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# Contents

**Federal Register**

Vol. 83, No. 128

Tuesday, July 3, 2018

**Agriculture Department**
*See* Animal and Plant Health Inspection Service
*See* Foreign Agricultural Service

**Animal and Plant Health Inspection Service**
**NOTICES**
Environmental Assessments; Availability, etc.:
Oral Rabies Vaccine Trial, 31117–31118

**Centers for Disease Control and Prevention**
**NOTICES**
Final National Occupational Research Agenda for Services, 31150

**Centers for Medicare & Medicaid Services**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 31150–31152

**Civil Rights Commission**
**NOTICES**
Meetings:
Florida Advisory Committee, 31119–31120

**Coast Guard**
**RULES**
Drawbridge Operations:
Rancocas Creek, Burlington, NJ, 31048
Safety Zones:
Annual Events in Captain of the Port Buffalo Zone—July Fireworks; Enforcement, 31059–31060
Canalside 4th of July Celebration, Buffalo River, Buffalo, NY, 31048–31050
City of Benicia Fourth of July Fireworks Display, Carquinez Straight, Benicia, CA, 31050–31052
City of Vallejo Fourth of July Fireworks Display, Mare Island Strait, Vallejo, CA, 31060–31062
Gulf Intracoastal Waterway, Lafitte, LA, 31062–31064
Lower Mississippi River, New Orleans, LA, 31055–31057
Lower Tchefuncte River, Madisonville, LA, 31052–31054
Red, White and Tahoe Blue Fireworks, Incline Village, NV, 31054–31055
San Francisco Fourth of July Fireworks Display, San Francisco Bay, San Francisco, CA, 31057–31059
Special Local Regulations:
Regattas and Marine Parades; Great Lakes Annual Marine Events, 31047–31048
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 31162–31167

**Commerce Department**
*See* International Trade Administration

**Commodity Futures Trading Commission**
**PROPOSED RULES**
Financial Surveillance Examination Program Requirements for Self-Regulatory Organizations, 31078–31086

**Defense Department**
*See* Navy Department
**NOTICES**
Charter Amendments:
Defense Innovation Board, 31124
Charter Renewals:
Uniform Formulary Beneficiary Advisory Panel, 31124
Meetings:
Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in Armed Forces, 31125

**Education Department**
**RULES**
Assistance to States for Education of Children With Disabilities; Preschool Grants for Children With Disabilities, 31306–31318
Program Integrity and Improvement, 31296–31303
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
National Household Education Survey 2019, 31134
Applications for New Awards:
Educational Technology, Media, and Materials for Individuals With Disabilities—Stepping-Up Technology Implementation, 31125–31134

**Energy Department**
*See* Federal Energy Regulatory Commission
**NOTICES**
Meetings:
Environmental Management Site-Specific Advisory Board, Nevada, 31135–31136
Environmental Management Site-Specific Advisory Board, Northern New Mexico, 31134–31135
Environmental Management Site-Specific Advisory Board, Savannah River Site, 31135

**Environmental Protection Agency**
**RULES**
Air Quality State Implementation Plans; Approvals and Promulgations:
California; Yolo-Solano Air Quality Management District; Negative Declarations, 31072–31075
Colorado; Attainment Demonstration for 2008 8-Hour Ozone Standard for Denver Metro/North Front Range Nonattainment Area, and Approval of Related Revisions, 31068–31072
Pennsylvania; Base Year Emissions Inventories for Lebanon and Delaware County Nonattainment Areas for 2012 Annual Fine Particulate Matter National Ambient Air Quality Standard, 31064–31067
**PROPOSED RULES**
Air Quality State Implementation Plans; Approvals and Promulgations:
Arizona Air Plan; Hayden Lead Nonattainment Area Plan for 2008 Lead Standard, 31087–31098
Increasing Consistency and Transparency in Considering Costs and Benefits in Rulemaking Process, 31098–31099
Standards for 2019 and Biomass-Based Diesel Volume for 2020 Under Renewable Fuel Standard Program:
Public Hearing, 31098

**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Facility Ground-Water Monitoring Requirements, 31141–31142
Hazardous Waste Generator Standards, 31140–31141
NESHAP for Hazardous Waste Combustors, 31142–31143
Requirements and Exemptions for Specific RCRA Wastes, 31139–31140

**Farm Credit Administration**
**NOTICES**
Meetings; Sunshine Act, 31143

**Federal Aviation Administration**
**NOTICES**
Exemption Petitions; Summaries:
HessJet, LLC, 31255
Meetings:
Drone Advisory Committee, 31254–31255

**Federal Communications Commission**
**PROPOSED RULES**
8YY Access Charge Reform, 31099–31116

**Federal Emergency Management Agency**
**RULES**
Suspensions of Community Eligibility, 31075–31077

**Federal Energy Regulatory Commission**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 31137–31138
Complaints:
VA Solar 1, LLC v. PJM Interconnection, LLC, 31136
Environmental Assessments; Availability, etc.:
National Grid LNG, LLC; Fields Point Liquefaction Project, 31136–31137
Environmental Reviews:
Rover Pipeline, LLC; UGS-Crawford Meter Station Project, 31138–31139
Filings:
ATX Southwest, LLC, 31139

**Federal Maritime Commission**
**NOTICES**
Complaints:
Falcone Global Solutions, LLC v. Maurice Ward Networks, Ltd. d/b/a Maurice Ward Group; Maurice Ward and Co., BV.; and Maurice Ward and Co. S.R.O., 31143–31144

**Federal Reserve System**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 31144–31150
Announcement of Financial Sector Liabilities, 31148–31149

**Fish and Wildlife Service**
**NOTICES**
Environmental Impact Statements; Availability, etc.:
American Electric Power American Burying-Beetle Habitat Conservation Plan in Arkansas, Oklahoma, and Texas, 31170–31172
Requests for Nominations:
Sport Fishing and Boating Partnership Council, 31172–31173

**Food and Drug Administration**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
General Licensing Provisions; Section 351(k) Biosimilar Applications, 31152–31154
Regulations Under Federal Import Milk Act, 31155–31156
Meetings:
Antimicrobial Drugs Advisory Committee; Establishment of Public Docket, 31154–31155

**Foreign Agricultural Service**
**NOTICES**
WTO Agricultural Quantity-Based Safeguard Trigger Levels, 31118–31119

**Health and Human Services Department**
*See* Centers for Disease Control and Prevention
*See* Centers for Medicare & Medicaid Services
*See* Food and Drug Administration
*See* National Institutes of Health

**Homeland Security Department**
*See* Coast Guard
*See* Federal Emergency Management Agency

**Housing and Urban Development Department**
**RULES**
Government National Mortgage Association:
Loan Seasoning for Ginnie Mae Mortgage-Backed Securities—Interpretive Rule, 31042–31045
Inspection Requirements for Federal Housing Administration Single-Family Mortgage Insurance:
Removal of FHA Inspector Roster, 31038–31042
**NOTICES**
Rental Assistance Demonstration:
Implementation of Certain Fiscal Year 2018 Appropriations Act Provisions, 31168–31169
Supplemental Guidance on Final Notice, 31169–31170

**Interior Department**
*See* Fish and Wildlife Service
*See* Surface Mining Reclamation and Enforcement Office
**NOTICES**
Charter Renewals:
Sport Fishing and Boating Partnership Council, 31173

**International Trade Administration**
**NOTICES**
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Opportunity To Request Administrative Review, 31121–31123
Application(s) for Duty-Free Entry of Scientific Instruments, 31120
Charter Renewals:
Renewable Energy and Energy Efficiency Advisory Committee; Solicitation of Nominations for Membership, 31123–31124

**International Trade Commission**
**NOTICES**
Investigations; Determinations, Modifications, and Rulings, etc.:
Steel Propane Cylinders From Taiwan, 31174

**Labor Department**
*See* Occupational Safety and Health Administration

**Management and Budget Office**
**RULES**
OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 31037–31038

**National Institutes of Health**
**NOTICES**
Charter Renewals:
Office of AIDS Research Advisory Council, 31157
Meetings:
Center for Scientific Review, 31158–31161
National Eye Institute, 31157
National Human Genome Research Institute, 31159
National Institute of Allergy and Infectious Diseases, 31161
National Institute of Neurological Disorders and Stroke, 31159–31160
National Institute on Aging, 31157, 31161
National Institute on Alcohol Abuse and Alcoholism, 31158, 31161–31162

**Navy Department**
**RULES**
Certifications and Exemptions Under International Regulations for Preventing Collisions at Sea, 1972, 31046–31047

**Nuclear Regulatory Commission**
**NOTICES**
Facility Operating Licenses and Combined Licenses:
Applications and Amendments Involving Proposed No Significant Hazards Considerations, etc., 31190–31197
Applications and Amendments Involving Proposed No Significant Hazards Considerations, etc.; Biweekly Notice, 31180–31190
Meetings; Sunshine Act, 31197–31198
State Agreements:
Wyoming; NRC Staff Assessment, 31174–31180

**Occupational Safety and Health Administration**
**RULES**
Beryllium Standard for General Industry, 31045–31046
**PROPOSED RULES**
Beryllium Standard for General Industry, 31086–31087

**Postal Regulatory Commission**
**RULES**
Non-Public Information, 31258–31294
**NOTICES**
New Postal Products, 31198

**Presidential Documents**
**ADMINISTRATIVE ORDERS**
Department of State Authorities Act, Fiscal Year 2017; Delegation of Authority (Memorandum of June 4, 2018), 31319–31321
Jerusalem Embassy Act; Suspension of Limitations (Presidential Determination No. 2018–09 of June 4, 2018), 31323

**Securities and Exchange Commission**
**NOTICES**
Meetings; Sunshine Act, 31205
Self-Regulatory Organizations; Proposed Rule Changes:
Cboe BYX Exchange, Inc., 31229–31232
Cboe BZX Exchange, Inc., 31198–31201, 31246
Depository Trust Co., 31223–31227
ICE Clear Credit, LLC, 31244–31246
Nasdaq BX, Inc., 31203–31205, 31232–31233, 31241–31243
Nasdaq GEMX, LLC, 31233–31234
Nasdaq ISE, LLC, 31243–31244
Nasdaq MRX, LLC, 31213–31214
Nasdaq PHLX, LLC, 31201–31203, 31227–31229
New York Stock Exchange, LLC, 31212–31213, 31234–31236
NYSE American, LLC, 31205–31210
NYSE Arca, Inc., 31210–31212, 31214–31223, 31236–31237
Options Clearing Corp., 31237–31241

**Small Business Administration**
**NOTICES**
Disaster Declarations:
Hawaii, 31250
Interest Rates, 31246–31247
Privacy Act; Systems of Records, 31247–31250

**Social Security Administration**
**NOTICES**
Privacy Act; Systems of Records, 31250–31252

**State Department**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Statement Regarding Lost or Stolen U.S. Passport Book and/or Card, 31253
Meetings:
Biodiversity Beyond National Jurisdiction, 31252–31253

**Surface Mining Reclamation and Enforcement Office**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Contractor Eligibility and Abandoned Mine Land Contractor Information Form, 31173–31174

**Surface Transportation Board**
**NOTICES**
Releases of Waybill Data, 31253–31254

**Trade Representative, Office of United States**
**NOTICES**
Determinations Under African Growth and Opportunity Act, 31254

**Transportation Department**
*See* Federal Aviation Administration

**Veterans Affairs Department**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals
Federal Medical Care Recovery Act Bill Requests, 31256
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Accelerated Aging Among Vietnam-Era Veterans Survey, 31255–31256

**Separate Parts In This Issue**

**Part II**
Postal Regulatory Commission, 31258–31294

**Part III**
Education Department, 31296–31303

**Part IV**
Education Department, 31306–31318

**Part V**
Presidential Documents, 31319–31321, 31323

**Reader Aids**

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

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

## CFR PARTS AFFECTED IN THIS ISSUE

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

**2 CFR**
180.....31037

**3 CFR**

**Administrative Orders:**
Memorandums:
Memorandum of June 4, 2018.....31321
Presidential Determinations:
No. 2018–1 of June 4, 2018.....31323

**17 CFR**

**Proposed Rules:**
1.....31078

**24 CFR**
200.....31038
330.....31042

**29 CFR**
1910.....31045

**Proposed Rules:**
1910.....31086

**32 CFR**
706.....31046

**33 CFR**
100.....31047
117.....31048
165 (9 documents).....31048, 31050, 31052, 31054, 31055, 31057, 31059, 31060, 31062

**34 CFR**
300.....31306
600.....31296
668.....31296

**39 CFR**
3001.....31258
3004.....31258
3007.....31258

**40 CFR**
52 (3 documents).....31064, 31068, 31072

**Proposed Rules:**
Ch. I.....31098
52.....31087
80.....31098

**44 CFR**
64.....31075

**47 CFR**

**Proposed Rules:**
51.....31099
61.....31099

# Rules and Regulations

Federal Register
Vol. 83, No. 128
Tuesday, July 3, 2018

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

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

## OFFICE OF MANAGEMENT AND BUDGET

### 2 CFR Part 180

### OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)

**AGENCY:** Office of Management and Budget.

**ACTION:** Interim final action.

**SUMMARY:** The Office of Management and Budget (OMB) is amending the OMB guidance to agencies on governmentwide nonprocurement debarment and suspension (nonprocurement) to implement a section of the National Defense Authorization Act for Fiscal Year 2017 (NDAA) that prohibits awards to persons or entities involved in activities that violate arms control treaties or agreements with the United States. The NDAA requires revision of these OMB's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. To fully implement the NDAA requirement necessitates revision of OMB Guidelines to agencies on Governmentwide Debarment and Suspension (Nonprocurement).

**DATES:**

*Effective date:* July 3, 2018.

*Comments due date:* Interested parties should submit comments electronically to *www.regulations.gov* on or before September 4, 2018 to be considered in the formation of the final guidance.

**ADDRESSES:** Comments on this interim action must be submitted electronically before the comment closing date to *www.regulations.gov.* In submitting comments, please search for recent submissions by OMB to find docket OMB–2018–0001. The public comments received by OMB will be a matter of public record and will be posted at *www.regulations.gov.* Accordingly, please do not include in your comments any confidential business information or information of a personal-privacy nature. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments notwithstanding the inclusion of the routine notice.

**FOR FURTHER INFORMATION CONTACT:** Gil Tran, OMB, Office of Federal Financial Management at 202–395–3052 or *Hai_M._Tran@omb.eop.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Background

The System for Award Management (SAM) Exclusions is a list of persons and entities ineligible for Federal awards. Currently, Federal awarding agencies are required to check the list before making Federal awards to determine whether the person or entity is excluded, debarred, suspended, or otherwise prohibited from receiving Federal awards. If the person or entity is identified as prohibited from receiving Federal awards, Federal awarding agencies cannot make the award unless the Federal agency head or designee allows an exception consistent with existing law. This requirement flows down to Federal award recipients, who are required to check SAM Exclusions for all subawards and contracts equal to or exceeding $25,000. However, these requirements do not currently apply to a limited number of Federal awards given to certain types of foreign entities. The purpose of this interim action is to amend OMB Guidelines to agencies on Governmentwide Debarment and Suspension (Nonprocurement) to extend these requirements of potential Federal awards to persons, entities, or organizations that have engaged in any activity that contributed to or is a significant factor in a country's non-compliance with its obligations under arms control, nonproliferation, or disarmament agreements or commitments with the United States.

Pursuant to 22 U.S.C. 2593e(a)(1), the Secretary of the Treasury is required to submit to the appropriate Congressional committees a report, consistent with the protection of intelligence sources and methods, identifying every person with respect to whom there is credible information indicating that the person is an individual who is a citizen, national, or permanent resident of, or an entity organized under the laws of, a noncompliant country as described in 22 U.S.C. 2593e(a)(2); and has engaged in any activity that contributed to or is a significant factor in the President's or the Secretary of State's determination that such country is noncompliant.

The Secretary of the Treasury also identifies any person or entity that has provided material support for such noncompliance to a person or entity engaged in the noncompliant activities. The Secretary of Treasury posts this information, as appropriate and consistent with the protection of intelligence sources and methods, as an exclusion record in the SAM database. If the person or entity is on the SAM Exclusions list, the person or entity may not receive Federal awards and awards may not be renewed or extended.

With respect to each person or entity identified by the Secretary of the Treasury as having provided material support, the NDAA calls for the imposition of certain measures. Specifically, section 1290(c)(1) requires that the head of any executive agency may not enter into, renew, or extend a contract for the procurement of goods or services with such person or entity. Furthermore, section 1290(c)(3) directs that the Federal Acquisition Regulation (FAR), the Defense Federal Acquisition Regulation Supplement, and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards be revised accordingly to implement the NDAA requirement. The revisions to the FAR were published in the **Federal Register** on June 15, 2018 (83 FR 28145, FAR Case 2017–018). This action amends 2 CFR 180.215 to implement section 1290 of the NDAA.

#### Discussion and Analysis

This action amends 2 CFR part 180 to ensure that entities who have engaged in activity that contributed to or is a significant factor in a country's non-compliance with its obligations under arms control, nonproliferation or disarmament agreements or commitments with the United States are restricted from receiving non-procurement and procurement transactions. Currently, 2 CFR part 180

restricts Federal awards that are considered covered transactions to persons or entities that are listed in SAM Exclusions and these requirements flow down to all covered transactions, including: (1) All nonprocurement subawards; and (2) contracts that equal or exceed $25,000. However, 2 CFR 180.215 provides specific exceptions from what are considered covered transactions, including awards to certain types of foreign entities. This action revises 2 CFR 180.215 to define ''covered transactions'' to include direct awards, regardless of tier or amount for non-procurement and procurement transaction, to exempt foreign persons, entities and organizations if such persons, entities, or organizations have engaged in any activity that contributed to or is a significant factor in a country's non-compliance with its obligations under arms control, nonproliferation or disarmament agreements or commitments with the United States.

**Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866. In addition, this action is not a major rule under 5 U.S.C. 804.

**Executive Order 13771**

This action is not an E.O. 13771 regulatory action because it is not significant under E.O. 12866.

**Regulatory Flexibility Act**

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* requires that an agency provide a final regulatory flexibility analysis or certify that the rule will not have a significant economic impact on a substantial number of small entities. OMB does not expect this interim action to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This interim action implements the provisions of section 1290 of the NDAA and will not have a significant economic impact on a substantial number of small entities because it will affect only a small number of Federal awards that are currently excluded from the definition of covered transactions. Currently, the vast majority of Federal awards are subject to the 2 CFR part 180 provisions that apply to covered transactions.

**Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to 2 CFR part 180 do not impose incremental recordkeeping or information collection requirements, or the collection of information that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**Determination To Issue Interim Action**

As this regulatory action involves a matter relating to Federal awards, it is not subject to the public procedure requirements of the informal rulemaking provisions of the Administrative Procedure Act. *See* 5 U.S.C. 553(a)(2). Nevertheless, OMB is voluntarily seeking comment to be considered in the formation of the final action.

**List of Subjects in 2 CFR Part 180**

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

**Timothy F. Soltis,**

*Deputy Controller.*

For the reasons stated in the preamble, the Office of Management and Budget amends 2 CFR part 180, as set forth below:

## PART 180—OMB GUIDELINES TO AGENCIES ON GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

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

**Authority:** Pub. L. 109–282; 31 U.S.C. 6102, Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

■ 2. In § 180. 215, add paragraph (h) to read as follows:

**§ 180. 215 Which nonprocurement transactions are not covered transactions?**

* * * * *

(h) Notwithstanding paragraph (a) of this section, covered transactions must include non-procurement and procurement transactions involving entities engaged in activity that contributed to or is a significant factor in a country's non-compliance with its obligations under arms control, nonproliferation or disarmament agreements or commitments with the United States. Federal awarding agencies and primary tier non-procurement recipients must not award, renew, or extend a non-procurement transaction or procurement transaction, regardless of amount or tier, with any entity listed in the System for Award Management Exclusions List on the basis of involvement in activities that violate arms control, nonproliferation or disarmament agreements or commitments with the United States, pursuant to section 1290 of the National Defense Authorization Act for Fiscal Year 2017, unless the head of a Federal agency grants an exception pursuant to 2 CFR 180.135 with the concurrence of the OMB Director.

[FR Doc. 2018–14279 Filed 6–29–18; 8:45 am]

**BILLING CODE 3110–01–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Part 200

**[Docket No. FR–5457–F–02]**

**RIN 2502–AJ03**

## Streamlining Inspection Requirements for Federal Housing Administration (FHA) Single-Family Mortgage Insurance: Removal of the FHA Inspector Roster

**AGENCY:** Office of the Assistant Secretary of Housing—Federal Housing Commissioner, HUD.

**ACTION:** Final rule.

**SUMMARY:** This final rule streamlines the inspection requirements for FHA single-family mortgage insurance by removing the regulations for the FHA Inspector Roster (Roster). The Roster is a list of inspectors approved by FHA as eligible to determine if the construction quality of a one- to four-unit property is acceptable as security for an FHA-insured loan. The removal of the Roster regulations is based on the recognition of the sufficiency and quality of inspections carried out by certified inspectors and other qualified individuals. This final rule follows publication of a February 6, 2013, proposed rule, and takes into consideration the public comments received on the proposed rule.

