traffic laws or motor carrier safety regulations, and
- (k) The driver's total driving time and total on-duty time period prior to the accident.

Reports filed under this provision shall be emailed to MCPSD@DOT.GOV.

Termination

FMCSA does not believe the drivers covered by this exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation of the exemption. The FMCSA will immediately revoke or restrict the exemption for failure to comply with its terms and conditions.

Issued on: March 10, 2017.

Daphne Y. Jefferson,
Deputy Administrator.

[FR Doc. 2017-05522 Filed 3-20-17; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2016-0275]

Agency Information Collection Activities; Approval of a New Information Collection Request: Commercial Driver's License (CDL) Skills Testing Delays

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval. This ICR is to collect data on the delays, by State, that applicants face when scheduling a CDL skills test. This information collection and subsequent data analysis is required by section 5506 of the Fixing America's Surface Transportation Act, 2015 (FAST Act).

DATES: Please send your comments by April 20, 2017. OMB must receive your comments by this date in order to act quickly on the ICR.

ADDRESSES: All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA-2016-0275. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/Federal Motor Carrier Safety Administration, and sent via electronic mail to oir_submission@omb.eop.gov, or faxed to (202) 395-6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Nicole Michel, Office of Analysis, Research, and Technology/Research Division, Department of Transportation, Federal Motor Carrier Safety Administration, 6th Floor, West Building, 1200 New Jersey Avenue SE., Washington, DC 20590-0001. Telephone: 202-366-4354; Email Address: nicole.michel@dot.gov. Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION:

Title: Survey on CDL Skills Test Delays.

OMB Control Number: 2126-00XX.
Type of Request: New information collection.

Respondents: Annual survey: State CDL Coordinators; Optional quarterly report of delay time at each test site: State CDL Coordinators and State CDL test location staff.

Estimated Number of Respondents: Annual survey: 51 State CDL Coordinators, one from each of the 50 States, and one from Washington, DC. Optional quarterly report of delay time at each test site: 1,230 (51 State CDL Coordinators and 1,179 State CDL testing location representatives).

Estimated Time per Response: Annual survey: 2.3 hours (120 minutes to gather data + 17.5 minutes to respond to survey). Optional quarterly report of delay time at each test site: 30 minutes for State CDL Coordinator to gather information and 1 minute for State CDL test location representative to report current delay time at test site.

Expiration Date: N/A. This is a new information collection.

Frequency of Response: Annually; In addition, respondents have the option to report delay time at test sites on a quarterly basis.

Estimated Total Annual Burden: Annual survey: 116.9 hours (2.3 hours × 51 respondents = 116.9 hours). Optional quarterly report of delay time at each test site: 180.6 hours [4 quarters × (30 minutes × 51 State CDL Coordinators + 1 minute × 1179 State CDL test location representatives) = 180.6 hours].

Background

Section 5506 of the FAST Act (Pub. L. 114-94, Dec. 4, 2015, 49 U.S.C. 31305 note) requires FMCSA to produce a study on CDL skills test delays on an annual basis. The requirements of the study are to submit a report describing:

“(A) the average wait time from the date an applicant requests to take a skills test to the date the applicant has the opportunity to complete such test;

(B) the average wait time from the date an applicant, upon failure of a skills test, requests a retest to the date the applicant has the opportunity to complete such retest;

(C) the actual number of qualified commercial driver's license examiners available to test applicants; and

(D) the number of testing sites available through the State department of motor vehicles and whether this number has increased or decreased from the previous year.”

The report is also required to describe “specific steps the Administrator is

taking to address skills testing delays in States that have average skills test or retest wait times of more than 7 days.” If this information collection does not occur, FMCSA will not be able to fulfill its mandate as directed by the FAST Act, noted above, by conducting a study on CDL skills test delays, as there is currently no repository of information on skills tests and the required data is not available for all States at this time. If information collection occurs on a less-than-annual basis, beyond negating its statutory duties, as discussed above, FMCSA will not be able to make observations on yearly trends or analyze differences in each State on a year-to-year basis.

FMCSA has met with several stakeholders, including the American Association of Motor Vehicle Administrators (AAMVA), the Commercial Vehicle Training Association, and State Driver Licensing Agencies to ensure that the information being collected in this survey has not already been collected, is not currently available to FMCSA, and is not in the process of being collected. Extensive background research was conducted to ensure the study was not duplicative. A previous study, done by the Government Accountability Office in 2015, asked for similar information but did not produce specific enough data to be used in this study.