**DATES:** *Effective date:* August 2, 2018.

**FOR FURTHER INFORMATION CONTACT:** Elissa Saunders, Director, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW, Room 9184, Washington, DC 20410–8000; telephone number 202–708–2121 (this is not a toll-free

number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

## I. Background—HUD's February 6, 2013, Proposed Rule

On February 6, 2013, at 78 FR 8448, HUD published a proposed rule to streamline the inspection and home warranty requirements for FHA single-family home insurance. As part of this rule, HUD proposed to eliminate the Roster,[1] which lists inspectors, approved by HUD, to perform inspections in the limited circumstances when either: (1) A local jurisdiction did not already perform its own inspections for new construction, and issue building permits and certificates of occupancy; or (2) when the inspection of a structural repair or renovation was not performed by a licensed professional as specified by regulation. (See 24 CFR 200.170(b)). HUD originally established the Roster to standardize the inspection process for properties with FHA-insured mortgages. Before the Roster, cities and states developed their own building codes, which had little uniformity or consistency with each other. Now, however, the International Residential Code (IRC) is in use or adopted in 49 states, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands.[2] The International Code Council (ICC), which developed the IRC, also certifies Combination Inspectors (CIs) and Residential Combination Inspectors (RCIs). To be certified by the ICC, CIs and RCIs must pass a rigorous set of examinations, which includes testing their knowledge of the IRC. As a result, there is no longer a need for HUD to maintain and administer its own standardization process for inspectors.

For local jurisdictions that do not provide building code enforcement and requisite documentation, the rule proposed to accept inspections by an RCI, who is also licensed or certified as a home inspector in accordance with the applicable state and local requirements governing the licensing or certification of such inspectors in the respective jurisdiction. For jurisdictions who have an absence of RCIs, the rule proposed to require lenders to obtain an inspection performed by a third party who is a registered architect, a professional engineer, or a trades person or contractor and has met the licensing and bonding requirements of the state in which the property is located.

As part of the same publication, HUD also proposed to eliminate its requirement that borrowers purchase a 10-year protection plan for all high loan-to-value mortgages in order to qualify for FHA mortgage insurance. HUD had combined the two proposals as they both involved streamlining requirements for FHA single-family mortgage insurance. However, the two proposals are distinct and the regulations unrelated. In addition to covering separate subjects, the regulations applied to different parties. The procedures and requirements related to the Roster applied to inspectors and lenders, while the regulations regarding 10-year protection plans applied to homebuilders, lenders, and borrowers. The public comments reflect this distinction, in that they treated these proposals separately, with the exception of expressions of general support for both proposals. In order to properly address the separate comments received on each proposal and to be more transparent about the how the regulatory changes will affect different parties, this final rule only deals with elimination of the Roster. HUD is addressing elimination of the 10-year protection plan requirement in a separate rule.

Interested readers are referred to the preamble of the February 6, 2013, proposed rule for additional historical background and explanation of the proposed regulatory changes.

## II. This Final Rule; Change to February 6, 2013, Proposed Rule

After considering public comment, HUD is making one change to the February 6, 2013, proposed rule. As discussed above, HUD proposed to accept inspections from RCIs for local jurisdictions that do not provide building code enforcement and requisite documentation. This final rule provides that HUD will also accept inspections performed by CIs, who are subject to the same rigorous ICC requirements required for RCI certification, and have also passed tests in the same disciplines for commercial buildings. HUD determined that the change is warranted due to similarity in the certification requirements between RCIs and CIs. Moreover, as more fully discussed in the following section of this preamble, expanding the number of inspectors certified by the ICC that are eligible to perform inspections will help to address the concern expressed by a commenter that some jurisdictions lack a sufficient number of RCIs.

## III. Discussion of the Public Comments Related to the Elimination of HUD's Inspector Roster

The public comment period for the February 6, 2013, proposed rule closed on April 8, 2013. HUD received 7 public comments, 5 of which provided comments on the elimination of the Roster requirement. These comments were submitted by the ICC, a housing trade association, a mortgage company, a homebuilder, and an individual.[3] Below is a summary of the significant issues pertaining to the Roster raised by these comments, and HUD's responses to these comments.

In response to the general solicitation of public comments, HUD received the following comments and provides the following responses:

*Comment: Include CIs as allowed inspectors.* One commenter suggested that HUD accept inspections from ICC-certified CIs who have passed the required tests for RCI certification, as well as passed tests in the same disciplines for commercial buildings. The commenter wrote that this change would increase the pool of inspectors from 3,666 (RCIs) to 5,892 (RCIs and CIs), and help avoid confusion as to whether only RCIs meet the requirements of the rule, or whether those certified for both Residential and Commercial Inspection who are certified as Combination Inspectors also meet the requirements of the rule.

*HUD Response.* HUD has adopted the change suggested by the commenter. The final rule provides that in jurisdictions that do not provide building code enforcement and requisite documentation, the lender must, in order to ensure compliance with FHA requirements, select an RCI or CI certified by the ICC who is licensed or certified as a home inspector in accordance with the applicable state and local requirements. CIs are subject to the same rigorous ICC certification requirements as RCIs and, therefore, their inclusion is consistent with HUD's stated policy goals in accepting inspection performed by RCIs. Further, HUD agrees with the commenter that the change will expand the pool of qualified inspectors and avoid confusion.

*Comment: With Limited Number of RCIs, Allow Original Loan Appraiser to Complete Final Inspection.* One commenter wrote that due to the limited number of current RCI inspectors, the

[1] Codified at 24 CFR 200.170–200.172.

[2] *http://www.iccsafe.org/wp-content/uploads/stateadoptions.pdf.*

[3] The public comments on the proposed rule are available for download from the *Regulations.gov* website at the following link: *http://www.regulations.gov/#!docketBrowser;rpp=25;po=0;dct=PS;D=HUD-2013-0011.*

proposed process will be less efficient and more subjective than HUD anticipated. The commenter wrote that while the use of a building permit/certificate of occupancy may be feasible with existing residences, the timing of these related to new home construction would be problematic. The commenter wrote that with reduced options and precarious timelines, the opportunity for additional costs and closing delays will increase for homeowners. The commenter suggested that HUD allow the original appraiser to complete the final inspection. According to the commenter this is acceptable under Federal National Mortgage Association (Fannie Mae), United States Department of Agriculture, and United States Department of Veterans Affairs guidelines. The commenter wrote that because mortgage lenders maintain an FHA approved appraiser list, or work with an appraisal management company which does so, the process would be an extension of an efficient and accepted process, which would continue to provide protections for both homebuyers and HUD.

*HUD Response.* HUD has not revised the rule in response to this comment. As an initial matter, HUD notes that inspections are only required where the local jurisdiction does not provide building code enforcement and documentation. HUD specifically solicited comment on the number of qualified RCIs. Based on the data provided by the ICC, HUD continues to believe there are sufficient number of ICC-certified inspectors to allow for inspections in the limited circumstances contemplated by the rule.[4] As discussed in the preamble to the February 6, 2013, proposed rule, HUD believes that the overall effect of removing the Roster will be to increase the number of competent inspectors, since inspectors currently on the Roster will no longer have an advantage of the exclusive market power of inspecting FHA-insured homes. Moreover, HUD is amending the proposed rule to further expand the pool of eligible inspectors to include CIs. In the absence of such ICC-certified inspectors, the lender may obtain an inspection performed by a third party, who is a registered architect, a professional engineer, or a trades person or contractor, and who has met the licensing and bonding requirements of the State in which the property is located.

With respect to the suggestion that HUD allow appraisers to conduct the required inspections, HUD agrees that appraisers have always played a vital role in FHA's mission to provide affordable homeownership by accurately assessing the value of a home. While other Federal agencies may allow appraisers to conduct inspections to determine construction quality, HUD continues to believe that limiting the conduct of required inspections to ICC-certified inspectors and other qualified, licensed and bonded professionals is the best means to safeguard FHA and the Federal taxpayer.

In addition to the general solicitation of public comments on the February 6, 2013, proposed rule, HUD specifically requested comments on two issues.

First, HUD advised that it had been unable to determine the number of jurisdictions for which there may be an absence of RCIs and specifically requested information on this issue. In response, the ICC advised that there are 3,666 RCIs and 2,226 CIs around the country, with nearly every state having at least 4 inspectors certified as RCIs or CIs. Massachusetts, Maine, North Dakota, South Dakota, Rhode Island, and Vermont each have only one certified inspector. However, the ICC said that in each of these states, there are additional individuals possessing three, and sometime four, of the required four underlying certifications to achieve the RCI, or seven or eight of the underlying certifications for the CI. The ICC said it believes that if this proposed requirement is implemented, many eligible inspectors will apply for appropriate certification. The ICC said it believes that there are sufficient numbers in every state to allow for inspectors in all of the 50 states, but that in some cases, nearby out of state travel may be required by the inspector.

In addition to the foregoing issue, HUD specifically sought comment on whether, for jurisdictions for which RCIs are not available, HUD should require the lender, in selecting a non-RCI, albeit an individual licensed and bonded under State law, to select a registered architect, engineer, trades person, or contractor with a minimum of 5 years' experience. HUD did not receive any comments in response to this issue.

## IV. Findings and Certifications

*Regulatory Review—Executive Orders 12866 and 13563*

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulation and Regulatory Review) directs executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' Executive Order 13563 also directs that where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

This rule was determined to be a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866 (although not an economically significant regulatory action, as provided under section 3(f)(1) of the Executive Order). The removal of these regulations is consistent with goals of Executive Order 13563.

The rule does not rise to the level of an economically ''significant regulatory action'' under section 3(f)(1) of Executive Order 12866. HUD expects the elimination of the national Inspector Roster to have economic benefits and costs. However, neither the economic costs nor the benefits of the elimination are greater than the $100 million threshold that determines economic significance under Executive Orders 12866 and 13563. The preamble to the February 6, 2013, proposed rule at 78 FR 8453–8454, provided a discussion of the anticipated costs and benefits of the regulatory amendments. Please see the below section on the summary of benefits and costs, which summarizes and updates the costs and benefits of the regulatory changes.

*Executive Order 13771*

Executive Order 13771, entitled ''Reducing Regulation and Controlling Regulatory Costs,'' was issued on January 30, 2017. This final rule is considered an E.O. 13771 deregulatory action. Details on the estimated cost savings of this final rule can be found in the rule's economic analysis.

*Summary of Benefits and Costs of Final Rule*

There are two effects of eliminating the FHA Inspector Roster requirement: A reduction in paperwork burden to the Federal Government and potential, but not probable, gains in consumer surplus from enhanced competition.

First, no longer requiring that an inspector be on the Roster creates savings by reducing the administrative costs necessary to maintain the Roster.

[4] Please refer to the end of this section of the preamble for the information on the number of ICC-certified inspectors.

HUD anticipates cost savings of approximately $62,870. This estimate is based on the following: Savings of $46,350 for elimination of Applications for Fee or Roster Inspector designation forms and copy of state certification (based on 3,090 inspector applications or respondents times a response per respondent times 0.5 burden hours per response times at cost of $30 per hour); savings of $11,520 for elimination of the fielding with inspectors and data input into FHA Connection; and savings of $5,000 for the elimination of maintenance of the Roster database.

Second, relaxing restrictions to entry of inspectors would expand the set of inspectors from which lenders may choose for the inspection of a home where the mortgage is to be insured by FHA. Inspectors currently on the Roster would lose the ability to exploit any market power conveyed by the current Roster requirements.

The market outcome (effect on price, quantity, and quality of service) of eliminating supply restrictions depends upon whether there is excess demand for inspector services. It appears that the Inspector Roster is not a binding restriction. Only a very limited number of FHA loans would be affected by eliminating the Roster. FHA data reveals that the number of FHA-insured properties requiring an inspection by an RCI or other qualified individual where an RCI is unavailable represents a small percentage of total loans. During 2017, only 877 (0.07 percent) out of the 1,233,428 endorsed loans required the use of a Roster inspector. The average cost for Roster inspector services was estimated at $200 in 2016. This fee is not significantly different (and not greater than) the average fee charged by inspectors. Given the small number of loans initially reserved to inspectors from the Roster and the lack of divergence in cost, the cost for inspector service would not be affected. However, an elimination of the Roster could result in a small transfer of business activity away from inspectors on the Roster.

The quality of inspection is not likely to suffer because of the elimination of the Roster. Current industry standards and local regulations are sufficiently rigorous to render HUD's standards redundant. To become an RCI, applicants must undergo a rigorous examination and certification process that is even more robust than the Inspector Roster qualification process. On the rare occasion that an RCI is unavailable in a particular jurisdiction, the professional qualifications and length of experience for other qualified individuals are sufficiently high thresholds to mitigate the concern of inadequate inspections.

The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulation Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the toll-free Federal Relay Service at 800–877–8339.

*Paperwork Reduction Act*

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Numbers 2502–0538 (Application for Fee or Roster Personnel Designation (form HUD–92563)), and 2502–0189 (pertaining to the Compliance Inspection Report (form HUD–92051) and the Mortgagee's Assurance of Completion (form HUD–92300)). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is a deregulatory action taken by HUD that will lower barriers to entry to FHA business by removing redundant professional certifications. As previously noted, an elimination of the Roster could result in a small transfer of business activity away from inspectors on the Roster, but there is no reason to believe this transfer will be significant. There is no detectable wage premium for inspectors on the FHA Roster, and the Roster has been used for less than 0.1 percent of FHA's loans in recent years. Therefore, the undersigned certifies that this rule will not have a significant impact on a substantial number of small entities.

*Environmental Impact*

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410–0500.

*Executive Order 13132, Federalism*

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

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This rule does not impose any federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of UMRA.

*Catalogue of Federal Domestic Assistance*

The Catalogue of Federal Domestic Assistance Number for the principal FHA single-family mortgage insurance program is 14.117.

**List of Subjects in 24 CFR Part 200**

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Lead poisoning, Loan programs—housing and community development, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

Accordingly, for the reasons discussed in the preamble, HUD amends 24 CFR part 200 as follows:

## PART 200—INTRODUCTION TO FHA PROGRAMS

■ 1. The authority citation for part 200 continues to read as follows:

**Authority:** 12 U.S.C. 1702–1715z–21; 42 U.S.C. 3535(d).

■ 2. In § 200.145, add paragraph (c) to read as follows:

### § 200.145 Property and mortgage assessment.

* * * * *

(c) For all new construction as well as structural repairs and/or renovations of existing properties, to the extent that an inspection is required to determine if construction quality of a one- to four-unit property is acceptable as security for an FHA-insured loan, the following requirements apply:

(1)(i) In areas where local jurisdictions provide building code enforcement and the requisite documentation, the lender shall provide a copy of:

(A) The building permit, or its equivalent, and a copy of the certificate of occupancy, or its equivalent; or

(B) A satisfactory inspection notice for work completed, or its equivalent.

(ii) The documentation provided under paragraph (c)(1)(i) of this section shall be considered satisfactory evidence of completion of the work.

(2) In jurisdictions that do not provide building code enforcement and requisite documentation, three inspections are required for new construction. For existing construction, only one inspection and certification of work completed for structural repairs and renovations is required. For both new and existing construction, the lender shall, in order to ensure compliance with FHA requirements:

(i) Select a Residential Combination Inspector (or its successor designation) or a Combination Inspector (or its successor designation) certified by the International Code Council (or its successor organization) who is licensed or certified as a home inspector in accordance with the applicable State and local requirements governing the licensing or certification of those jurisdictions that license or certify such inspectors in the respective jurisdiction. The lender shall provide a certification from such inspector that the new construction and/or structural repair or renovation work is completed satisfactorily and in compliance with any applicable building code.

(ii) In the absence of such Residential Combination Inspector and Combination Inspector, the lender shall obtain an inspection performed by a third party, who is a registered architect, a professional engineer, or a trades person or contractor, and who has met the licensing and bonding requirements of the State in which the property is located. The lender shall provide a certification from such inspector that the inspector is licensed and bonded under applicable State law, and that the new construction and/or structural repair or renovation work is completed satisfactorily and in compliance with any applicable building code.

### §§ 200.170 through 200.172 [Removed]

■ 3. Remove the undesignated center heading ''FHA Inspector Roster'' and §§ 200.170 through 200.172.

Dated: June 26, 2018.

**Brian D. Montgomery,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 2018–14212 Filed 7–2–18; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Part 330

**[Docket No. FR–6112–IA–01]**

## Government National Mortgage Association: Loan Seasoning for Ginnie Mae Mortgage-Backed Securities—Interpretive Rule

**AGENCY:** Office of General Counsel, HUD.

**ACTION:** Interpretive rule.

**SUMMARY:** HUD is issuing this interpretive rule to clarify the scope of the provision of the recently enacted Economic Growth, Regulatory Relief, and Consumer Protection Act (Act) that prohibits the Government National Mortgage Association (Ginnie Mae) from guaranteeing the timely payment of principal and interest on a security that is ''backed by a mortgage'' that fails to meet certain ''seasoning'' requirements. With this new amendment, questions have arisen as to the effect of this provision on Ginnie Mae's ability to guarantee Multiclass Securities where the trust assets consist of direct or indirect interests in certificates, previously lawfully guaranteed by Ginnie Mae, but with underlying mortgage loans that may not be in compliance with the seasoning requirements. This rule provides HUD's interpretation that the statutory provision does not prohibit Ginnie Mae from making guarantees in this context. Although interpretive rules are exempt from public comment under the Administrative Procedure Act, HUD nevertheless invites public comment on the interpretation provided in this rule.

**DATES:**

*Effective date:* This interpretive rule is effective June 29, 2018, and is applicable beginning June 25, 2018.

*Comment due date:* August 2, 2018.

**ADDRESSES:** Interested persons are invited to submit comments regarding this interpretive rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Due to security measures at all Federal agencies, however, submission of comments by mail often results in delayed delivery. To ensure timely receipt of comments, HUD recommends that comments submitted by mail be submitted at least two weeks in advance of the public comment deadline.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov*. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

*Note:* To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

*No Facsimile Comments.* Facsimile (FAX) comments are not acceptable.

*Public Inspection of Public Comments.* All properly submitted

comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Kevin M. Simpson, Associate General Counsel for Finance and Administrative Law, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 8150, Washington, DC 20410; telephone number 202–402–2036. Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Relay Service at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Established by the Federal National Mortgage Association Charter Act (Ginnie Mae Charter),[1] Ginnie Mae guarantees investors the timely payment of principal and interest on single class mortgage-backed securities (MBS) issued by private lenders and others that are backed by pools of mortgage loans insured or guaranteed by the U.S. Department of Housing and Urban Development, Federal Housing Administration (FHA), U.S Department of Veterans Affairs (VA), U.S. Department of Agriculture, Rural Development (RD), and U.S. Department of Housing and Urban Development, Office of Public and Indian Housing (PIH). The Ginnie Mae guaranty, backed by the full faith and credit of the United States Government, which Ginnie Mae places on MBS lowers the cost of, and maintains the supply of, mortgage financing for such government-backed loans. The authority for these guaranties is found in section 306(g)(1) of the Ginnie Mae Charter.[2] As stated in Ginnie Mae's All Participants Memorandum 18–04, any Ginnie Mae MBS with an issuance date of May 2018 or earlier is not affected by the Act. Further, any refinanced VA mortgage loan that does not meet the seasoning requirement contained in the Act, that was not backing a Ginnie Mae MBS prior to May 24, 2018, is ineligible to serve as MBS collateral.

The ''Multiclass Securities Program'' is a vehicle that further increases the liquidity of Ginnie Mae MBS and attracts new sources of capital for federally insured or guaranteed loans. Ginnie Mae Multiclass Securities are collateralized by trust assets that consist of direct or indirect interest in certificates with underlying FHA, VA, RD, and PIH mortgage loans (*i.e.,* MBS or previously issued Multiclass Securities). Ginnie Mae Multiclass Securities direct principal and interest payments from the underlying MBS or previously-issued Multiclass Securities to classes (known as tranches) with different principal balances, interest rates, average lives, prepayment characteristics, and final maturities. This enables investors with different investment horizons, risk-reward preferences, and asset-liability management requirements to purchase mortgage securities that are tailored to their needs. The authority for this program is also found in section 306(g)(1) of the Ginnie Mae Charter.

On May 24, 2018, President Trump signed into law the Act.[3] Title III of the Act contains several legislative protections for veterans, consumers and homeowners, including section 309, which largely incorporated the ''Protecting Veterans from Predatory Lending Act of 2018.'' Section 309(b) of the Act amended section 306(g)(1) of the Ginnie Mae Charter[4] to add the following sentence: ''The Association may not guarantee the timely payment of principal and interest on a security that is backed by a mortgage insured or guaranteed under chapter 37 of title 38, United States Code,[5] and that was refinanced until the later of the date that is 210 days after the date on which the first monthly payment is made on the mortgage being refinanced and the date on which 6 full monthly payments have been made on the mortgage being refinanced.''

This seasoning requirement was designed to deter lenders from encouraging veterans to refinance their VA mortgage loans often and repeatedly. This practice of ''churning'' led to faster prepayment speeds on the mortgages underlying Ginnie Mae MBS and Multiclass Securities, making these securities less valuable to investors. Increased prepayment speeds means that the underlying loans, and therefore a portion of the related securities, do not stay outstanding, at the agreed upon interest rates, as long as expected. This uncertainty adversely affects the investor expectations, resulting in low prices on the securities and therefore higher coupon rates for MBS and Multiclass Securities. The value to investors of the predictability of Ginnie Mae MBS and Multiclass Securities as opposed to alternatives is one reason, however, that interest rates on mortgage loans insured or guaranteed by VA, FHA, RD and PIH are kept at relatively low interest rates. Accordingly, ''churning'' was seen as detrimental to veterans not only because those who refinanced often did not realize that the overall refinance costs could outweigh the short-term benefits, but also because overall mortgage rates were higher than they would otherwise be in part because of the adverse impact, in the view of the investors, of higher prepayment speeds on the VA mortgage loans backing the Ginnie Mae MBS and Multiclass Securities.

## II. This Interpretive Rule

It is HUD's interpretation that as of the enactment of the Act, any VA refinanced mortgage loan that does not meet the seasoning requirements contained in section 309(b) of the Act is ineligible to serve as collateral for Ginnie Mae MBS. Ginnie Mae MBS guaranteed before the enactment of the Act, that contain VA refinanced mortgage loans that do not meet the seasoning requirements contained in the Act, are unaffected by the Act. For Multiclass Securities, the Act does not prohibit Ginnie Mae from guaranteeing Multiclass Securities where the trust assets consist of direct or indirect interests in Ginnie Mae guaranteed certificates with underlying VA mortgage loans that may not comply with the statutory seasoning requirement. As discussed more fully below, this reading of section 309(b) is supported by a close reading of the relevant statutory language. Further, and as discussed below, a contrary interpretation of section 309(b) of the Act would defeat the provision's purposes of restricting VA loan churning and protecting veterans.

### *A. Statutory Text*

HUD's interpretation is supported by a close reading of the statutory text of the Ginnie Mae Charter, section 309(b) of the Act, and section 309 more broadly.

The language of section 309(b) of the Act differs in significant respect from the long-standing language in the Ginnie Mae Charter. Section 306(g)(1) of the Ginnie Mae Charter refers to the securities that Ginnie Mae is authorized

[1] 12 U.S.C. 1716 *et seq.*

[2] 12 U.S.C. 1721(g)(1).

[3] Public Law 115–174.

[4] 12 U.S.C. 1721(g)(1).

[5] 38 U.S.C. chapter 37 governs VA loans.

to guarantee as those ''backed by a trust or pool composed of mortgages,'' language that has long been understood by Congress and HUD to encompass both MBS and Multiclass Securities. *See* Letter from Nelson Diaz to Dwight P. Robinson (June 27, 1994). However, the language added by section 309(b) of the Act does not use similarly broad language—it refers only to those securities that are ''backed by a mortgage.'' It is a well-settled principle of statutory interpretation that ''the use of different words within the same statutory context strongly suggests that different meanings were intended.'' [6] In addition, ''a statute should be constructed so that effect is given to all of its provisions, so that no part will be inoperative or superfluous, void or insignificant.'' [7] Under these principles, Congress's decision to use only the words ''backed by a mortgage,'' as compared to ''backed by a *trust or pool composed of* mortgages,'' should be given meaning.

To give meaning to the narrower language in section 309(b) of the Act, that provision should be read to reference a narrower class of securities (MBS) than all of the securities long understood to be covered by the broader language of section 306(g) the of Ginnie Mae Charter (both MBS and Multiclass Securities). Had Congress intended section 309(b) of the Act to encompass Multiclass Securities as well as MBS, it would have employed the broader language known to encompass both types of securities—*i.e.,* ''backed by a trust or pool composed of mortgages.'' Instead, Congress used only the words ''backed by a mortgage.'' HUD believes that the best way to give that distinction meaning, as required under the case law, is to read the narrower phrase to encompass only those securities that are backed directly by mortgages (*i.e.,* MBS) as opposed to securities that are backed directly by a trust of securities that are ultimately backed by mortgages (*i.e.,* Multiclass Securities).

This reading is supported by nearby statutory language in section 306(g)(3) of the Ginnie Mae Charter. As the Supreme Court has explained, ''[t]he plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.'' [8] The language of section 306(g)(3) of the Ginnie Mae Charter refers differently to MBS and to Multiclass Securities in a way that supports reading section 309(b) of the Act to apply only to MBS. In sections 306(g)(3)(A) and (B) of the Ginnie Mae Charter, Congress describes MBS as ''securities or notes based on or backed by mortgages.'' In contrast, in section 306(g)(3)(E) of the Ginnie Mae Charter, Congress refers distinctly to Multiclass Securities as being ''backed by a trust or pool of securities or notes guaranteed by [Ginnie Mae].'' Put more simply, section 306(g)(3) of the Ginnie Mae Charter describes MBS as securities *backed by mortgages* and describes Multiclass Securities differently as securities *backed by a trust or pool of securities or notes,* even though Multiclass Securities ultimately also are backed by mortgages. The narrow language of section 309(b) of the Act —''a security backed by a mortgage''— appears intended to track the description of MBS in section 306(g)(3)(A) and (B) of the Ginnie Mae Charter and not to include Multiclass Securities as described in section 306(g)(3)(E) of the Ginnie Mae Charter.

In addition, this interpretation of section 309(b) of the Act is supported by a holistic reading of section 309. Other provisions in this section refer explicitly to MBS, but none refers to Multiclass Securities. In section 309(c) of the Act, for example, the statute imposes reporting requirements on Ginnie Mae to allow it to monitor the effectiveness of the Act in regards to MBS, but the provision does not reference Multiclass Securities. This strongly implies that MBS were the only securities targeted by Congress in section 309 of the Act, and that section 309(b) of the Act therefore does not apply to Multiclass Securities.

Lastly, this reading is supported by the heading of section 309(b) of the Act—''Loan Seasoning for Ginnie Mae Mortgage-Backed Securities.'' The heading refers only to MBS and makes no reference to Multiclass Securities. The Supreme Court has said that ''the title of a statute or section can aid in resolving ambiguity in the legislation's text.'' [9] Thus, to the extent section 309(b) of the Act is ambiguous, its heading clarifies its limited application to MBS only.

*B. Inconsistency With Purpose of Statute*

HUD's interpretation of section 309(b) of the Act is also consistent with the purposes of both section 309 of the Act and the Ginnie Mae Charter. A contrary reading would prohibit Ginnie Mae from guaranteeing all new Multiclass Securities ultimately backed by any prohibited mortgage, including Multiclass Securities composed solely of securities lawfully guaranteed prior to enactment of the Act. Prohibiting Ginnie Mae from guaranteeing such securities would harm, not help, veterans and would therefore contravene the purposes of section 309 of the Act and the Ginnie Mae Charter.

1. *Anti-Churning.* As noted, section 309 of the Act was intended to protect both veterans and investors by discouraging the unfair lending practice of ''churning.'' By prohibiting Ginnie Mae from guaranteeing MBS containing any loans refinanced in violation of the seasoning requirements, the Act decreases the marketability of these loans and thereby motivates lenders to avoid such practices in the future. By contrast, prohibiting Ginnie Mae's ability to guarantee Multiclass Securities containing MBS that were guaranteed by Ginnie Mae prior to the Act becoming law can have no impact on lender behavior. The lender cannot change the circumstances surrounding the production of a loan securitized and sold prior to the enactment of the Act. Further, it may be unknowable whether the previously guaranteed MBS or previously issued Multiclass Security would comply with section 309(b) of the Act because assuring and tracking compliance with the seasoning requirements in the Act were not requirements for Ginnie Mae securities prior to the Act's enactment. To interpret the prohibition of section 309(b) of the Act to include Multiclass Securities, therefore, is to sanction a measure that does not advance the legislative aim of decreasing the financial motives of lenders to engage in the predatory practices at issue.

2. *Protection of Veterans.* Interpreting section 309(b) of the Act to prohibit the guarantee of Multiclass Securities composed of trust assets that consist of direct or indirect interests in certificates with underlying VA mortgage loans that were guaranteed prior to the enactment of the statute would also have a negative impact on the liquidity of the Multiclass Securities market, driving up VA mortgage rates and restricting the availability of the VA mortgage loans to the very veterans that the statute was intended to protect.

[6] *United States* v. *Maria,* 186 F.3d 65, 71 (2d Cir. 1999) (citing *Crockett Telephone Co.* v. *F.C.C.,* 963 F.2d 1564, 1570 (D.C. Cir. 1992) and other cases); *see also* A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 170 (2012) (''[W]here the document has used one term in one place, and a materially different term in another, the presumption is that the different term denotes a different idea.'').

[7] *Marx* v. *General Revenue Corp.,* 568 U.S. 371, 392–93 (2013).

[8] *Robinson* v. *Shell Oil Co.,* 519 U.S. 337, 341, 117 S. Ct. 843, 846 (1997).

[9] *INS* v. *National Center for Immigrants Rights Inc,* 502 U.S. 183 (1991).

The Act enacted several legislative changes, including section 309, that were aimed at protecting veterans from predatory lending practices in connection with refinancing activity and preserving the relatively low rates created by Ginnie Mae guarantees without the adverse impact of high prepayment speeds.[10] The broader purpose of these provisions is to benefit veterans by providing them with affordable housing. Indeed, section 309(b) of the Act is titled ''Protecting Veterans from Predatory Lending.'' This is also one of the purposes of the Ginnie Mae Charter, which was amended by section 309(b) of the Act.

Under settled precedent, Section 309(b) of the Act cannot be construed in a way that would frustrate the purposes of either Section 309 of the Act or the Ginnie Mae Charter. The Supreme Court has instructed that courts ''cannot interpret federal statutes to negate their own stated purposes.'' [11] Moreover, a statutory provision that may seem ''ambiguous in isolation is often clarified by the remainder of the statutory scheme . . . because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law.'' [12]

But to conclude that section 309(b) of the Act precludes the guarantee of Multiclass Securities collateralized by MBS and Multiclass Securities previously and lawfully issued by Ginnie Mae also would frustrate the purpose of these statutes. Precluding existing MBS and Multiclass Securities—where it is now difficult, if not practically impossible, to assess compliance with Section 309(b) of the Act would potentially ''orphan'' billions of dollars worth of outstanding Ginnie Mae securities that were validly guaranteed under prior law. This is because they never could be incorporated into Multiclass Securities after the enactment of the Act. This would frustrate the reasonable expectations of Ginnie Mae investors who purchased Ginnie Mae MBS at prices that explicitly contemplated their ultimate inclusion in Multiclass Securities. Because these securities would then decrease in value, the end result would be increased interest rates for veterans. Given that this would harm, rather than help, veterans, it is difficult to imagine that Congress intended to cause significant disruption to the Multiclass Securities program beyond what was needed to stop the undesirable lending practices on a prospective basis. Further, restricting the inclusion of existing MBS and previously issued Multiclass Securities as eligible collateral would not decrease the amount of risk to Ginnie Mae and the investors since the certificates are already guaranteed.

## III. Conclusion

For the reasons described above, it is HUD's interpretation that as of the enactment of the Act, any VA refinanced mortgage loan that does not meet the seasoning requirements contained in section 309(b) the Act is ineligible to serve as collateral for Ginnie Mae MBS. Ginnie Mae MBS guaranteed before the enactment of the Act, that contain VA refinanced mortgage loans that do not meet the seasoning requirements contained in the Act, are unaffected by the Act. For Multiclass Securities, the Act permits Ginnie Mae to guarantee Multiclass Securities even where the trust assets consist of direct or indirect interest in certificates guaranteed by Ginnie Mae without regard to whether the underlying VA mortgage loans are in compliance with the seasoning requirements in section 309(b) of the Act.

## IV. Solicitation of Comment

This interpretive rule represents HUD's interpretation of section 309(b) of the Act and, as such, is exempt from the notice and comment requirements of the Administrative Procedure Act.[13] Nevertheless, HUD is interested in receiving feedback from the public on this interpretation, specifically with respect to clarity and scope.

Dated: June 25, 2018.

**J. Paul Compton, Jr.,**

*General Counsel.*

[FR Doc. 2018–14354 Filed 6–29–18; 11:15 am]

**BILLING CODE 4210–67–P**

[10] *See e.g.,* section 302 (limits, and establishes a dispute process and verification procedures with respect to, the inclusion of a veteran's medical debt in a consumer credit report); section 313 (makes permanent the one-year grace period during which a servicemember is protected from foreclosure after leaving military service)).

[11] *New York State Dept. of Social Servs.* v. *Dublino,* 413 U.S. 405, 419–420 (1973).

[12] *United Sav. Assn. of Tex.* v. *Timbers of Inwood Forest Associates, Ltd.,* 484 U.S. 365, 371 (1988).

[13] *See,* 5 U.S.C. 553(b)(3)(A).

## DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

## 29 CFR Part 1910

**[Docket No. OSHA–2018–0003]**

**RIN 1218–AB76**

## Revising the Beryllium Standard for General Industry

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Final rule; confirmation of effective date.

**SUMMARY:** OSHA is confirming the effective date of its direct final rule (DFR) adopting a number of clarifying amendments to the beryllium standard for general industry to address the application of the standard to materials containing trace amounts of beryllium. In the May 7, 2018, DFR, OSHA stated that the DFR would become effective on July 6, 2018, unless one or more significant adverse comments were submitted by June 6, 2018. OSHA did not receive significant adverse comments on the DFR, so by this document the agency is confirming that the DFR will become effective on July 6, 2018.

**DATES:** The DFR published on May 7, 2018 (83 FR 19936), becomes effective on July 6, 2018. For purposes of judicial review, OSHA considers the date of publication of this document as the date of promulgation of the DFR.

**ADDRESSES:** For purposes of 28 U.S.C. 2112(a), OSHA designates the Associate Solicitor of Labor for Occupational Safety and Health as the recipient of petitions for review of the direct final rule. Contact the Associate Solicitor at the Office of the Solicitor, Room S–4004, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–5445.

**FOR FURTHER INFORMATION CONTACT:**

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

*General information and technical inquiries:* Mr. William Perry or Ms. Maureen Ruskin, Directorate of Standards and Guidance, Room N–3718, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–1950; fax: (202) 693–1678.

*Copies of this* ***Federal Register*** *document and news releases:* Electronic copies of these documents are available

at OSHA's web page at *http://www.osha.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. Confirmation of Effective Date**

On May 7, 2018, OSHA published a DFR in the **Federal Register** (83 FR 19936) amending the text of the beryllium standard for general industry to clarify OSHA's intent with respect to certain terms in the standard, including the definition of Beryllium Work Area (BWA), the definition of emergency, and the meaning of the terms dermal contact and beryllium contamination. It also clarifies OSHA's intent with respect to provisions for disposal and recycling and with respect to provisions that the agency intends to apply only where skin can be exposed to materials containing at least 0.1% beryllium by weight. Interested parties had until June 6, 2018, to submit comments on the DFR.

The agency stated that it would publish another document confirming the effective date of the DFR if it received no significant adverse comments. OSHA received seven comments in the record from Materion Brush, Inc., Mead Metals Inc., National Association of Manufacturers, Airborn, Inc., Edison Electric Institute, and two private citizens (Document IDs OSHA–2018–0003–0004 thru OSHA–2018–0003–0010). The seven submissions contained comments that were either supportive of the DFR or were considered not to be significant adverse comments. (Document IDs OSHA–2018–0003–0004 thru OSHA–2018–0003–0010). Three of these submissions also contained comments that were outside the scope of the DFR and OSHA is not considering the portions of those submissions that are outside the scope (OSHA–2018–0003–0004 thru OSHA–2018–0003–0006).

OSHA has determined this DFR will maintain safety and health protections for workers while reducing employers' compliance burdens. As the agency did not receive any significant adverse comments, OSHA is hereby confirming that the DFR published on May 7, 2018, will become effective on July 6, 2018.

**II. OMB Review Under the Paperwork Reduction Act of 1995**

This action does not add or change any information collection requirements subject to OMB approval under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* and its implementing regulations at 5 CFR part 1320. The PRA defines a collection of information as the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public of facts or opinions by or for an agency regardless of form or format. See 44 U.S.C. 3502(3)(A). While not affected by this rulemaking, the Department has cleared information collections related to occupational exposure to beryllium standards—general industry, 29 CFR 1910.1024; construction, 29 CFR 1926.1124; and shipyards, 29 CFR 1915.1024—under control number 1218–0267. The existing approved information collections are unchanged by this rulemaking.

In the DFR published on May 7, 2018, OSHA provided 30 days for the public to comment on whether approved information collections would be affected by this rulemaking. The agency did not receive any comments on paperwork in response to that notice.

**List of Subjects in 29 CFR Part 1910**

Beryllium, General industry, Health, Occupational safety and health.

**Authority and Signature**

Loren Sweatt, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this direct final rule. The agency is issuing this rule under Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order 5–2007 (72 FR 31159), and 29 CFR part 1911.

Signed at Washington, DC, on June 27, 2018.

**Loren Sweatt,**

*Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2018–14274 Filed 7–2–18; 8:45 am]

**BILLING CODE 4510–26–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### 32 CFR Part 706

### Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Navy (DoN) is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (DAJAG) (Admiralty and Maritime Law) has determined that USS PAUL IGNATIUS (DDG 117) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

**DATES:** This rule is effective July 3, 2018 and is applicable beginning May 30, 2018.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Kyle Fralick, (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave. SE, Suite 3000, Washington Navy Yard, DC 20374–5066, telephone 202–685–5040.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority granted in 33 U.S.C. 1605, the DoN amends 32 CFR part 706.

This amendment provides notice that the DAJAG (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS PAUL IGNATIUS (DDG 117) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(f)(i), pertaining to the placement of the masthead light or lights above and clear of all other lights and obstructions; Annex I, paragraph 2(f)(ii), pertaining to the vertical placement of task lights; Rule 23(a), the requirement to display a forward and aft masthead light underway, and Annex I, paragraph 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, and the horizontal distance between the forward and after masthead lights; and Annex I, paragraph 3(c), pertaining to placement of task lights not less than two meters from the fore and aft centerline of the ship in the athwartship direction. The DAJAG (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

**List of Subjects in 32 CFR Part 706**

Marine safety, Navigation (water), Vessels.

For the reasons set forth in the preamble, the DoN amends part 706 of title 32 of the Code of Federal Regulations as follows:

## PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read:

**Authority:** 33 U.S.C. 1605.

■ 2. Section 706.2 is amended by:

■ a. In Table Four, paragraph 15, adding, in alpha numerical order, by vessel number, an entry for USS PAUL IGNATIUS (DDG 117); and

■ b. In Table Five, adding, in alpha numerical order, by vessel number, an entry for USS PAUL IGNATIUS (DDG 117).

The additions read as follows:

**§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.**

* * * * *

**Table Four**

* * * * *

15. * * *

| Vessel | Number | Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction |
|---|---|---|
| * | * | * |
| USS PAUL IGNATIUS | DDG 117 | 1.85 |
| * | * | * |

* * * * *

TABLE FIVE

| Vessel | Number | Masthead lights not over all other lights and obstructions. annex I, sec. 2(f) | Forward masthead light not in forward quarter of ship. annex I, sec. 3(a) | After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a) | Percentage horizontal separation attained |
|---|---|---|---|---|---|
| * | * | * | * | * | * |
| USS PAUL IGNATIUS | DDG 117 | X | X | X | 14.6 |

Approved: May 30, 2018.

**C.J. Spain,**

*Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Acting.*

Dated: June 13, 2018.

**E.K. Baldini,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 2018–14251 Filed 7–2–18; 8:45 am]

**BILLING CODE 3810–FF–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 100

**[Docket No. USCG–2018–0605]**

### Regattas and Marine Parades; Great Lakes Annual Marine Events

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce various special local regulations for annual regattas and marine parades in the Captain of the Port Detroit zone. Enforcement of these regulations is necessary and intended to ensure safety of life on the navigable waters immediately prior to, during, and after these regattas or marine parades. During the aforementioned period, the Coast Guard will enforce restrictions upon, and control movement of, vessels in a specified area immediately prior to, during, and after regattas or marine parades.