The survey will be sent out via email, with the option for online completion using SurveyMonkey®. Each State can respond via email or the online survey depending on which method is more convenient for the respondent. The welcome letter will indicate that FMCSA prefers responses via the online survey tool.

The information collected will be published annually in a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives. The first report is due to Congress no later than June 1, 2017. FMCSA plans to have a draft report available by June 1, 2017, with the finalized report submitted to congress in August 2017. Subsequent reports will be published on an annual basis thereafter.

Summary of Public Comments Received

On October 5, 2016, FMCSA published a notice in the **Federal Register** (81 FR 69184) with a 60-day public comment period to announce this proposed information collection. The agency received eight comments in response to this notice.

Four commenters provided insights into States' current CDL skills testing

delays, including an applicant's average wait time to complete a skills test; an applicant's average wait time to complete a retest; the number of qualified commercial driver's license examiners; and the number of State testing sites. FMCSA appreciates this information, and encourages each State to fill out the complete survey when it is administered.

Two commenters indicated that they believe the information collection is necessary and can provide useful information. One commenter noted that FMCSA's primary mission is to reduce crashes, injuries, and fatalities involving large trucks and buses, and that this survey does not advance FMCSA's mission. While FMCSA agrees that the correlation between CDL skills test and increased safety is not immediately apparent, FMCSA believes skills testing is an integral part of truck and bus safety mission. In addition, as discussed above, FMCSA is required to collect this information at this interval based on the FAST Act.

While two commenters indicated that they believe the burden estimate seems reasonable, one commenter strongly disagreed. The commenter estimated that annual burden would be between 200 and 270 hours because the State does not currently track the information subject to the ICR. FMCSA has re-evaluated the burden estimate based on this feedback and feels that the new burden estimate accurately reflects the commenter's concerns. FMCSA also believes the commenter was accounting for a much more in depth analysis, which FMCSA appreciates but does not plan to require. FMCSA has revised the instructions and definitions accordingly to ensure States do not feel unduly burdened by the information collection.

FMCSA received valuable feedback on ways to enhance the quality, usefulness, and clarity of the collected information. Specific suggestions related to the inclusion of additional questions and better defined terms and phrases.

One commenter requested that FMCSA ensure data is as detailed as possible. FMCSA believes the data will become more robust after the first year, as States will be able to better prepare for the annual survey.

One commenter suggested FMCSA inquire as to the source of States' reported estimates, while another commenter voiced concern that there may not be enough space for providing feedback on how estimates were developed, thereby introducing error in the analysis portion of this study. FMCSA has revised the survey to include questions pertaining to how the

data was collected and calculated, and the sources used to calculate delays, thereby allowing for more meaningful analysis and more meaningful future data collection.

Several commenters indicated that FMCSA should inquire about mandatory waiting periods for skills testing and retesting. FMCSA has covered this area in multiple questions in the survey to ensure mandatory waiting periods are accurately understood in addition to skills testing delays, as both contribute to the time it takes an applicant to receive their CDL. FMCSA has ensured that mandatory wait times are collected separately from delay periods throughout the ICR.

One commenter requested FMCSA include a question pertaining to shortest and longest wait times. FMCSA has revised the survey to include this question, but has also included an option for States to indicate they cannot collect this information. FMCSA understands that some States will not be able to produce information pertaining to this data.

One commenter was concerned with the definition of “average wait time,” when it should be calculated, and how it should be calculated. In addition, the commenter noted that “average wait time” will vary by region, or by testing location. FMCSA has included detailed instructions in the survey to address these concerns. Furthermore, it has provided the *option* for States to either provide wait times for all testing locations, or to provide a minimum wait time (*i.e.* the wait time at a rural, non-popular test site), the maximum (the wait time at the busiest test site), and the average wait time for medium-density test sites. Finally, FMCSA is providing an option for seasonal surveys tailored to each State to minimize burden, as discussed in further detail below.

The commenter also requested FMCSA clarify what is meant by “opportunity to complete such test.” While FMCSA understands some applicants may choose a later test date for personal reasons, a delay incurred by the applicant's personal reasons is not something the State has control over and should not be reflected in this study, to the best ability of the State. FMCSA understands some States may not be able to separate the two, in which case personal delays may be grouped together with test scheduling delays.

One commenter recommended the AAMVA add the required information to additional reports in Commercial Skills Test Information Management System (CSTIMS) to satisfy the information collection request. During

previous conversations with AAMVA, FMCSA determined that an additional field to determine if the delay is due to a customer request or actual delay would require funding and time that is not currently available. Furthermore, given that not all States currently use CSTIMs, FMCSA cannot justify pursuing this route at this time, but will continue discussions with AAMVA for future efforts, as appropriate.