**DATES:** The regulations in 33 CFR 100.914 and 100.915 will be enforced at specified dates and times between July 20, 2018 and July 29, 2018.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this document, call or email Tracy Girard, Prevention Department, telephone (313)568–9564, email *Tracy.M.Girard@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the following special local regulations listed in 33 CFR part 100, Safety of Life on Navigable Waters, on the following dates and times:

(1) *§ 100.914 Trenton Rotary Roar on the River, Trenton, MI.* This special local regulation will be enforced from 8 a.m. to 8 p.m. each day from July 20 through July 22, 2018.

(2) *§ 100.915 St. Clair River Classic Offshore Race, St. Clair, MI.* This special local regulation will be enforced from 10 a.m. to 7 p.m. each day from July 23 through July 29, 2018.

**Special Local Regulations**

In accordance with § 100.901, entry into, transiting, or anchoring within these regulated areas is prohibited unless authorized by the Coast Guard patrol commander (PATCOM). The PATCOM may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

Vessels permitted to enter this regulated area must operate at a no-wake speed and in a manner that will not endanger race participants or any other craft.

The PATCOM may direct the anchoring, mooring, or movement of any vessel within this regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the PATCOM shall serve as a signal to stop. Vessels so signaled shall stop and shall comply with the orders of the PATCOM. Failure to do so may result in expulsion from the area, a Notice of Violation for failure to comply, or both.

If it is deemed necessary for the protection of life and property, the PATCOM may terminate the marine event or the operation of any vessel within the regulated area.

In accordance with the general regulations in § 100.35 of this part, the Coast Guard will patrol the regatta area under the direction of a designated Coast Guard Patrol Commander (PATCOM). The PATCOM may be contacted on Channel 16 (156.8 MHz) by the call sign ''Coast Guard Patrol Commander.''

Under the provisions of 33 CFR 100.928, vessels transiting within the regulated area shall travel at a no-wake speed and remain vigilant for event participants and safety craft. Additionally, vessels shall yield right-of-way for event participants and event safety craft and shall follow directions given by the Coast Guard's on-scene representative or by event representatives during the event.

The ''on-scene representative'' of the Captain of the Port Detroit is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port Detroit to act on his behalf. The on-scene representative of the Captain of the Port Detroit will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port Detroit or his designated on scene representative may be contacted via VHF Channel 16.

The rules in this section shall not apply to vessels participating in the event or to government vessels patrolling the regulated area in the performance of their assigned duties.

This document is issued under authority of 33 CFR 100.35 and 5 U.S.C. 552(a). If the Captain of the Port determines that any of these special local regulations need not be enforced for the full duration stated in this document, he may suspend such enforcement and notify the public of the suspension via a Broadcast Notice to Mariners.

Dated: June 26, 2018.

**J.W. Novak,**

*Captain, U.S. Coast Guard, Captain of the Port Detroit.*

[FR Doc. 2018–14250 Filed 7–2–18; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 117

**[Docket No. USCG–2018–0628]**

## Drawbridge Operation Regulation; Rancocas Creek, Burlington, NJ

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of deviation from drawbridge regulation.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the S.R. 543 (Riverside-Delanco) Bridge across the Rancocas Creek, mile 1.3, at Burlington, NJ. The deviation is necessary to facilitate routine maintenance. This deviation allows the bridge to remain in the closed-to-navigation position.

**DATES:** This deviation is effective without actual notice from July 3, 2018 until 3:30 p.m. on August 2, 2018. For enforcement purposes actual notice will be used from 7 a.m. on June 28, 2018 until July 3, 2018.

**ADDRESSES:** The docket for this deviation, [USCG–2018–0628] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH''. Click on Open Docket Folder on the line associated with this deviation.

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

**SUPPLEMENTARY INFORMATION:** The Burlington County Bridge Commission, owner and operator of the S.R. 543 (Riverside-Delanco) Bridge across the Rancocas Creek, mile 1.3, at Burlington, NJ, has requested a temporary deviation from the current operating schedule to accommodate routine maintenance.

Under this temporary deviation, the bridge will require a 30 minutes advanced notice to open Monday through Friday, from 7 a.m. to 3:30 p.m., on June 28, 2018, to August 2, 2018. The current operating schedule is set out in 33 CFR 117.745.

The Rancocas Creek is mostly used by recreational vessels. The Coast Guard has carefully considered the restrictions with waterway users in publishing this temporary deviation.

Vessels able to pass through the bridge in the closed position may do so at any time. The bridge will be able to open for emergencies and there is no immediate alternate route for vessels unable to pass through the bridge in the closed position. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notice to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by this temporary deviation.

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

Dated: June 26, 2018.

**Hal R. Pitts,**

*Bridge Program Manager, Fifth Coast Guard District.*

[FR Doc. 2018–14238 Filed 7–2–18; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket Number USCG–2018–0613]**

**RIN 1625–AA00**

## Safety Zone; Canalside 4th of July Celebration, Buffalo River, Buffalo, NY

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for navigable waters on the Buffalo River, Buffalo, NY. This safety zone is intended to restrict vessels from portions of the Buffalo River during the Canalside 4th of July Celebration fireworks display. This temporary safety zone is necessary to protect mariners and vessels from the navigational hazards associated with a fireworks display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Buffalo.

**DATES:** This rule is effective from 9:45 p.m. July 4, 2018 until 10:45 p.m. on July 5, 2018.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *http://*

*www.regulations.gov,* type USCG–2018–0613 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 LT Michael Collet, Chief Waterways Management Division, U.S. Coast Guard; telephone 716–843–9322, email *D09-SMB-SECBuffalo-WWM@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

## I. Table of Abbreviations

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

## II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the event sponsor did not submit notice to the Coast Guard with sufficient time remaining before the event to publish an NPRM. Delaying the effective date of this rule to wait for a comment period to run would be impracticable and contrary to the public interest by inhibiting the Coast Guard's ability to protect spectators and vessels form the hazards associated with a fireworks display.

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** because doing so would be impracticable and contrary to the public interest. Delaying the effective date would be contrary to the rule's objectives of enhancing safety of life on the navigable waters and protection of persons and vessels in vicinity of the fireworks display.

## III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Buffalo (COTP) has determined that a fireworks display presents significant risks to the public safety and property. Such hazards include premature and accidental detonations, dangerous projectiles, and falling or burning debris. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the fireworks display takes place.

## IV. Discussion of the Rule

This rule establishes a safety zone on July 4, 2018, from 9:45 p.m. until 10:45 p.m. with a rain date of July 5, 2018 from 9:45 p.m. until 10:45 p.m. The safety zone will encompass all waters of the Buffalo River, Buffalo, NY starting at position 42°52′34.0″ N, 078°52′54.7″ W then East to 42°52′36.3″ N, 078°52′48.6″ W then South to 42°52′32.8″ N, 078°52′45.4″ W then West to 42°52′30.0″ N, 078°52′51.9″ W then returning to the point of origin.

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

## V. Regulatory Analyses

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

### *A. Regulatory Planning and Review*

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

This regulatory action determination is based on the conclusion that this rule is not a significant regulatory action. We anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for a relatively short time. Also, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

### *B. Impact on Small Entities*

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

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

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

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

### *C. Collection of Information*

This rule will not call for a new collection of information under the

Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

*D. Federalism and Indian Tribal Governments*

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

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

*E. Unfunded Mandates Reform Act*

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

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule establishes a temporary safety zone. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

*G. Protest Activities*

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

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0613 to read as follows:

**§ 165.T09–0613 Safety Zone; Canalside 4th of July Celebration, Buffalo River, Buffalo, NY.**

(a) *Location.* The safety zone will encompass all waters of the Buffalo River, Buffalo, NY starting at position 42°52′34.0″ N, 078°52′54.7″ W then East to 42°52′36.3″ N, 078°52′48.6″ W then South to 42°52′32.8″ N, 078°52′45.4″ W then West to 42°52′30.0″ N, 078°52′51.9″ W then returning to the point of origin.

(b) *Enforcement period.* This regulation will be enforced from 9:45 p.m. until 10:45 p.m. on July 4, 2018 with a rain date of July 5, 2018 from 9:45 p.m. until 10:45 p.m.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Buffalo is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Buffalo to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone must contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo, or his on-scene representative.

Dated: June 27, 2018.

**Joseph S. Dufresne,**

*Captain, U.S. Coast Guard, Captain of the Port Buffalo.*

[FR Doc. 2018–14325 Filed 7–2–18; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket No. USCG–2018–0641]**

**RIN 1625–AA00**

## Safety Zone: City of Benicia Fourth of July Fireworks Display, Carquinez Straight, Benicia, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in the navigable waters of San Francisco Bay near Carquinez Strait in support of the City of Benicia Fourth of July Fireworks Display on July 4, 2018. This safety zone is established to ensure the safety of participants and spectators from the dangers associated with pyrotechnics. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port or their designated representative.

**DATES:** This rule is effective on July 4, 2018, from 9 a.m. through 10:30 p.m.

**ADDRESSES:** Documents mentioned in this preamble are part of docket USCG–2018–0641. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Emily Rowan, U.S.

Coast Guard Sector San Francisco; telephone (415) 399–7443 or email at *D11-PF-MarineEvents@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

## I. Table of Acronyms

APA Administrative Procedure Act
COTP U.S. Coast Guard Captain on the Port
DHS Department of Homeland Security
FR Federal Register
NOAA National Oceanic and Atmospheric Administration
NPRM Notice of Proposed Rulemaking
PATCOM U.S. Coast Guard Patrol Commander
U.S.C. United States Code

## II. Background Information and Regulatory History

The Coast Guard is issuing this temporary final 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. Since the Coast Guard received final details of this event on June 25, 2018, notice and comment procedures would be impracticable in this instance.

For similar reasons as those stated 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 Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port (COTP) San Francisco has determined that potential hazards associated with the planned fireworks display on July 4, 2018, will be a safety concern for anyone within a 100-foot radius of the fireworks barge and anyone within a 1,000-foot radius of the fireworks firing site. This rule is needed to protect spectators, vessels, and other property from hazards associated with pyrotechnics.

## IV. Discussion of the Rule

This rule establishes a temporary safety zone during the loading and transit of the fireworks barge, until after completion of the fireworks display. During the loading of the pyrotechnics onto the fireworks barge, scheduled to take place from 9:00 a.m. to 2:00 p.m. on July 4, 2018, at Pier 50 in San Francisco, CA, the safety zone will encompass the navigable waters around and under the fireworks barge within a radius of 100 feet.

The fireworks barge will remain at Pier 50 until the start of the transit to the display location. Towing of the barge from Pier 50 to the display location is scheduled to take place from 3:30 p.m. to 8:00 p.m. on July 4, 2018, where it will remain until the conclusion of the fireworks displays.

At 9:00 p.m. on July 4, 2018, 30 minutes prior to the commencement of the 20-minute fireworks display, the safety zone will increase in size and encompass the navigable waters around and under the fireworks barge within a radius of 1,000 feet in approximate position 38°02′49″ N, 122°10′02″ W (NAD 83) for the City of Benicia Fourth of July Fireworks Display. The safety zone shall terminate at 10:30 p.m. on July 4, 2018.

The effect of the temporary safety zone are to restrict navigation in the vicinity of the fireworks loading, transit, and firing site. Except for persons or vessels authorized by the COTP or the COTP's designated representative, no person or vessel may enter or remain in the restricted area. This regulation is needed to keep spectators and vessels away from the immediate vicinity of the fireworks firing site to ensure the safety of participants, spectators, and transiting vessels.

## V. Regulatory Analyses

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

### *A. Regulatory Planning and Review*

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

This regulatory action determination is based on the limited duration and narrowly tailored geographic area of the safety zone. Although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zone will result in minimum impact. The entities most likely to be affected are waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities.

### *B. Impact on Small Entities*

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

This rule may affect the following entities, some of which may be small entities: owners and operators of waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities and sightseeing, if these facilities or vessels are in the vicinity of the safety zone at times when this zone is being enforced. This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) This rule will encompass only a small portion of the waterway for a limited period of time, and (ii) the maritime public will be advised in advance of this safety zone via Broadcast Notice to Mariners.

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you

wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

*C. Collection of Information*

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

*D. Federalism and Indian Tribal Governments*

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

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

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such 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 M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone of limited size and duration. It is categorically excluded from further review under Categorical Exclusion L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

*G. Protest Activities*

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

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T11–938 to read as follows:

**§ 165.T11–938 Safety Zone; City of Benicia 4th of July Fireworks Display, Carquinez Strait, Benicia, CA.**

(a) *Location.* The following area is a safety zone: all navigable waters of San Francisco Bay within 100 feet of the fireworks barge during loading at Pier 50, as well as transit and arrival to launching location in Carquinez Strait, Benicia, CA. From 9:00 a.m. until approximately 2:00 p.m. on July 4, 2018, the fireworks barge will be loading at Pier 50, San Francisco, CA. The safety zone will expand to all navigable waters around and under the firework barge within a radius of 1,000 feet in approximate positions 38°02′49″ N, 122°10′02″ W (NAD 83), 30 minutes prior to the start of the 20-minute fireworks display, scheduled to begin at 9:30 p.m. on July 4, 2018.

(b) *Enforcement period.* The zone described in paragraph (a) of this section will be enforced from 9:00 a.m. until approximately 10:30 p.m. on July 4, 2018. The Captain of the Port San Francisco (COTP) will notify the maritime community of periods during which this zone will be enforced via Broadcast Notice to Mariners in accordance with § 165.7.

(c) *Definitions.* As used in this section, ''designated representative'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer on a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the COTP in the enforcement of the safety zone.

(d) *Regulations.* (1) Under the general regulations in subpart C of this part, entry into, transiting or anchoring within this safety zone is prohibited unless authorized by the COTP or the COTP's designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or a designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or a designated representative. Persons and vessels may request permission to enter the safety zone on VHF–23A or through the 24-hour Command Center at telephone (415) 399–3547.

Dated: June 27, 2018.

**Anthony J. Ceraolo,**

*Captain, U.S. Coast Guard, Captain of the Port, San Francisco.*

[FR Doc. 2018–14269 Filed 7–2–18; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket Number USCG–2018–0332]**

**RIN 1625–AA00**

## Safety Zone; Lower Tchefuncte River, Madisonville, LA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for certain navigable waters of the

Tchefuncte River. This action is necessary to provide for the safety of persons, vessels, and the marine environment near Madisonville, LA, during a fireworks display on July 4, 2018. This regulation prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port Sector New Orleans or a designated representative.

**DATES:** This rule is effective from 8 p.m. through 9 p.m. on July 4, 2018.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type USCG–2018–0332 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 Howard Vacco, Sector New Orleans, U.S. Coast Guard; telephone 504–365–2281, email *Howard.K.Vacco@uscg.mil*.

**SUPPLEMENTARY INFORMATION:**

## I. Table of Abbreviations

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

## II. Background Information and Regulatory History

On April 4, 2018, Geaux Pyro, notified the Coast Guard that it would be conducting a fireworks display from 8 p.m. through 8:30 p.m. on July 4, 2018, for a July 4th celebration. The fireworks are to be launched from a barge on the Tchefuncte River, at approximate position 30°24′11.63″ N, 090°09′17.39″ W, in front of the Madisonville Town Hall. In response, on April 17, 2018, the Coast Guard published a notice of proposed rulemaking (NPRM) titled ''Safety Zone; Lower Tchefuncte River, Madisonville, LA'' (83 FR 16815). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this fireworks display. During the comment period that ended May 17, 2018, we received no comments.

## III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Sector New Orleans (COTP) has determined that potential hazards associated with the fireworks to be used in this July 4, 2018 display will be a safety concern for anyone within a 100-yard radius of the fireworks barge. The purpose of this rule is to ensure safety of persons, vessels, and the marine environment before, during, and after the scheduled event.

## IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published April 17, 2018. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a temporary safety zone from 8 p.m. through 9 p.m. on July 4, 2018. The safety zone would cover all navigable waters of the Tchefuncte River within 100-yards of a barge at approximate position 30°24′11.63″ N, 090°09′17.39″ W, in front of the Madisonville Town Hall in Madisonville, LA. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 8 p.m. to 8:30 p.m. fireworks display. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector New Orleans.

Vessels requiring entry into this safety zone must request permission from the COTP or a designated representative. They may be contacted on VHF–FM Channel 16 or 67 or by telephone at (504) 365–2200. Persons and vessels permitted to enter this safety zone must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or a designated representative. The COTP or a designated representative will inform the public through Broadcast Notices to Mariners of any changes in the planned schedule.

## V. Regulatory Analyses

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

### *A. Regulatory Planning and Review*

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

This regulatory action determination is based on the size and duration of the temporary safety zone. This temporary safety zone is for only one hour and will only encompass a 100-yard section on the Tchefuncte River. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners (BNM) via VHF–FM marine channel 16 about the zone, and the rule allows vessels to seek permission to enter the zone.

### *B. Impact on Small Entities*

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

While some owners or operators of vessels intending to transit the safety zone 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.

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The

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

*C. Collection of Information*

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

*D. Federalism and Indian Tribal Governments*

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

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

*E. Unfunded Mandates Reform Act*

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

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting one hour that would prohibit entry within a 100-yard radius of a barge at approximate position of 30°24′11.63″ N, 090°09′17.39″ W, on the Tchefuncte River. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

*G. Protest Activities*

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

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T08–0332 to read as follows:

**§ 165.T08–0332 Safety Zone; Tchefuncte River, New Orleans, LA.**

(a) *Location.* The following area is a safety zone: All navigable waters of the Tchefuncte River, 100-yards around a barge at approximate position 30°24′11.63″ N, 090°09′17.39″ W, in front of the Madisonville Town Hall in Madisonville, LA.

(b) *Effective period.* This section is effective from 8 p.m. through 9 p.m. on July 4, 2018.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into this zone is prohibited unless specifically authorized by the Captain of the Port Sector New Orleans (COTP) or designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector New Orleans.

(2) Vessels requiring entry into this safety zone must request permission from the COTP or a designated representative. They may be contacted on VHF–FM Channel 16 or 67 or by telephone at (504) 365–2200.

(3) Persons and vessels permitted to enter this safety zone must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public through Broadcast Notices to Mariners of any changes in the planned schedule.

Dated: June 27, 2018.

**K.M. Luttrell,**

*Captain, U.S. Coast Guard, Captain of the Port Sector New Orleans.*

[FR Doc. 2018–14243 Filed 7–2–18; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket No. USCG–2018–0621]**

**RIN 1625–AA00**

## Safety Zone: Red, White and Tahoe Blue Fireworks, Incline Village, NV

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the safety zone for Red, White and Tahoe Blue Fireworks display in the Captain of the Port, San Francisco area of responsibility during the dates and times noted below. This action is necessary to ensure the safety of vessels, spectators and participants from hazards associated with fireworks. During the enforcement period, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone, unless authorized by the Patrol Commander (PATCOM).

**DATES:** The regulations in 33 CFR 165.1191, Table 1, Item number 19, will be enforced from 7:30 a.m. on July 3, 2018 through 10:30 p.m. on July, 4, 2018.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notice of enforcement, call or email Lieutenant Junior Grade Emily Rowan, U.S. Coast Guard Sector San Francisco; telephone (415) 399–7443 or email at *D11-PF-MarineEvents@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce a safety zone during the loading and transit of the fireworks support pontoon vessel and fireworks barge, until completion of the fireworks display. From 7:30 a.m. to 8:30 a.m. on July 3, 2018, the fireworks support pontoon vessel will be loaded at Ivgid Boat Launch in the vicinity of Incline Beach, near Incline Village, NV and will transit from Ivgid Boat Launch to the display location at approximate position 39°14′13″ N, 119°57′01″ W (NAD 83), the safety zone will encompass the navigable waters around and under the fireworks support pontoon vessel within a radius of 100 feet. From 8:30 a.m. to 5:30 p.m. on July 3, 2018 the fireworks barge will be loaded at approximate position 39°14′13″ N, 119°57′ 01″ W (NAD 83) where it will remain until the commencement of the fireworks display. Upon the commencement of the 18-minute fireworks display, scheduled to start at approximately 9:30 p.m. on July 4, 2018, the safety zone will increase in size to encompass the navigable waters around and under the fireworks barges within a radius of 1,000 feet at approximate position 39°14′13″ N, 119°57′01″ W (NAD 83) for the Red, White, and Tahoe Blue Fireworks, Incline Village, NV in 33 CFR 165.1191, Table 1, Item number 19. This safety zone will be in effect from 7:30 a.m. on July 3, 2018 until 10:30 p.m. on July 4, 2018.

Under the provisions of 33 CFR 165.1191, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone during all applicable effective dates and times, unless authorized to do so by the PATCOM. Additionally, each person who receives notice of a lawful order or direction issued by an official patrol vessel shall obey the order or direction. The PATCOM is empowered to forbid entry into and control the regulated area. The PATCOM shall be designated by the Commander, Coast Guard Sector San Francisco. The PATCOM may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

This notice of enforcement is issued under authority of 33 CFR 165.1191 and 5 U.S.C. 552 (a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide the maritime community with extensive advance notification of the safety zone and its enforcement period via the Local Notice to Mariners.

If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice of enforcement, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: June 27, 2018.

**Anthony J. Ceraolo,**

*Captain, U.S. Coast Guard, Captain of the Port, San Francisco.*

[FR Doc. 2018–14268 Filed 7–2–18; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket Number USCG–2018–0606]**

**RIN 1625–AA00**

## Safety Zone; Lower Mississippi River, New Orleans, LA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for navigable waters of the Lower Mississippi River between mile markers (MM) 95.7 and MM 96.7 above Head of Passes in New Orleans, LA. The safety zone is necessary to protect persons, vessels, and the marine environment from potential hazards created by a fireworks display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector New Orleans or a designated representative.

**DATES:** This rule is effective from 8:45 p.m. through 9:45 p.m. on July 12, 2018.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0606 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 Howard Vacco, Sector New Orleans, U.S. Coast Guard; telephone 504–365–2281, email *Howard.K.Vacco@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Table of Abbreviations

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

### II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable It is impracticable to publish an NPRM because we must establish this safety zone by July 12, 2018 and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

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

### III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Sector New Orleans (COTP) has determined that potential hazards associated with a fireworks display on July 12, 2018, will be a safety concern for anyone within a one-mile stretch of the Lower Mississippi River. This rule is necessary to protect persons, vessels, and the marine environment in the navigable waterway before, during, and after the fireworks display.

### IV. Discussion of the Rule

This rule establishes a temporary safety zone from 8:45 p.m. through 9:45 p.m. on July 12, 2018. The safety zone will cover all navigable waters of the Lower Mississippi River between mile marker (MM) 95.7 and MM 96.7, above Head of Passes. The duration of the zone is intended to protect persons, vessels, and the marine environment in these navigable waters while the fireworks

display is being set up and launched. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector New Orleans.

Vessels requiring entry into this safety zone must request permission from the COTP or a designated representative. They may be contacted on VHF–FM Channel 16 or 67 or by telephone at (504) 365–2200. Persons and vessels permitted to enter this safety zone must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative. The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

## V. Regulatory Analyses

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

### *A. Regulatory Planning and Review*

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

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. This safety zone will restrict traffic on a one-mile portion of the Lower Mississippi River for one hour on one evening. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule allows vessels to seek permission to enter the zone.

### *B. Impact on Small Entities*

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

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

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

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

### *C. Collection of Information*

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

### *D. Federalism and Indian Tribal Governments*

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

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

### *E. Unfunded Mandates Reform Act*

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

### *F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only one hour that will prohibit entry between mile marker (MM) 95.7 and MM 96.7 on the Lower Mississippi River, above Head of Passes, before, during and after a fireworks display. It is categorically excluded from further review under paragraph L(60)a of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters.

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

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T08–0606 to read as follows:

### § 165.T08–0606 Safety Zone; Lower Mississippi River, New Orleans, LA.

(a) *Location.* The following area is a safety zone: All navigable waters of Lower Mississippi River between mile marker (MM) 95.7 and MM 96.7, near New Orleans, LA.

(b) *Effective period.* This section is effective from 8:45 p.m. through 9:45 p.m. on July 12, 2018.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into this zone is prohibited unless authorized by the Captain of the Port Sector New Orleans (COTP) or designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector New Orleans.

(2) Vessels requiring entry into this safety zone must request permission from the COTP or a designated representative. They may be contacted on VHF–FM Channel 16 or 67 or by telephone at (504) 365–2200.

(3) Persons and vessels permitted to enter this safety zone must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

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

Dated: June 25, 2018.

**Kristi M. Luttrell,**

*Captain, U.S. Coast Guard, Captain of the Port Sector New Orleans.*

[FR Doc. 2018–14245 Filed 7–2–18; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket No. USCG–2018–0508]**

**RIN 1625–AA00**

## Safety Zone: San Francisco Fourth of July Fireworks Display, San Francisco Bay, San Francisco, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing temporary moving safety zones in the navigable waters of the San Francisco Bay near Aquatic Park in support of the Fourth of July Fireworks Display on July 4, 2018. These safety zones are established to ensure the safety of participants and spectators from the dangers associated with pyrotechnics. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zones without permission of the Captain of the Port or their designated representative.

**DATES:** This rule is effective from July 3, 2018 through July 4, 2018. This rule will be enforced from 9 a.m. on July 3, 2018 through 10:30 p.m. on July 4, 2018.

**ADDRESSES:** Documents mentioned in this preamble are part of docket USCG–2018–0508. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Emily Rowan, U.S. Coast Guard Sector San Francisco; telephone (415) 399–7443 or email at *D11-PF-MarineEvents@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Table of Acronyms

APA Administrative Procedure Act
COTP U.S. Coast Guard Captain on the Port
DHS Department of Homeland Security
FR Federal Register
NOAA National Oceanic and Atmospheric Administration
NPRM Notice of Proposed Rulemaking
PATCOM U.S. Coast Guard Patrol Commander
U.S.C. United States Code

### II. Background Information and Regulatory History

The Coast Guard is issuing this temporary final 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. Since the Coast Guard received notice of this event on May 24, 2018, notice and comment procedures would be impracticable in this instance.

For similar reasons as those stated 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 Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port (COTP) San Francisco has determined that potential hazards associated with the planned fireworks display on July 4, 2018 will be a safety concern for anyone within a 100-foot radius of the fireworks barges and anyone within a 700-foot radius of the fireworks firing sites. This rule is needed to protect spectators, vessels, and other property from hazards associated with pyrotechnics.

### IV. Discussion of the Rule

This rule establishes temporary safety zones during the loading and transit of the fireworks barge, until after completion of the fireworks display. During the loading of the pyrotechnics onto the fireworks barges, scheduled to take place from 9:00 a.m. to 5:00 p.m. on July 3, 2018 and from 9:00 a.m. to 6:00 p.m. on July 4, 2018 at Pier 50 in San Francisco, CA, the safety zones will encompass the navigable waters around and under the fireworks barges within a radius of 100 feet.

The fireworks barges will remain at Pier 50 until the start of the transit to the display locations. Towing of the barges from Pier 50 to the display

locations is scheduled to take place from 7:30 p.m. to 8:15 p.m. on July 4, 2018, where they will remain until the conclusion of the fireworks display.

At 9:00 p.m. on July 4, 2018, 30 minutes prior to the commencement of the 30-minute fireworks displays, the safety zones will increase in size and encompass the navigable waters around and under the fireworks barges within a radius of 700 feet in approximate positions 37°48′49″ N, 122°24′46″ W and 37°48′45″ N, 122°25′39″ W (NAD 83) for the San Francisco Fourth of July Fireworks Display. The safety zones shall terminate at 10:30 p.m. on July 4, 2018.

The effect of the temporary safety zones are to restrict navigation in the vicinity of the fireworks loading, transit, and firing sites. Except for persons or vessels authorized by the COTP or the COTP's designated representative, no person or vessel may enter or remain in the restricted areas. These regulations are needed to keep spectators and vessels away from the immediate vicinity of the fireworks firing sites to ensure the safety of participants, spectators, and transiting vessels.

## V. Regulatory Analyses

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

### *A. Regulatory Planning and Review*

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

This regulatory action determination is based on the limited duration and narrowly tailored geographic area of the safety zones. Although this rule restricts access to the waters encompassed by the safety zones, the effect of this rule will not be significant because the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zones will result in minimum impact. The entities most likely to be affected are waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities.

### *B. Impact on Small Entities*

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

This rule may affect the following entities, some of which may be small entities: Owners and operators of waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities and sightseeing, if these facilities or vessels are in the vicinity of the safety zone at times when this zone is being enforced. This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) This rule will encompass only a small portion of the waterway for a limited period of time, and (ii) the maritime public will be advised in advance of these safety zones via Broadcast Notice to Mariners.

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

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

### *C. Collection of Information*

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

### *D. Federalism and Indian Tribal Governments*

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

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

### *E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such 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 M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves safety zones of limited size and duration. It is categorically excluded from further

review under Categorical Exclusion L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

*G. Protest Activities*

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

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T11–930 to read as follows:

### § 165.T11–930 Safety Zone; San Francisco Fourth of July Fireworks Display, San Francisco Bay, San Francisco, CA.

(a) *Location.* The following area are safety zones: All navigable waters of the San Francisco Bay within 100 feet of the fireworks barges during loading at Pier 50, as well as transit and arrival near Aquatic Park in San Francisco, CA. From 9:00 a.m. until approximately 5:00 p.m. on July 3, 2018, and from 9:00 a.m. until approximately 6:00 p.m. on July 4, 2018, the fireworks barges will be loading at Pier 50 in San Francisco, CA. The safety zones will expand to all navigable waters around and under the firework barges within a radius of 700 feet in approximate positions 37°48′49″ N, 122°24′46″ W and 37°48′45″ N, 122°25′39″ W (NAD 83), 30 minutes prior to the start of the 30 minute fireworks display, scheduled to begin at 9:30 p.m. on July 4, 2018.

(b) *Enforcement period.* The zones described in paragraph (a) of this section will be enforced from 9:00 a.m. on July 3, 2018 until approximately 10:30 p.m. on July 4, 2018. The Captain of the Port San Francisco (COTP) will notify the maritime community of periods during which these zones will be enforced via Broadcast Notice to Mariners in accordance with § 165.7.

(c) *Definitions.* As used in this section, ''designated representative'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer on a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the COTP in the enforcement of the safety zones.

(d) *Regulations.* (1) Under the general regulations in subpart C of this part, entry into, transiting or anchoring within these safety zones is prohibited unless authorized by the COTP or the COTP's designated representative.

(2) The safety zones are closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) Vessel operators desiring to enter or operate within the safety zones must contact the COTP or a designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zones must comply with all directions given to them by the COTP or a designated representative. Persons and vessels may request permission to enter the safety zones on VHF–23A or through the 24-hour Command Center at telephone (415) 399–3547.

Dated: June 27, 2018.

**Anthony J. Ceraolo,**

*Captain, U.S. Coast Guard, Captain of the Port, San Francisco.*

[FR Doc. 2018–14259 Filed 7–2–18; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket No. USCG–2018–0624]**

## Safety Zones; Annual Events in the Captain of the Port Buffalo Zone—July Fireworks

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce certain safety zones located in federal regulations for recurring marine events. This action is necessary and intended for the safety of life and property on navigable waters during these events. During each enforcement period, no person or vessel may enter the respective safety zone without the permission of the Captain of the Port Buffalo.

**DATES:** The regulations in 33 CFR 165.939(a)(1) will be enforced from 8:45 p.m. to 10:45 p.m. on July 4, 2018. The regulations in 33 CFR 165.939(a)(2) will be enforced from 9:30 p.m. to 10:30 p.m. on July 3, 2018. The regulation in 33 CFR 165.939(a)(13) will be enforced from 10:00 p.m. to 10:30 p.m. on July 3, 2018.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notice of enforcement, call or email LT Michael Collet, Chief of Waterways Management, U.S. Coast Guard Sector Buffalo; telephone 716–843–9322, email *D09-SMB-SECBuffalo-WWM@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce a Safety Zone; Annual Events in the Captain of the Port Buffalo Zone listed in 33 CFR 165.939 for the following events:

(1) *Boldt Castle 4th of July Fireworks, Heart Island, NY;* The safety zone listed in 33 CFR 165.939(a)(1) will be enforced from 8:45 p.m. to 10:45 p.m. on July 4, 2018.

(2) *Clayton Chamber of Commerce Fireworks, Calumet Island, NY;* The safety zone listed in 33 CFR 165.939(a)(2) will be enforced from 9:30 p.m. to 10:30 p.m. on July 3, 2018.

(3) *Tom Graves Memorial Fireworks;* The safety zone listed in 33 CFR 165.939(a)(13) will be enforced from 10:00 p.m. to 10:30 p.m. on July 3, 2018.

Pursuant to 33 CFR 165.23, entry into, transiting, or anchoring within a safety zone during an enforcement period is prohibited unless authorized by the Captain of the Port Buffalo or his designated representative. Those seeking permission to enter a safety zone may request permission from the Captain of Port Buffalo via channel 16, VHF–FM. Vessels and persons granted permission to enter a safety zone shall obey the directions of the Captain of the Port Buffalo or his designated representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice of enforcement is issued under authority of 33 CFR 165.939 and 5 U.S.C. 552(a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via Broadcast Notice to Mariners or Local Notice to Mariners. If the Captain of the Port Buffalo determines that a safety zone need not be enforced for the full duration stated in this notice he or she may use a Broadcast Notice to

Mariners to grant general permission to enter the respective safety zone.

Dated: June 27, 2018.

**Joseph S. Dufresne,**

*Captain, U.S. Coast Guard, Captain of the Port Buffalo.*

[FR Doc. 2018–14326 Filed 7–2–18; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket No. USCG–2018–0544]**

**RIN 1625–AA00**

## Safety Zone: City of Vallejo Fourth of July Fireworks Display, Mare Island Strait, Vallejo, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in the navigable waters of San Francisco Bay near Mare Island Strait in support of the City of Vallejo Fourth of July Fireworks Display on July 4, 2018. This safety zone is established to ensure the safety of participants and spectators from the dangers associated with pyrotechnics. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port or their designated representative.

**DATES:** This rule is effective on July 4, 2018, from 8 a.m. through 10:30 p.m.

**ADDRESSES:** Documents mentioned in this preamble are part of docket USCG–2018–0544. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Emily Rowan, U.S. Coast Guard Sector San Francisco; telephone (415) 399–7443 or email at *D11-PF-MarineEvents@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Table of Acronyms

APA Administrative Procedure Act
COTP U.S. Coast Guard Captain on the Port
DHS Department of Homeland Security
FR Federal Register
NOAA National Oceanic and Atmospheric Administration
NPRM Notice of Proposed Rulemaking
PATCOM U.S. Coast Guard Patrol Commander
U.S.C. United States Code

### II. Background Information and Regulatory History

The Coast Guard is issuing this temporary final 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. Since the Coast Guard received final details of this event on June 25, 2018, notice and comment procedures would be impracticable in this instance.

For similar reasons as those stated 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 Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port (COTP) San Francisco has determined that potential hazards associated with the planned fireworks display on July 4, 2018, will be a safety concern for anyone within a 100-foot radius of the fireworks barge and anyone within a 420-foot radius of the fireworks firing site. This rule is needed to protect spectators, vessels, and other property from hazards associated with pyrotechnics.

### IV. Discussion of the Rule

This rule establishes a temporary safety zone during the loading and transit of the fireworks barge, until after completion of the fireworks display. During the loading of the pyrotechnics onto the fireworks barge, scheduled to take place from 8:00 a.m. to 4:00 p.m. on July 4, 2018, at Mare Island Waterfront in Vallejo, CA, the safety zone will encompass the navigable waters around and under the fireworks barge within a radius of 100 feet.

The fireworks barge will remain at Mare Island Waterfront until the start of the transit to the display location. Towing of the barge from Mare Island Waterfront to the display location is scheduled to take place from 8:50 p.m. to 9:00 p.m. on July 4, 2018, where it will remain until the conclusion of the fireworks displays.

At 9:00 p.m. on July 4, 2018, 30 minutes prior to the commencement of the 18-minute fireworks display, the safety zone will increase in size and encompass the navigable waters around and under the fireworks barge within a radius of 420 feet in approximate position 38°06′03″ N, 122°16′00″ W (NAD 83) for the City of Vallejo Fourth of July Fireworks Display. The safety zone shall terminate at 10:30 p.m. on July 4, 2018.

The effect of the temporary safety zone are to restrict navigation in the vicinity of the fireworks loading, transit, and firing site. Except for persons or vessels authorized by the COTP or the COTP's designated representative, no person or vessel may enter or remain in the restricted area. This regulation is needed to keep spectators and vessels away from the immediate vicinity of the fireworks firing site to ensure the safety of participants, spectators, and transiting vessels.

### V. Regulatory Analyses

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

#### *A. Regulatory Planning and Review*

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

This regulatory action determination is based on the limited duration and narrowly tailored geographic area of the safety zone. Although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zone will result in minimum impact. The entities most likely to be affected are waterfront facilities, commercial vessels, and

pleasure craft engaged in recreational activities.

*B. Impact on Small Entities*

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

This rule may affect the following entities, some of which may be small entities: Owners and operators of waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities and sightseeing, if these facilities or vessels are in the vicinity of the safety zone at times when this zone is being enforced. This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) This rule will encompass only a small portion of the waterway for a limited period of time, and (ii) the maritime public will be advised in advance of this safety zone via Broadcast Notice to Mariners.

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

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

*C. Collection of Information*

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

*D. Federalism and Indian Tribal Governments*

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

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

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such 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 M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone of limited size and duration. It is categorically excluded from further review under Categorical Exclusion L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

*G. Protest Activities*

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

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T11–931 to read as follows:

**§ 165.T11–931 Safety Zone; City of Vallejo 4th of July Fireworks Display, Mare Island Strait, Vallejo, CA.**

(a) *Location.* The following area is a safety zone: All navigable waters of the Mare Island Strait within 100 feet of the fireworks barge during loading at Mare Island Waterfront, as well as transit and arrival to launching location in Mare Island Strait, Vallejo, CA. From 8:00 a.m. until approximately 4:00 p.m. on July 4, 2018, the fireworks barge will be loading at Mare Island Waterfront, Vallejo, CA. The safety zone will expand to all navigable waters around and under the firework barge within a radius of 420 feet in approximate positions 38°06′03″ N, 122°16′00″ W (NAD 83), 30 minutes prior to the start of the 18-minute fireworks display, scheduled to begin at 9:30 p.m. on July 4, 2018.

(b) *Enforcement period.* The zone described in paragraph (a) of this section will be enforced from 8:00 a.m. until approximately 10:30 p.m. on July 4, 2018. The Captain of the Port San Francisco (COTP) will notify the maritime community of periods during

which this zone will be enforced via Broadcast Notice to Mariners in accordance with § 165.7.

(c) *Definitions.* As used in this section, ''designated representative'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer on a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the COTP in the enforcement of the safety zone.

(d) *Regulations.* (1) Under the general regulations in subpart C of this part, entry into, transiting or anchoring within this safety zone is prohibited unless authorized by the COTP or the COTP's designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or a designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or a designated representative. Persons and vessels may request permission to enter the safety zone on VHF–23A or through the 24-hour Command Center at telephone (415) 399–3547.

Dated: June 27, 2018.

**Anthony J. Ceraolo,**

*Captain, U.S. Coast Guard, Captain of the Port, San Francisco.*

[FR Doc. 2018–14267 Filed 7–2–18; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket Number USCG–2018–0514]**

**RIN 1625–AA00**

## Safety Zone; Gulf Intracoastal Waterway, Lafitte, LA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for certain navigable waters of the Gulf Intracoastal Waterway in Lafitte, LA. The safety zone is necessary to protect persons, vessels, and the marine environment from potential hazards created by the Jean Lafitte Pirogue Race. Entry of persons or vessels into this zone is prohibited unless authorized by the Captain of the Port Sector New Orleans or a designated representative.

**DATES:** This rule is effective from 11:30 a.m. through 4 p.m. on July 21, 2018.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0514 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 Howard Vacco, Sector New Orleans, U.S. Coast Guard; telephone 504–365–2281, email *Howard.K.Vacco@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Table of Abbreviations

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

### II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. It is impracticable to publish an NPRM because we must establish this safety zone by July 21, 2018 and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

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

### III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Sector New Orleans (COTP) has determined that potential hazards associated with a boat race on July 21, 2018, will be a safety concern for anyone within a one-mile section of the Gulf Intracoastal Waterway. Possible hazards include risks of injury or death from near or actual contact among participant vessels and mariners traversing through the safety zone. This rule is necessary to protect persons, vessels, and the marine environment during the race.

### IV. Discussion of the Rule

This rule establishes a temporary safety zone from 11:30 a.m. through 4 p.m. on July 21, 2018. This zone will encompass all navigable waters of the Gulf Intracoastal Waterway between mile markers (MMs) 12 and 13 west of the Harvey Locks in Lafitte, LA. The duration of the zone is intended to protect persons, vessels, and the marine environment during the race and will include breaks and opportunity for vessels to transit through the regulated area.

No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector New Orleans. Vessels requiring entry into this safety zone must request permission from the COTP or a designated representative. They may be contacted on VHF–FM Channel 16 or 67 or by telephone at (504) 365–2200.

A designated representative may be a Patrol Commander (PATCOM). The PATCOM may be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The PATCOM may be contacted on Channel 16 VHF–FM (156.8 MHz) by the call sign ''PATCOM''. The ''official patrol vessels'' consist of any Coast Guard, state, or local law enforcement and sponsor provided vessels assigned or approved by the COTP or a designated representative to patrol the zone. All persons and vessels not registered with the sponsor as participants or official patrol vessels are considered spectators.