Several comments addressed how the burden could be minimized without reducing the quality of collected information. One commenter indicated that they believe the burden is minimal as it stands. Another commenter suggested that as States become accustomed to this annual data collection, States will be able to collect data in a timelier manner.

One commenter suggested the burden could be minimized by not requiring a year's worth of data to be accumulated and calculated. The commenter suggested that FMCSA distribute a quarterly "snapshot" survey to collect wait times across different seasons and different locales, or to work with AAMVA to readily produce this information in CSTIMs. FMCSA did not intend for every CDL skills test to be included in the average and has provided more concrete instructions for States to collect data that is meaningful while not being overly burdensome. FMCSA has considered the suggestion for a quarterly snapshot survey, and will include a voluntary quarterly survey after the first annual survey. This has been accurately updated in burden estimates and in the information collection package.

Finally, one commenter reported that if they are required to modify their systems to provide the information subject to this ICR, grant funding would be necessary and it would require a long time period to complete these efforts. FMCSA does not intend for States to be required to modify their existing systems, and believes most of the information required should be readily available to a certain degree of granularity.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FMCSA to perform its functions; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality,

usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued under the authority delegated in 49 CFR 1.87 on: March 9, 2017.

G. Kelly Regal,

Associate Administrator for Office of Research and Information Technology.

[FR Doc. 2017-05523 Filed 3-20-17; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF THE TREASURY

Multiemployer Pension Plan Application To Reduce Benefits

AGENCY: Department of the Treasury.

ACTION: Notice of availability; request for comments.

SUMMARY: The Board of Trustees of the Western States Office and Professional Employees Pension Fund (WSOPE Pension Fund), a multiemployer pension plan, has submitted an application to Treasury to reduce benefits under the plan in accordance with the Multiemployer Pension Reform Act of 2014 (MPRA). The purpose of this notice is to announce that the application submitted by the Board of Trustees of the WSOPE Pension Fund has been published on the Web site of the Department of the Treasury (Treasury), and to request public comments on the application from interested parties, including participants and beneficiaries, employee organizations, and contributing employers of the WSOPE Pension Fund.

DATES: Comments must be received by May 5, 2017.

ADDRESSES: You may submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>, in accordance with the instructions on that site. Electronic submissions through www.regulations.gov are encouraged.

Comments may also be mailed to the Department of the Treasury, MPRA Office, 1500 Pennsylvania Avenue NW., Room 1224, Washington, DC 20220. Attn: Eric Berger. Comments sent via facsimile and email will not be accepted.

Additional Instructions. All comments received, including attachments and other supporting

materials, will be made available to the public. Do not include any personally identifiable information (such as Social Security number, name, address, or other contact information) or any other information in your comment or supporting materials that you do not want publicly disclosed. Treasury will make comments available for public inspection and copying on www.regulations.gov or upon request. Comments posted on the Internet can be retrieved by most Internet search engines.

FOR FURTHER INFORMATION CONTACT: For information regarding the application from the WSOPE Pension Fund, please contact Treasury at (202) 622-1534 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The Multiemployer Pension Reform Act of 2014 (MPRA) amended the Internal Revenue Code to permit a multiemployer plan that is projected to have insufficient funds to reduce pension benefits payable to participants and beneficiaries if certain conditions are satisfied. In order to reduce benefits, the plan sponsor is required to submit an application to the Secretary of the Treasury, which Treasury, in consultation with the Pension Benefit Guaranty Corporation (PBGC) and the Department of Labor, is required to approve or deny.

On February 22, 2017, the Board of Trustees of the WSOPE Pension Fund submitted an application for approval to reduce benefits under the plan. As required by MPRA, that application has been published on Treasury's Web site at <https://auth.treasury.gov/services/Pages/Plan-Applications.aspx>. Treasury is publishing this notice in the **Federal Register**, in consultation with the PBGC and the Department of Labor, to solicit public comments on all aspects of the WSOPE Pension Fund application.

Comments are requested from interested parties, including participants and beneficiaries, employee organizations, and contributing employers of the WSOPE Pension Fund. Consideration will be given to any comments that are timely received by Treasury.

Dated: March 15, 2017.

Tom West,

Tax Legislative Counsel, Office of Tax Policy.

[FR Doc. 2017-05489 Filed 3-20-17; 8:45 am]

BILLING CODE 4810-25-P

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The Federal Register staff cannot interpret specific documents or regulations.

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/**.

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