Spectator vessels desiring to transit the zone may do so only with prior approval of the COTP or a designated representative and when so directed by that officer must be operated at a minimum safe navigation speed in a

manner that will not endanger any other vessels. No spectator vessel shall anchor, block, loiter, or impede the through transit of official patrol vessels in the zone during the effective date and times, unless cleared for entry by or through the COTP or a designated representative. Any spectator vessel may anchor outside the zone, but may not anchor in, block, or loiter in a navigable channel. Spectator vessels may be moored to a waterfront facility within the zone in such a way that they shall not interfere with the progress of the event. Such mooring must be complete at least 30 minutes prior to the establishment of the zone and remain moored through the duration of the event.

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

The COTP or a designated representative may terminate the operation of any vessel at any time it is deemed necessary for the protection of life or property. The COTP or a designated representative will terminate enforcement of the safety zone at the conclusion of the event.

The COTP or a designated representative will inform the public of the enforcement periods of this safety zone through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

## V. Regulatory Analyses

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

### *A. Regulatory Planning and Review*

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

This regulatory action determination is based on the size and duration of the temporary safety zone. This temporary safety zone covers a one-mile section of the Gulf Intracoastal Waterway for only four and a half hours on one day. Moreover, the Coast Guard will issue a BNMs via VHF–FM marine channel 16 about the zone, breaks may provide an opportunity for vessels to transit through the safety zone, and the rule allows vessels to seek permission to enter the zone.

### *B. Impact on Small Entities*

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

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

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

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

### *C. Collection of Information*

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

### *D. Federalism and Indian Tribal Governments*

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

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

### *E. Unfunded Mandates Reform Act*

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

### *F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety

zone lasting only four and a half hours on one day that will prohibit entry within a one-mile stretch of the Gulf Intracoastal Waterway. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

*G. Protest Activities*

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

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T08–0514 to read as follows:

### § 165.T08–0514 Safety Zone; Gulf Intracoastal Waterway, Lafitte, LA.

(a) *Location.* The following area is a safety zone: All navigable waters of the Gulf Intracoastal Waterway, from mile markers (MMs) 12 to 13 west of the Harvey Locks, Lafitte, LA.

(b) *Effective period.* This section is effective from 11:30 a.m. through 4 p.m. on July 21, 2018.

(c) *Enforcement periods.* This section will be enforced during the effective period. However, breaks in the racing may occur during the enforcement periods, which will allow for vessels to pass through the safety zone. The Captain of the Port Sector New Orleans (COTP) or a designated representative will provide notice of breaks as appropriate under (e) Informational broadcasts.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into this zone is prohibited unless authorized by the COTP or designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector New Orleans. They may be contacted on VHF–FM Channel 16 or 67 or by telephone at (504) 365–2200. A designated representative may be a Patrol Commander (PATCOM). The PATCOM may be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Patrol Commander may be contacted on Channel 16 VHF–FM (156.8 MHz) by the call sign ''PATCOM''.

(2) All persons and vessels not registered with the sponsor as participants or official patrol vessels are considered spectators. The ''official patrol vessels'' consist of any Coast Guard, state, or local law enforcement and sponsor provided vessels assigned or approved by the COTP or a designated representative to patrol the regulated area.

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

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

(5) Any spectator vessel may anchor outside the regulated area, but may not anchor in, block, or loiter in a navigable channel. Spectator vessels may be moored to a waterfront facility within the regulated area in such a way that they shall not interfere with the progress of the event. Such mooring must be complete at least 30 minutes prior to the establishment of the regulated area and remain moored through the duration of the event.

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

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

(8) The COTP or a designated representative will terminate enforcement of the special local regulations at the conclusion of the event.

(e) *Informational broadcasts.* The COTP or a designated representative will inform the public of the effective period for the safety zone as well as any changes in the dates and times of enforcement through Local Notice to Mariners (LNMs), Broadcast Notices to Mariners (BNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

Dated: June 27, 2018.

**K.M. Luttrell,**

*Captain, U.S. Coast Guard, Captain of the Port Sector New Orleans.*

[FR Doc. 2018–14244 Filed 7–2–18; 8:45 am]

**BILLING CODE 9110–04–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R03–OAR–2017–0423; FRL–9980–30—Region 3]**

## Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Base Year Emissions Inventories for the Lebanon and Delaware County Nonattainment Areas for the 2012 Annual Fine Particulate Matter National Ambient Air Quality Standard

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving two state implementation plan (SIP) revisions submitted by the Commonwealth of Pennsylvania. These revisions pertain to base year emission inventories for the Lebanon County and Delaware County nonattainment areas for the 2012 annual fine particulate national ambient air quality standard (NAAQS). The Clean Air Act (CAA) requires states to submit a comprehensive, accurate and current inventory of actual emissions from all sources of direct and secondary ambient fine particulate matter less than 2.5 microns in diameter ($PM_{2.5}$) for all $PM_{2.5}$ nonattainment areas. EPA is approving these revisions in accordance with the requirements under Title I of the CAA.

**DATES:** This final rule is effective on August 2, 2018.

**ADDRESSES:** EPA has established a docket for this action under Docket ID

Number EPA–R03–OAR–2017–0423. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *http://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Brian Rehn, (215) 814–2176, or by email at *rehn.brian@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

Ambient air contains a variety of pollutants, including particulate matter (PM). Airborne PM can be comprised of either solid or liquid particles, or a complex mixture of particles in both solid and liquid form. The most common airborne PM constituents include sulfate (SO4); nitrate (NO3); ammonium; elemental carbon; organic mass; and inorganic material, referred to as ''crustal'' material, which can include metals, dust, soil and other trace elements. $PM_{2.5}$ includes ''primary'' particles, which are directly emitted into the air by a variety of sources, and ''secondary'' particles, that are formed in the atmosphere as a result of reactions between precursor pollutants.

Human health effects associated with long- or short-term exposure to $PM_{2.5}$ include premature mortality, aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions and emergency room visits) and development of chronic respiratory disease.

On December 14, 2012, EPA revised the primary annual $PM_{2.5}$ NAAQS to provide increased protection of public health from fine particle pollution (the 2012 annual $PM_{2.5}$ NAAQS). 78 FR 3086 (January 15, 2013). In that action, EPA strengthened the primary annual $PM_{2.5}$ standard, lowering the level from 15.0 micrograms per cubic meter ($\mu g/m^3$) to 12.0 $mg/m^3$. The 2012 annual $PM_{2.5}$ NAAQS is attained when the 3-year average of the annual arithmetic mean monitored values does not exceed 12.0 $mg/m^3$. *See* 40 CFR 50.18.

On January 15, 2015 (80 FR 2206), EPA published area designations, as required by CAA section 107(d)(1), for the 2012 annual $PM_{2.5}$ NAAQS. Therein, EPA identified as ''nonattainment'' areas that were then violating the 2012 annual $PM_{2.5}$ NAAQS based on quality-assured, certified air quality monitoring data from 2011 to 2013 or that contributed to a violation of the NAAQS in a nearby area. EPA designated the Delaware County and Lebanon County nonattainment areas as moderate nonattainment for the 2012 annual $PM_{2.5}$ NAAQS, effective April 15, 2015. *See* 40 CFR 81.339.

Under section 172(c)(3) of the CAA, Pennsylvania is required to submit a comprehensive, accurate, and current inventory of actual emissions from all sources (point, nonpoint, nonroad, and onroad) of the relevant pollutants, in each nonattainment area. EPA's ''Provisions for Implementation of the $PM_{2.5}$ NAAQS'' (or PM implementation rule), at 40 CFR part 51, subpart Z, sets criteria for which pollutants are to be included by states in the required base year emission inventory. This PM inventory must include direct $PM_{2.5}$ emissions, separately reported $PM_{2.5}$ filterable and condensable emissions, and emissions of the $PM_{2.5}$ precursors. 40 CFR 51.1008.

## II. Summary of SIP Revision and EPA Analysis

On May 5, 2017, the Pennsylvania Department of Environmental Protection (PADEP) submitted a formal SIP revision consisting of the 2011 base year emissions inventory for the Delaware County nonattainment area for the 2012 annual $PM_{2.5}$ NAAQS. On September 25, 2017, PADEP submitted to EPA a formal revision consisting of the 2011 base year emission inventory for the Lebanon County nonattainment area for the 2012 annual $PM_{2.5}$ NAAQS.

The base year emissions inventories prepared by PADEP use 2011 as the base year for planning purposes. They include direct $PM_{2.5}$ emissions, as well as $PM_{2.5}$ filterable and condensable emissions, and emissions of the scientific $PM_{2.5}$ precursors. PADEP reported actual annual emissions of directly-emitted $PM_{2.5}$ emissions ($PM_{2.5}$ PRI), as well as separately reported $PM_{2.5}$ filterable and condensable particulate matter (PM CON) emissions. PM CON is matter that exists as a vapor at stack conditions, but becomes a solid or liquid upon exit of the stack. PADEP's base year inventories for these areas also include directly-emitted, primary particulate matter less than 10 microns in diameter ($PM_{10}$ PRI), emissions precursors that contribute to secondary formation of $PM_{2.5}$, including sulfur dioxides ($SO_2$), nitrogen oxides ($NO_X$), volatile organic compounds (VOC), and ammonia (NH3) emissions.

Table 1 summarizes the 2011 emission inventory by source sector for each pollutant or pollutant precursor for the Delaware County 2012 annual $PM_{2.5}$ nonattainment area, expressed as annual emissions in tons per year (tpy).

TABLE 1—SUMMARY OF 2011 EMISSIONS OF $PM_{2.5}$, $PM_{10}$, AND $PM_{2.5}$ PRECURSORS FOR THE DELAWARE COUNTY 2012 ANNUAL $PM_{2.5}$ NAAQS NONATTAINMENT AREA

| Source sector | Annual emissions (tpy) | | | | | |
|---|---|---|---|---|---|---|
| | $PM_{10}$ Primary [1] | $PM_{2.5}$ Primary [2] | $SO_2$ | $NO_X$ | VOC | NH3 |
| Stationary Point Sources [3] | 1,671.81 | 1,496.70 | 4,975.94 | 7,641.98 | 1,393.18 | 217.50 |
| Area Sources [4] | 2,502.73 | 998.82 | 2,055.13 | 2,875.85 | 6,779.07 | 206.47 |
| Onroad Mobile Sources [5] | 328.61 | 179.01 | 31.05 | 5,643.30 | 2,999.73 | 130.41 |
| Nonroad Mobile Sources | 128.87 | 121.78 | 3.498 | 1,123.96 | 1,787.97 | 1.759 |
| Total Emissions | 4,632.02 | 2,796.30 | 7,065.62 | 17,285.08 | 12,959.95 | 556.14 |

[1] Primary PM particles are emitted directly to the air from a source and include both filterable particulate and condensable components. Condensable PM (PM CON) exists as a vapor at stack conditions but exists as a solid or liquid once it exits the stack and is cooled by ambient air. All PM CON is smaller than 2.5 microns in diameter and, therefore, represents condensable matter for both $PM_{10}$ and $PM_{2.5}$. $PM_{10}$ Primary is the sum of filterable $PM_{10}$ ($PM_{10}$ FIL) and PM CON.

[2] $PM_{2.5}$ Primary is the sum of filterable $PM_{2.5}$ and PM CON.

[3] The $PM_{10}$ Primary value for stationary point sources includes a condensable component of 656.39 tpy. Because $PM_{10}$ includes $PM_{2.5}$ by definition, the $PM_{2.5}$ Primary value for stationary point sources includes the same condensable component of 656.39 tpy.

[4] $PM_{10}$ Primary includes $PM_{10}$ FIL and PM CON. $PM_{2.5}$ Primary includes $PM_{2.5}$ FIL and PM CON. Condensable emissions for the area source sector are a subset of PM Primary emissions, or 164.93 tpy.

[5] Condensable emissions for the onroad and nonroad sectors are not separately calculated by the MOVES model, and are therefore included within the $PM_{10}$ Primary and $PM_{2.5}$ Primary values of this table.

Table 2 summarizes the 2011 emission inventory by source sector for each pollutant or pollutant precursor for the Lebanon County 2012 annual $PM_{2.5}$ nonattainment area, expressed as annual emissions in tons per year.

TABLE 2—SUMMARY OF 2011 EMISSIONS OF $PM_{2.5}$, $PM_{10}$, AND $PM_{2.5}$ PRECURSORS FOR THE LEBANON COUNTY 2012 ANNUAL $PM_{2.5}$ NAAQS NONATTAINMENT AREA

| Source sector | Annual emissions (tpy) | | | | | |
|---|---|---|---|---|---|---|
| | $PM_{10}$ Primary [1] | $PM_{2.5}$ Primary [2] | $SO_2$ | $NO_X$ | VOC | NH3 |
| Stationary Point Sources [3] | 136.64 | 80.68 | 278.53 | 690.30 | 182.37 | 17.44 |
| Area Sources [4] | 4,462.63 | 1,287.21 | 373.62 | 869.09 | 5,924.16 | 3,843.03 |
| Onroad Mobile Sources [5] | 140.23 | 92.50 | 11.21 | 2,937.04 | 1,331.72 | 49.15 |
| Nonroad Mobile Sources | 64.48 | 61.55 | 1.684 | 615.91 | 668.43 | 0.751 |
| Total Emissions | 4,803.98 | 1,521.94 | 665.05 | 5,112.33 | 8,106.69 | 3,910.37 |

[1] Primary PM particles are emitted directly to the air from a source and include both filterable particulate and condensable components. $PM_{10}$ Primary is the sum of filterable $PM_{10}$ FIL and PM CON.

[2] $PM_{2.5}$ Primary is the sum of filterable $PM_{2.5}$ and PM CON.

[3] The $PM_{10}$ Primary value for stationary point sources includes a condensable component of 48.04 tpy. Because $PM_{10}$ includes $PM_{2.5}$ by definition, the $PM_{2.5}$ Primary value for stationary point sources includes the same condensable component of 48.04 tpy.

[4] $PM_{10}$ Primary includes $PM_{10}$ FIL and PM CON. $PM_{2.5}$ Primary includes $PM_{2.5}$ FIL and PM CON. Condensable emissions for the area source sector are a subset of PM Primary emissions, or 38.88 tpy.

[5] Condensable emissions for the onroad and nonroad sectors are not separately calculated by the MOVES model, and are therefore included within the $PM_{10}$ Primary and $PM_{2.5}$ Primary values of this table.

Stationary point sources are large, stationary, and identifiable sources of emissions that release pollutants into the atmosphere. PADEP extracted data for $PM_{2.5}$ source emissions from the 2011 NEI v2, which receives input from each state's annual inventory estimates.

Area sources are stationary, nonpoint sources that are too small and numerous to be inventoried individually. Area sources are inventoried at the county level and aggregated with like categories. They are typically estimated through use of emission factors combined with activity factor estimates for each source category, adjusted to reflect emission control efficiency, emission control rule effectiveness, and rule penetration.

Onroad sources of emissions include motor vehicles operated on public roadways. PADEP estimates onroad emissions using EPA's Motor Vehicle Emission Simulator (MOVES) model, version MOVES2014, coupled with vehicle miles of travel activity levels generated by PADEP or local transportation authorities.

Nonroad sources are mobile, internal combustion powered emission sources other than highway motor vehicles. Examples include lawn and garden equipment, recreational vehicles, construction and agricultural equipment, and industrial equipment. Nonroad mobile source emissions from different source categories are calculated using various methodologies, primarily by use of EPA's MOVES NONROAD emissions model or from EPA's National Mobile Inventory Model (NMIM).

EPA reviewed Pennsylvania's 2011 base year emission inventory submissions including results, procedures, and methodologies for the Delaware County and Lebanon County nonattainment areas and found them to be acceptable and approvable under sections 110 and 172(c)(3) of the CAA. EPA prepared a Technical Support Document (TSD) for each of the Delaware County and Lebanon County nonattainment areas in support of this rulemaking. The TSDs are available in the docket for this action, online at *http://www.regulations.gov,* Docket ID No. EPA–R03–OAR–2017–0423.

On May 3, 2018 (83 FR 19476), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania, proposing approval of both the Delaware and Lebanon County 2011 base year emission inventory SIP revisions for the 2012 annual $PM_{2.5}$ NAAQS. The rationale for EPA's proposed action is explained in the NPR and will not be restated here. EPA received three comments on our May 3, 2018 NPR proposing to approve Pennsylvania's May 5, 2017 and September 25, 2017 SIP submittals. All comments received were not specific to this action, and thus are not addressed here.

## III. Final Action

EPA is approving Pennsylvania's May 5, 2017 and September 25, 2017 SIP revisions, which are base year emission inventories for the Delaware County and Lebanon County 2012 $PM_{2.5}$ NAAQS, as revisions to the Pennsylvania SIP as the revisions are in accordance with requirements in CAA section 110 generally and section 172(c)(3) specifically.

## IV. Statutory and Executive Order Reviews

### *A. General Requirements*

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory

action because SIP approvals are exempted under Executive Order 12866.

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

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

*B. Submission to Congress and the Comptroller General*

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

*C. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 4, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve base year emission inventories for the Delaware and Lebanon County nonattainment areas for the 2012 annual $PM_{2.5}$ NAAQS 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 19, 2018.

**Cosmo Servidio,**

*Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

### Subpart NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (e)(1) is amended by adding two entries entitled ''2011 Base Year Emissions Inventory for the 2012 Annual Fine Particulate ($PM_{2.5}$) National Ambient Air Quality Standard'' ''Delaware County 2012 $PM_{2.5}$ nonattainment area'' and ''2011 Base Year Emissions Inventory for the 2012 Annual Fine Particulate ($PM_{2.5}$) National Ambient Air Quality Standard'' ''Lebanon County 2012 $PM_{2.5}$ nonattainment area'' at the end of the table to read as follows:

**§ 52.2020 Identification of plan.**

* * * * *

(e) * * *

(1) EPA-APPROVED NONREGULATORY AND QUASI-REGULATORY MATERIAL

| Name of non-regulatory SIP revision | Applicable geographic area | State submittal date | EPA approval date | Additional explanation |
|---|---|---|---|---|
| * * * | * | * | * | * |
| 2011 Base Year Emissions Inventory for the 2012 Annual Fine Particulate ($PM_{2.5}$) National Ambient Air Quality Standard. | Delaware County 2012 $PM_{2.5}$ nonattainment area. | 5/5/2017 | 7/3/2018, [Insert **Federal Register** citation]. | |
| 2011 Base Year Emissions Inventory for the 2012 Annual Fine Particulate ($PM_{2.5}$) National Ambient Air Quality Standard. | Lebanon County 2012 $PM_{2.5}$ nonattainment area. | 9/25/2017 | 7/3/2018, [Insert **Federal Register** citation]. | |

* * * * *

[FR Doc. 2018–14199 Filed 7–2–18; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA–R08–OAR–2017–0567; FRL–9979–64—Region 8]**

## Approval and Promulgation of State Implementation Plan Revisions; Colorado; Attainment Demonstration for the 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area, and Approval of Related Revisions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** On May 31, 2017, the State of Colorado submitted State Implementation Plan (SIP) revisions related to attainment of the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS) for the Denver Metro/North Front Range (DMNFR) Moderate nonattainment area by the applicable attainment date of July 20, 2018. The Environmental Protection Agency (EPA) is approving the majority of the submittal, as well as revisions made to Colorado's Reg. No. 7 in a May 5, 2013 SIP submission. The EPA is deferring action on portions of the submitted reasonably available control technology (RACT) rules. This action is being taken in accordance with the Clean Air Act (CAA).

**DATES:** Effective August 2, 2018.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID Number EPA–R08–OAR–2017–0567. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *http://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional available information.

**FOR FURTHER INFORMATION CONTACT:** Abby Fulton, (303) 312–6563, *fulton.abby@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

The DMNFR nonattainment area includes Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas and Jefferson Counties, and portions of Larimer and Weld Counties. *See* 40 CFR 81.306. The area was designated nonattainment for the 2008 ozone NAAQS effective July 20, 2012 (77 FR 30088, May 21, 2012) and reclassified as a Moderate ozone nonattainment area on May 4, 2016 (81 FR 26697; *see* 40 CFR 81.306). Moderate areas are required to attain the 2008 8-hour ozone NAAQS by no later than 6 years after the effective date of designation, which for the DMNFR nonattainment area is July 20, 2018. *See* 40 CFR 51.903.

On April 6, 2018, 83 FR 14807, the EPA proposed approval of certain revisions to Colorado's SIP submitted to the EPA on May 5, 2013, and May 31, 2017. Specifically, we proposed approval of Colorado's 2017 attainment demonstration for the 2008 8-hour ozone NAAQS. In addition, we proposed approval of the motor vehicle emissions budgets (MVEB) contained in the State's 2017 submittal. We also proposed approval of all other aspects of the 2017 submittal, except for certain area source categories and major source RACT, which we will be acting on at a later date. We proposed approval of the revisions to Colorado's Reg. 7 and 11, except for Sections X.E and XIX of Reg. 7, which we will be acting on at a later date. We proposed approval of the revisions to Colorado Reg. 7 Section XII from the State's May 5, 2013 submittal.

The factual and legal background for this action is discussed in detail in our April 6, 2018 proposed approval. 83 FR 14807. The proposal provides a detailed description of the revisions and the rationale for the EPA's proposed actions.

### II. Response to Comments

We received nineteen comments during the public comment period. After reviewing the comments, the EPA has determined that sixteen of the comments are outside the scope of our proposed action or fail to identify any material issue necessitating a response. We received two comments supporting our proposal to approve the DMNFR moderate nonattainment area attainment demonstration and related revisions, and one adverse comment. Below is a summary of the material comments and the EPA's responses.

*Comments From Colorado Department of Public Health and Environment*

The Colorado Department of Public Health and Environment (CDPHE) stated that ''Colorado supports EPA's proposal to approve the DMNFR moderate nonattainment area attainment demonstration and many of the related revisions.'' The State further requested that the EPA delay taking action on the combustion adjustment and tuning work practice requirements in Reg. 7, Section XVI.D, due to ''Colorado's ongoing efforts to further establish RACT for combustion sources on a categorical basis.'' Colorado stated that it anticipates submitting to the EPA additional RACT standards for combustion equipment in Summer 2019, and requested that the EPA delay action on Reg. 7, Section XVI.D revisions from the May 31, 2017 submittal so that the Agency ''can incorporate and approve Colorado's RACT standards for combustion equipment all at once.''

*Response:* The Agency acknowledges the State's support for this action. We agree with the request that we refrain from acting on Reg. 7, Section XVI.D of Colorado's May 31, 2017 submittal, which established RACT as a work practice for combustion equipment at major sources of nitrogen oxide ($NO^x$) emissions. In our notice of proposed rulemaking, we proposed to approve all of Reg. 7, Section XVI, but explained that we would be acting on Colorado's RACT demonstration for major sources in a future rulemaking and identified provisions for which we were taking no action on at the time (*see* sections H and N of the proposed rulemaking). The State's desire to incorporate Section XVI.D into its anticipated combustion equipment RACT submission is reasonable, and because Colorado did not rely on any emission reductions from control requirements in Section XVI.D in its 2017 modeling analysis, we are able to act on this revision in a separate action. We, therefore, agree with the State's comment and will act on revisions to Reg. 7, XVI.D from the May 31, 2017 submittal at a later time.

*Comment From Anonymous*

The comment described the approval of the State's revised SIP as ''a necessary step'' that ''will hold owners and operators more accountable for their actions,'' and cited several specific provisions as beneficial. The commenter urged future action on the changes made to Reg. 7, Sections X and section XIX, and also urged ''every revision and action'' to meet the ozone standard.

*Response:* The EPA agrees that the SIP provisions we are approving, which will be enforceable as a matter of federal law, are necessary steps to comply with the CAA and protect air quality. We are taking no action in this final rule on the State submissions concerning Reg. No. 7, Sections X.E. and XIX, but do intend to act on them in a later rulemaking. Further, we will continue our ongoing work to assist the State in its

development of measures to improve air quality.

*Comments From the Center for Biological Diversity*

Comment 1

The comment stated that the ''EPA must disapprove the attainment designation [*sic;* rightly ''demonstration''] because the N. Front Range nonattainment area did not attain by the attainment deadline'' and that the ''EPA must disapprove the attainment demonstration because it was demonstrable [*sic*] wrong.'' The comment said that ''EPA has used the excuse of ignoring ozone values if the comment period or decision is before the May 1 deadline for certifying data'' and that the time the comment was submitted was after May 1. The comment also explained that ''EPA uses the exceptional event provision as another excuse. However, in Table 1 [from the commenter], which is generated from data from EPA's Air Quality System (AQS), we have excluded exceptional events even though Colorado's claims of exceptional events are not valid.''

*Response:* We do not agree with the commenter's argument that the EPA should disapprove the attainment demonstration because the area did not attain by the attainment deadline, or with the commenter's assertions concerning exceptional events and the timing of the submission.

Colorado has satisfied the legal and regulatory criteria for approving attainment demonstration SIPs. An attainment demonstration uses photochemical grid modeling to show that SIP controls are sufficient to reduce predicted ambient ozone levels to a level at or below the standard, assuming identical meteorology in the baseline and future (modeled) years. As explained in section IV.D and E of the proposed rulemaking, to predict future ozone levels the modeled attainment demonstration uses a baseline design value derived from historical data (in this case 2009–2013), historical meteorological data from the baseline period, emission inventories representing the baseline design value period, and modeled reductions in emissions based on SIP control measures. The attainment demonstration is not required to identically match actual monitored ozone levels for the future years described in the model.[1] Rather, it is intended to assess whether SIP controls are adequate to reduce ambient ozone to a level at or below the NAAQS by the attainment date, and such an assessment is based on modeling. The modeled attainment demonstration can be an approvable SIP element, even if actual monitored data do not show attainment.

Applying this standard, Colorado's attainment demonstration qualifies for EPA approval. As described in the 2008 Ozone Implementation Rule (80 FR 12292), ''[t]o demonstrate attainment, the modeling results for the nonattainment area must predict that emissions reductions implemented by the beginning of the last full ozone season preceding the attainment date will result in ozone concentrations that meet the level of the standard'' (80 FR 12270, March 6, 2015). We find the attainment demonstration submitted on May 31, 2017, adequate to meet this requirement.

The EPA acknowledges that 2014–2016 and 2015–2017 monitored design values in the Denver nonattainment area violate the 2008 ozone NAAQS, regardless of whether all data are used, or whether instead, potential exceptional event data (which have not been acted on by the EPA) are removed. But under the CAA, a determination of whether an area has failed to attain is a separate action entirely from the review of an attainment demonstration SIP. The EPA's SIP review occurs under CAA section 110(k), 42 U.S.C. 7410(k), while a determination of whether an area has failed to attain is governed by CAA section 181(b)(2), 42 U.S.C. 7511(b)(2). Under section 181(b)(2), the EPA must determine whether an ozone nonattainment area has attained the applicable NAAQS ''[w]ithin 6 months *following* the applicable attainment date (including any extension thereof).'' (Emphasis added.) Here, the applicable attainment date is still in the future: July 20, 2018. After that date, the EPA will analyze the pertinent information and determine whether the DMNFR nonattainment area has attained the NAAQS by the applicable attainment date in accordance with section 181(b)(2). In the event that the EPA determines that the area failed to attain based on certified air quality data, the DMNFR nonattainment area may be reclassified to Serious by operation of law, and would then be subject to a number of Serious area attainment planning and control requirements, including developing and submitting a new attainment demonstration.

In addition, it is possible that Colorado will request and receive an extension of the attainment date if that is required, as is envisioned in section 181(b)(2). The CAA allows for up to two attainment date extensions, if the fourth maximum 8-hour average ozone concentration in the attainment year (2017 in this case) is below the level of the standard.[2] Thus, a nonattainment area may be able to attain the NAAQS by the extended attainment date, even if the measured design value for an area does not meet the NAAQS at the end of the original attainment year, if the area is eligible for and is granted an attainment date extension. The original attainment date has not yet passed, and it is possible that the attainment date will be extended per section 181(b)(2). As previously noted, the Colorado SIP submission satisfies the requirements for a modeled demonstration that the area will meet the standard in the attainment year.

Comment 2

The commenter also criticized EPA's approach to calculating design values for using figures that are ''truncated rather than rounded.''

*Response:* Rules for calculating monitored ozone design values for the 2008 ozone NAAQS are in 40 CFR part 50, appendix P. Section 2.1 of appendix P requires that hourly average ozone be truncated to the third decimal place (0.001 ppm), as shall 8-hour averages compiled from the individual 1-hour averages. Section 2.2 of appendix P then requires that 3-year averages of annual fourth highest 8-hour averages also be truncated to the third decimal place. The truncation is thus in compliance with the procedure required by the regulations.

## III. Final Action

We are approving the SIP submittal from the State of Colorado for the DMNFR ozone nonattainment area submitted on May 31, 2017. Specifically, we are approving the following:

- Attainment demonstration with weight of evidence analysis for the 2008 ozone NAAQS;
- Base and future year emissions inventories;
- RFP demonstration;
- Demonstration of RACT for Volatile Organic Compounds (VOC) Control Technique Guidelines (CTG) sources

[1] As noted above, attainment demonstration modeling assumes that the future meteorology will be identical to that in the baseline period, but year-to-year variability in meteorology means that actual measurements of ozone in future modeled years cannot match that predicted by models. In addition, monitoring data may not always accurately reflect conditions in the area, such as during times of exceptional events.

[2] *See* CAA section 181(b)(2)(A), 42 U.S.C. 7511(b)(2)(A), the EPA's implementing regulations at 40 CFR 51.1103, and 2008 Ozone Implementation Rule (80 FR 12292).

(except for the following CTG source categories as to which we are not taking any action at this time: Metal Furniture Coatings, 2007; Miscellaneous Metal Products Coatings, 2008; Wood Furniture Manufacturing Operations, 1996; Industrial Cleaning Solvents, 2006; Aerospace, 1997; and Oil and Natural Gas Industry, 2016.);

- Demonstration of RACM implementation;
- Motor vehicle inspection and maintenance program revisions in Colorado's Reg. No. 11;
- NNSR program;
- Contingency measures plan;
- MVEBs; and
- Revisions to Colorado's Reg. No. 7 (except for revisions to Reg. No. 7, Section X pertaining to VOC controls of industrial cleaning solvents, Section XVI.D revisions pertaining to RACT standards for combustion equipment, and Section XIX revisions pertaining to RACT requirements for major sources as to which we are not taking any action).

We are also approving SIP revisions to Reg. No. 7 submitted by the State on May 13, 2013, except for provisions that have been superseded by later submissions, for which we are not taking any action. We are approving these actions in accordance with section 110, 42 U.S.C. 7410, and part D of the CAA.

## 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 Colorado Reg. No. 11 pertaining to regulation of the State's motor vehicle emissions inspection program and Colorado Reg. No. 7 pertaining to regulation of sources of VOC and $NO_X$ emissions as discussed in section IV., J. Motor Vehicle Inspection and Maintenance Program (I/M) Program and N. SIP Control Measures (except we are not acting on Reg. 7, Sections, X, XVI.D, and XIX in this action) of this preamble. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 8 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the SIP, 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 the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[3]

## V. Statutory and Executive Order Reviews

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

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

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

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

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 September 4, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

## List of Subjects in 40 CFR Part 52

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

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

Dated: June 20, 2018.

**Douglas Benevento,**

*Regional Administrator, Region 8.*

40 CFR part 52 is amended as follows:

[3] 62 FR 27968 (May 22, 1997).

## 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 G—Colorado

■ 2. In § 52.320:

■ a. The table in paragraph (c) is amended by:

■ i. Revising table entries ''I,'' ''II,'' ''VI,'' ''VII,'' ''VIII,'' ''IX,'' ''XII,'' and ''XVI,'' under the centered heading ''5 CCR 1001–09, Regulation Number 7, Control of Ozone Via Ozone Precursors (Emissions of Volatile Organic Compounds and Nitrogen Oxides).''

■ ii. Revising table entry ''II'' and adding table entry ''V'' in numerical order under the centered heading ''5 CCR 1001–13, Regulation Number 11, Motor Vehicle Emissions Inspection Program—Part A, General Provisions, Area of Applicability, Schedules for Obtaining Certification of Emissions Control, Definitions, Exemptions, and Clean Screening/Remote Sensing.''

■ b. The table in paragraph (e) is amended by adding the entry ''2008 Ozone Moderate Area Attainment Plan'' after the last entry under the heading ''Denver Metropolitan Area.''

The revisions and additions read as follows:

**§ 52.320 Identification of plan.**

* * * * *

(c) * * *

| Title | State effective date | EPA effective date | Final rule/citation date | Comments |
|---|---|---|---|---|
| * | * | * | * | * * * |
| **5 CCR 1001–09, Regulation Number 7, Control of Ozone Via Ozone Precursors (Emissions of Volatile Organic Compounds and Nitrogen Oxides)** | | | | |
| I. Applicability | 1/14/2017 | 8/2/2018 | [Insert **Federal Register** citation], 7/3/2018. | Previous SIP approval 08/05/11 except for I.A.1.b, I.B.1.b, I.B.2.b, and I.B.2.d; nonsubstantive changes to I.A.1.a. and I.A.1.c. approved 7/3/2018. |
| II. General Provisions | 1/14/2017 | 8/2/2018 | [Insert **Federal Register** citation], 7/3/2018. | Previous SIP approval 08/05/11 except for II.A.12, II.C.1, and the repeal of previously approved II.D; nonsubstantive changes to II.D approved 7/3/2018. |
| * | * | * | * | * * * |
| VI. Storage and Transfer of Petroleum Liquid. | 1/14/2017 | 8/2/2018 | [Insert **Federal Register** citation], 7/3/2018. | Previous SIP approval 08/05/11; nonsubstantive changes to VI.B.2.a.(iii)(B) approved 7/3/2018. |
| VII. Crude Oil | 1/14/2017 | 8/2/2018 | [Insert **Federal Register** citation], 7/3/2018. | Previous SIP approval 08/05/11; nonsubstantive changes to VII.C 7/3/2018. |
| VIII. Petroleum Processing and Refining. | 1/14/2017 | 8/2/2018 | [Insert **Federal Register** citation], 7/3/2018. | Previous SIP approval 08/05/11; nonsubstantive changes to VIII.C.4.a.(i)(A)(6) 7/3/2018. |
| IX. Surface Coating Operations. | 1/14/2017 | 8/2/2018 | [Insert **Federal Register** citation], 7/3/2018. | Previous SIP approval 08/05/11; nonsubstantive changes to IX.A.3.c., IX.A.5.a.–d., and IX.A.12.a. 7/3/2018. |
| * | * | * | * | * * * |
| XII. Volatile Organic Compound Emissions From Oil and Gas Operations. | 1/14/2017 | 8/2/2018 | [Insert **Federal Register** citation], 7/3/2018. | Previous SIP approval 02/13/08; substantive changes to Section XII; state-only provisions excluded 7/3/2018. |
| * | * | * | * | * * * |
| XVI. Control of Emissions from Stationary and Portable Engines in the 8-Hour Ozone Control Area. | 2/15/2013, 1/14/2017 | 8/2/2018 | [Insert **Federal Register** citation], 7/3/2018. | Previous SIP approval 08/19/05; nonsubstantive changes to Sections XVI.A.–C. 7/3/2018. |
| * | * | * | * | * * * |
| **5 CCR 1001–13, Regulation Number 11, Motor Vehicle Emissions Inspection Program—Part A, General Provisions, Area of Applicability, Schedules for Obtaining Certification of Emissions Control, Definitions, Exemptions, and Clean Screening/Remote Sensing** | | | | |

| Title | State effective date | EPA effective date | Final rule/citation date | Comments |
|---|---|---|---|---|
| * | * | * | * | * |
| II. Definitions ..... | 1/14/2017 | 8/2/2018 | [Insert **Federal Register** citation], 7/3/2018. | |
| * | * | * | * | * |
| V. Expansion of the Enhanced Emissions Program to the North Front Range Area. | 1/14/2017 | 8/2/2018 | [Insert **Federal Register** citation], 7/3/2018. | |
| * | * | * | * | * |

* * * * * (e) * * *

| Title | State effective date | EPA effective date | Final rule/citation date | Comments |
|---|---|---|---|---|
| * | * | * | * | * |
| **Maintenance Plans** | | | | |
| * | * | * | * | * |
| **Denver Metropolitan Area** | | | | |
| * | * | * | * | * |
| 2008 Ozone Moderate Area Attainment Plan. | 1/14/2017 | 8/2/2018 | [Insert **Federal Register** citation], 7/3/2018. | Except RACT for Metal Furniture Coatings, Miscellaneous Metal Products Coatings, Wood Furniture Manufacturing Operations, Industrial Cleaning Solvents, Aerospace, Oil and Natural Gas Industry, and major source RACT. |
| * | * | * | * | * |

[FR Doc. 2018–13599 Filed 7–2–18; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R09–OAR–2018–0160; FRL–9980–17—Region 9]**

## Air Plan Approval; California; Yolo-Solano Air Quality Management District; Negative Declarations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve a revision to the Yolo-Solano Air Quality Management District (YSAQMD or ''District'') portion of the California State Implementation Plan (SIP). This revision concerns the District's negative declarations for several volatile organic compound (VOC) source categories included in its Reasonably Available Control Technology (RACT) State Implementation Plan Analysis. We are approving these negative declarations under the Clean Air Act (CAA or ''the Act'').

**DATES:** This rule is effective on August 2, 2018.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2018–0160. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Stanley Tong, EPA Region IX, (415) 947–4122, *tong.stanley@epa.gov.*

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

**Table of Contents**

I. Proposed Action
II. Public Comments and EPA Responses
III. EPA Action
IV. Statutory and Executive Order Reviews

## I. Proposed Action

On September 13, 2017, YSAQMD adopted its Reasonably Available Control Technology State Implementation Plan (RACT SIP) Analysis for the 2008 ozone National Ambient Air Quality Standards (NAAQS). Included in the District's RACT SIP analysis were several negative declarations where the District stated that it did not have sources subject to the Control Techniques Guidelines (CTG) documents listed below in Table 1. The District's RACT SIP further stated that the negative declarations were for the 1997 and 2008 ozone NAAQS. On November 13, 2017, the California Air Resources Board submitted YSAQMD's RACT SIP, including the following negative declarations, to the EPA as a SIP revision.

TABLE 1—SUBMITTED NEGATIVE DECLARATIONS [1]

| CTG document | CTG document title |
|---|---|
| EPA–450/2–77–008 | Control of Volatile Organic Emissions from Existing Stationary Sources—Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks. |
| EPA–450/2–77–025 | Control of Refinery Vacuum Producing Systems, Wastewater Separators, and Process Unit Turnarounds. |
| EPA–450/2–77–032 | Control of Volatile Organic Emissions from Existing Stationary Sources—Volume III: Surface Coating of Metal Furniture. |
| EPA–450/2–77–033 | Control of Volatile Organic Emissions from Existing Stationary Sources—Volume IV: Surface Coating of Insulation of Magnet Wire. |
| EPA–450/2–77–034 | Control of Volatile Organic Emissions from Existing Stationary Sources—Volume V: Surface Coating of Large Appliances. |
| EPA–450/2–77–036 | Control of Volatile Organic Emissions from Storage of Petroleum Liquids in Fixed-Roof Tanks. |
| EPA–450/2–78–029 | Control of Volatile Organic Emissions from Manufacture of Synthesized Pharmaceutical Products. |
| EPA–450/2–78–030 | Control of Volatile Organic Emissions from Manufacture of Pneumatic Rubber Tires. |
| EPA–450/2–78–032 | Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VII: Factory Surface Coating of Flat Wood Paneling. |
| EPA–450/2–78–033 | Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VIII: Graphic Arts-Rotogravure and Flexography. |
| EPA–450/2–78–036 | Control of Volatile Organic Compound Leaks from Petroleum Refinery Equipment. |
| EPA–450/3–82–009 | Control of Volatile Organic Compound Emissions from Large Petroleum Dry Cleaners. |
| EPA–450/3–83–006 | Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment. |
| EPA–450/3–83–007 | Control of Volatile Organic Compound Equipment Leaks from Natural Gas/Gasoline Processing Plants. |
| EPA–450/3–83–008 | Control of Volatile Organic Compound Emissions from Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins. |
| EPA–450/3–84–015 | Control of Volatile Organic Compound Emissions from Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry. |
| EPA–450/4–91–031 | Control of Volatile Organic Compound Emissions from Reactor Processes and Distillation Operations in Synthetic Organic Chemical Manufacturing Industry. |
| EPA–453/R–96–007 | Control of Volatile Organic Compound Emissions from Wood Furniture Manufacturing Operations. |
| 61 FR–44050 8/27/96 | Control Techniques Guidelines for Shipbuilding and Ship Repair Operations (Surface Coating). |
| EPA–453/R–97–004 | Aerospace (CTG & MACT). |
| EPA–453/R–06–003 | Control Techniques Guidelines for Flexible Package Printing. |
| EPA–453/R–06–004 | Control Techniques Guidelines for Flat Wood Paneling Coatings. |
| EPA 453/R–07–003 | Control Techniques Guidelines for Paper, Film, and Foil Coatings. |
| EPA 453/R–07–004 | Control Techniques Guidelines for Large Appliance Coatings. |
| EPA 453/R–07–005 | Control Techniques Guidelines for Metal Furniture Coatings. |
| EPA 453/R–08–005 | Control Techniques Guidelines for Miscellaneous Industrial Adhesives. |
| EPA 453/R–08–006 | Control Techniques Guidelines for Automobile and Light-Duty Truck Assembly Coatings. |
| EPA 453/R–08–003 | Control Techniques Guidelines for Miscellaneous Metal and Plastic Parts Coatings (plastic parts portion only). |
| EPA 453/B–16–001 | Control Techniques Guidelines for the Oil and Natural Gas Industry. |

[1] Negative declarations are for the 1997 and 2008 8-hour ozone NAAQS.

On May 9, 2018 (83 FR 21235), the EPA proposed to approve YSAQMD's negative declarations for the 1997 and 2008 ozone NAAQS into the California SIP. We proposed to approve these negative declarations because we determined that they comply with the relevant CAA requirements. Our proposed action contains more information on the negative declarations and our evaluation.

## II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received two anonymous comments that were outside the scope of this rulemaking. Neither of the comments were germane to our evaluation of YSAQMD's negative declarations.

## III. EPA Action

No comments were submitted that change our assessment of the suitability of the negative declarations in our proposed action and duplicated in Table 1 above. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is fully approving these negative declarations for the 1997 and 2008 ozone NAAQS into the California SIP.

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

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

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

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

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 September 4, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 20, 2018.

**Michael Stoker,**

*Regional Administrator, Region IX.*

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

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

### Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(505) to read as follows:

**§ 52.220 Identification of plan—in part.**

* * * * *

(c) * * *

(505) The following plan was submitted on November 13, 2017 by the Governor's designee.

(i) [Reserved]

(ii) *Additional materials.* (A) Yolo-Solano Air Quality Management District.

(*1*) Reasonably Available Control Technology (RACT) State Implementation Plan (SIP) Analysis: ''Table 3—CTG Categories for Which YSAQMD Will Adopt a Negative Declaration,'' adopted on September 13, 2017.

■ 3. Section 52.222 is amended by adding paragraph (a)(14)(ii) to read as follows:

**§ 52.222 Negative declarations.**

(a) * * *

(14) * * *

(ii) The following negative declarations are for the 1997 and 2008 8-hour ozone NAAQS and were adopted by the District on September 13, 2017 and submitted as part of Yolo-Solano AQMD's RACT SIP on November 13, 2017.

| CTG source category | Negative declaration CTG reference document |
|---|---|
| Aerospace | EPA–453/R–97–004 Aerospace (CTG & MACT). |
| Automobile and Light-Duty Truck Assembly Coatings. | EPA–450/2–77–008 Control of Volatile Organic Emissions from Existing Stationary Sources—Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks. |
| Automobile and Light-Duty Truck Assembly Coatings. | EPA 453/R–08–006 Control Techniques Guidelines for Automobile and Light-Duty Truck Assembly Coatings. |
| Dry Cleaning | EPA–450/3–82–009 Control of Volatile Organic Compound Emissions from Large Petroleum Dry Cleaners. |
| Flat Wood Paneling Coatings | EPA–450/2–78–032 Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VII: Factory Surface Coating of Flat Wood Paneling. |
| Flat Wood Paneling Coatings | EPA–453/R–06–004 Control Techniques Guidelines for Flat Wood Paneling Coatings. |
| Flexible Package Printing | EPA–453/R–06–003 Control Techniques Guidelines for Flexible Package Printing. |

| CTG source category | Negative declaration CTG reference document |
|---|---|
| Graphic Arts Rotogravure and Flexography. | EPA–450/2–78–033 Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VIII: Graphic Arts-Rotogravure and Flexography. |
| Large Appliance Coating | EPA–450/2–77–034 Control of Volatile Organic Emissions from Existing Stationary Sources—Volume V: Surface Coating of Large Appliances. |
| Large Appliance Coating | EPA 453/R–07–004 Control Techniques Guidelines for Large Appliance Coatings. |
| Magnet Wire Coating | EPA–450/2–77–033 Control of Volatile Organic Emissions from Existing Stationary Sources—Volume IV: Surface Coating of Insulation of Magnet Wire. |
| Metal Can Coating; Metal Coil Coating. | EPA–450/2–77–008 Control of Volatile Organic Emissions from Existing Stationary Sources—Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks. |
| Metal Furniture Coatings | EPA–450/2–77–032 Control of Volatile Organic Emissions from Existing Stationary Sources—Volume III: Surface Coating of Metal Furniture. |
| Metal Furniture Coatings | EPA 453/R–07–005 Control Techniques Guidelines for Metal Furniture Coatings. |
| Miscellaneous Industrial Adhesives | EPA 453/R–08–005 Control Techniques Guidelines for Miscellaneous Industrial Adhesives. |
| Miscellaneous Metal and Plastic Parts. | EPA 453/R–08–003 Control Techniques Guidelines for Miscellaneous Metal and Plastic Parts Coatings (plastic parts portion only). |
| Natural Gas/Gasoline | EPA–450/3–83–007 Control of Volatile Organic Compound Equipment Leaks from Natural Gas/Gasoline Processing Plants. |
| Oil and Gas Industry | EPA 453/B–16–001 Control Techniques Guidelines for the Oil and Natural Gas Industry. |
| Paper and Fabric Coating | EPA–450/2–77–008 Control of Volatile Organic Emissions from Existing Stationary Sources—Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks. |
| Paper, Film, and Foil Coatings | EPA 453/R–07–003 Control Techniques Guidelines for Paper, Film, and Foil Coatings. |
| Petroleum Liquid Storage Tanks | EPA–450/2–77–036 Control of Volatile Organic Emissions from Storage of Petroleum Liquids in Fixed-Roof Tanks. |
| Resin Manufacturing | EPA–450/3–83–008 Control of Volatile Organic Compound Emissions from Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins. |
| Resin Manufacturing | EPA–450/3–83–006 Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment. |
| Pharmaceutical Products | EPA–450/2–78–029 Control of Volatile Organic Emissions from Manufacture of Synthesized Pharmaceutical Products. |
| Refineries | EPA–450/2–78–036 Control of Volatile Organic Compound Leaks from Petroleum Refinery Equipment. |
| Refineries | EPA–450/2–77–025 Control of Refinery Vacuum Producing Systems, Wastewater Separators, and Process Unit Turnarounds. |
| Rubber Tire Manufacturing | EPA–450/2–78–030 Control of Volatile Organic Emissions from Manufacture of Pneumatic Rubber Tires. |
| Ship Coatings | 61 FR–44050 8/27/96 Control Techniques Guidelines for Shipbuilding and Ship Repair Operations (Surface Coating). |
| Synthetic Organic Chemical Manufacturing. | EPA–450/3–84–015 Control of Volatile Organic Compound Emissions from Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry. |
| Synthetic Organic Chemical Manufacturing. | EPA–450/4–91–031 Control of Volatile Organic Compound Emissions from Reactor Processes and Distillation Operations in Synthetic Organic Chemical Manufacturing Industry. |
| Wood Furniture Coating | EPA–453/R–96–007 Control of Volatile Organic Compound Emissions from Wood Furniture Manufacturing Operations. |

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[FR Doc. 2018–14197 Filed 7–2–18; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

### 44 CFR Part 64

**[Docket ID FEMA–2018–0002; Internal Agency Docket No. FEMA–8535]**

### Suspension of Community Eligibility

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at *https://www.fema.gov/national-flood-insurance-program-community-status-book.*

**DATES:** The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

**FOR FURTHER INFORMATION CONTACT:** If you want to determine whether a particular community was suspended on the suspension date or for further information, contact Adrienne L. Sheldon, PE, CFM, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 400 C Street SW, Washington, DC 20472, (202) 212–3966.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program

regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

*National Environmental Policy Act.* FEMA has determined that the community suspension(s) included in this rule is a non-discretionary action and therefore the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) does not apply.

*Regulatory Flexibility Act.* The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

*Regulatory Classification.* This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

*Executive Order 13132, Federalism.* This rule involves no policies that have federalism implications under Executive Order 13132.

*Executive Order 12988, Civil Justice Reform.* This rule meets the applicable standards of Executive Order 12988.

*Paperwork Reduction Act.* This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

**List of Subjects in 44 CFR Part 64**

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

## PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

### § 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

| State and location | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in SFHAs |
|---|---|---|---|---|
| **Region IV** | | | | |
| South Carolina: | | | | |
| Columbia, City of, Lexington and Richland Counties. | 450172 | January 16, 1974, Emerg; September 2, 1981, Reg; July 5, 2018, Susp. | July 5, 2018 ..... | July 5, 2018. |
| Lexington, Town of, Lexington County .. | 450134 | May 27, 1975, Emerg; May 1, 1980, Reg; July 5, 2018, Susp. | .....do ..... | Do. |
| Springdale, Town of, Lexington County | 450138 | December 4, 1973, Emerg; May 1, 1980, Reg; July 5, 2018, Susp. | .....do ..... | Do. |
| Swansea, Town of, Lexington County .. | 450139 | June 24, 1975, Emerg; June 10, 1977, Reg; July 5, 2018, Susp. | .....do ..... | Do. |
| **Region V** | | | | |
| Illinois: Quincy, City of, Adams County ..... | 170003 | March 25, 1974, Emerg; October 15, 1981, Reg; July 5, 2018, Susp. | .....do ..... | Do. |
| **Region VII** | | | | |
| Nebraska: | | | | |
| Adams County, Unincorporated Areas .. | 310411 | March 24, 1982, Emerg; June 1, 1988, Reg; July 5, 2018, Susp. | .....do ..... | Do. |
| Clay Center, City of, Clay County ..... | 310040 | N/A, Emerg; July 29, 1998, Reg; July 5, 2018, Susp. | .....do ..... | Do. |
| Hastings, City of, Adams County ..... | 310001 | July 24, 1974, Emerg; August 17, 1981, Reg; July 5, 2018, Susp. | .....do ..... | Do. |

| State and location | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in SFHAs |
|---|---|---|---|---|
| Juniata, Village of, Adams County ..... | 310293 | June 14, 1979, Emerg; June 18, 1990, Reg; July 5, 2018, Susp. | .....do ..... | Do. |

-do- = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: June 26, 2018.

**Michael M. Grimm,**

*Assistant Administrator for Mitigation, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. 2018–14229 Filed 7–2–18; 8:45 am]

**BILLING CODE 9110–12–P**

# Proposed Rules

Federal Register
Vol. 83, No. 128
Tuesday, July 3, 2018

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

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 1

**RIN 3038–AE73**

## Financial Surveillance Examination Program Requirements for Self-Regulatory Organizations

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is proposing to amend its regulations governing the minimum standards for a self-regulatory organization's (''SRO'') financial surveillance examination program of futures commission merchants (''FCMs''). The proposed amendments would revise the scope of a third-party expert's evaluation of the SRO's financial surveillance program to cover only the examination standards used by SRO staff in conducting FCM examinations. The proposed amendments also would revise the minimum timeframes between when an SRO must engage a third-party expert to evaluate its FCM examination standards.

**DATES:** Comments must be received on or before September 4, 2018.

**ADDRESSES:** You may submit comments, identified by RIN 3038–AE73, by any of the following methods:

- *CFTC Comments Portal: https://comments.cftc.gov.* Select the ''Submit Comments'' link for this rulemaking and follow the instructions on the Public Comment Form.
- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Follow the same instructions as for Mail, above. Please submit your comments using only one of these methods. To avoid possible delays with mail or in-person deliveries, submissions through the CFTC Comments Portal are encouraged.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://comments.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act (''FOIA''), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://comments.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the FOIA.

**FOR FURTHER INFORMATION CONTACT:** Matthew B. Kulkin, Director, 202–418–5213, *mkulkin@cftc.gov;* Thomas Smith, Deputy Director, 202–418–5495, *tsmith@cftc.gov;* Jennifer Bauer, Special Counsel, 202–418–5472, *jbauer@cftc.gov;* or Joshua Beale, Special Counsel, 202–418–5446, *jbeale@cftc.gov,* Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *A. Commission Initiative to Simplify and Modernize Regulations*

In March of 2017, Commission staff initiated an agency-wide internal review of CFTC regulations and practices to identify those areas that could be simplified to make them less burdensome and costly.[2] The Commission subsequently published in the **Federal Register** on May 9, 2017 a Request for Information soliciting suggestions from the public regarding how the Commission's existing rules, regulations, or practices could be applied in a simpler, less burdensome, and costly manner.[3]

The CME Group (''CME'') submitted suggestions on a variety of rules, regulations, and practices in responses to the Commission's Request for Information.[4] One area identified by CME for simplification and the reduction of regulatory burden was Regulation 1.52, which imposes an obligation on SROs[5] to conduct periodic examinations of member FCMs[6] for compliance with both SRO and Commission minimum capital and other financial and related reporting requirements. Specifically, the CME suggested that Regulation 1.52 should be amended to eliminate a requirement that a third-party public accounting firm perform periodic evaluations and assessments of the CME's surveillance program to oversee its member FCMs compliance with Commission and CME financial and related reporting requirements.[7]

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[1] Regulation 145.9. Commission regulations referred to herein are found at 17 CFR chapter I.

[2] *See* Remarks of Acting Chairman J. Christopher Giancarlo before the 42nd Annual International Futures Industry Conference in Boca Raton, FL, dated March 15, 2017. The remarks are available at the Commission's website: *https://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo-20.*

[3] Project KISS, 82 FR 21494 (May 9, 2017); amended on May 24, 2017, 82 FR 23765 (May 24, 2017). The **Federal Register** Request for Information, and the suggestion letters filed by the public are available at the Commission's website: *https://comments.cftc.gov/KISS/KissInitiative.aspx.*

[4] *See* Letter from Kathleen Cronin, Senior Managing Director, General Counsel and Corporate Secretary, CME Group, dated September 29, 2017. The CME's letter is available at the Commission's website: *https://comments.cftc.gov/PublicComments/ViewComment.aspx?id=61395&SearchText=.*

[5] The term ''self-regulatory organization'' is defined in Regulation 1.52 to include a contract market (as defined in Regulation 1.3) or an RFA under section 17 of the Commodity Exchange Act (''Act'') (7 U.S.C. 1 *et seq.*), but the term as defined in Regulation 1.52 does not include a swap execution facility (as defined in Regulation 1.3). *See* Regulation 1.52(a)(2).

[6] The term ''futures commission merchant'' is generally defined in Regulation 1.3 as (1) an entity that is engaged in soliciting or accepting orders for the purchase or sale of any commodity for future delivery or a swap and, in connection with the solicitation and acceptance of such orders, accepts money, securities or property (or extends credit in lieu thereof) to margin, guarantee or secure futures or swaps transactions, or (2) an entity registered as an FCM.

[7] CME Letter, pp. 13–14.

*B. Statutory and Regulatory Background*

FCMs perform critical functions to facilitate the efficient operation of Commission-regulated exchange-traded derivatives markets. In addition to trading for their own accounts and carrying the accounts of their affiliates, FCMs are market intermediaries, standing between customers trading futures and swaps transactions on one side and designated contract markets (''DCMs'') and derivatives clearing organizations (''DCOs'') on the other side. As part of their role as market intermediaries, FCMs carry customer accounts and hold customer funds to margin futures and cleared swap transactions. FCMs also fulfill daily settlement obligations on behalf of customers by posting sufficient funds to DCOs to support their customers' futures and swap positions, including paying mark-to-market losses associated with such positions. FCMs also are essential to the efficient operation of Commission-regulated markets in that they guarantee each customer's financial performance for futures and swap positions to DCOs by agreeing to use their own financial resources to cover any shortfall resulting from a customer default.[8]

The Act acknowledges the critical role performed by FCMs. Section 4f(b) of the Act authorizes the Commission to adopt regulations imposing minimum capital and financial reporting requirements on FCMs to help ensure that they maintain adequate financial resources to meet their obligations.[9] Under this statutory authorization, the Commission adopted regulations requiring FCMs, among other requirements, to maintain a minimum level of regulatory capital,[10] to segregate customer funds from their own funds in specially designated customer accounts,[11] and to maintain appropriate risk management programs to monitor and manage the risks associated with their activities as FCMs.[12]

The Commission also has adopted, under the authority granted by section 4f(b), regulations imposing periodic financial reporting requirements on FCMs that are intended to provide the Commission with information regarding their financial condition. The financial reporting requirements include daily statements demonstrating compliance with the segregation of customer funds requirements,[13] monthly unaudited and annual audited financial statements,[14] and regulatory notices upon the occurrence of specified events including failing to meet minimum capital requirements, failing to comply with segregation requirements, and failing to maintain current books and records.[15]

In addition to authorizing the Commission to adopt regulations imposing direct financial and related reporting requirements, the Act further establishes a regulatory oversight structure that imposes an obligation on DCMs and registered futures associations (''RFAs''),[16] as SROs, to perform frontline regulatory oversight of market intermediaries, including FCMs.[17] In 2000, Congress affirmed this regulatory structure of industry self-regulation by amending section 3 of the Act to state, in pertinent part, that it is the purpose of the Act to serve the public interests through a system of effective self-regulation of trading facilities, clearing systems, market participants and market professionals under the oversight of the Commission.[18]

To achieve the objective of a self-regulatory structure, the Act and Commission regulations require RFAs and DCMs to adopt financial and related reporting requirements for member FCMs, and to periodically examine FCMs for compliance with such requirements. Section 17(p) of the Act requires an RFA to establish and submit for Commission approval rules imposing minimum capital, segregation and other financial requirements applicable to its members for which such requirements are imposed by the Commission. The RFA's financial requirements for its members must be at least as stringent as those set by the Act or Commission regulations.[19] Section 17(p) further provides that the RFA must implement a program to audit and enforce compliance by its members with the RFA's minimum financial requirements.[20]

With respect to DCMs, section 5(d)(11)(B) of the Act and Regulation 38.600 require, in relevant part, each DCM to implement rules to ensure the financial integrity of any member FCM and the protection of customer funds.[21] DCMs also are required to monitor an FCM member's compliance with the DCM's minimum financial requirements by reviewing financial information filed with the DCM and by conducting periodic examinations of the FCM.[22]

The Commission's and SRO's minimum financial requirements for member FCMs are intended to help ensure that FCMs can continue to meet their financial and operational obligations to both customers and DCOs, which is necessary in order for the Commission-regulated markets to operate efficiently and effectively.

*C. Current Commission Regulation 1.52*

As noted in section I.B., above, the Act and Commission regulations establish SROs (*i.e.,* DCMs and NFA) as frontline regulators for FCMs. Commission Regulation 1.52 establishes the minimum standards that the Commission requires of an SRO oversight program, and includes an explicit requirement that each SRO must adopt rules prescribing minimum financial and related reporting requirements for member FCMs that are the same as, or more stringent than, the requirements imposed by the Commission.[23] Consistent with the requirements of Regulation 1.52, SROs have adopted rules imposing FCM capital and financial reporting requirements that are at least as stringent as the FCM capital and financial reporting requirements set

[8] *See* Regulation 39.16.

[9] Section 4f(b) of the Act authorizes the Commission to adopt FCM minimum financial and related reporting requirements. Section 4f(b) provides, in relevant part, that no person shall be registered as an FCM unless such person meets the minimum financial requirements that the Commission may prescribe by regulation as necessary to insure such person meets its obligations as a registrant, and each person registered as an FCM shall at all times continue to meet such prescribed minimum financial requirements.

[10] *See* Regulation 1.17 for FCM minimum capital requirements.

[11] *See* Regulations 1.20, 22.2, and 30.7 for FCM segregation requirements for customer accounts containing futures positions, swap positions, and foreign futures positions, respectively.

[12] *See* Regulation 1.11 for FCM risk management requirements.

[13] *See* Regulations 1.32, 22.2 and 30.7 for FCM requirements to prepare and to submit to the Commission daily segregation computations and schedules for customer futures, cleared swaps and foreign futures accounts, respectively.

[14] *See* Regulation 1.10 for FCM requirements to file unaudited monthly financial statements and annual audited financial statements.

[15] *See* Regulation 1.12.

[16] The National Futures Association (''NFA'') is the only registered RFA. NFA's financial requirements for FCMs are available at its website, *www.nfa.futures.org.*

[17] Section 3(b) of the Act.

[18] Section 108 of the Commodity Futures Modernization Act of 2000, Public Law 106–554, 114 Stat. 2763 (Dec. 21, 2000).

[19] *See* section 17(p)(2) of the Act.

[20] *Id.*

[21] *See also,* Regulation 38.602 which provides that a DCM must provide for the financial integrity of its transactions by establishing and maintaining appropriate minimum financial standards for its members and non-intermediated market participants, and Regulation 38.603 which requires a DCM to have rules concerning the protection of customer funds.

[22] *See* Regulations 38.600 through 38.605.

[23] *See* Regulation 1.52(b)(1).

forth in applicable Commission regulations.[24]

In 2013, the Commission adopted new rules and rule amendments to comprehensively enhance customer protections.[25] As part of the 2013 Customer Protection Rulemaking, the Commission amended Regulation 1.52 to impose several additional obligations on SROs with respect to the oversight of FCMs. Amended Regulation 1.52 requires each SRO to establish and operate a supervisory program that includes written policies and procedures concerning the application of the supervisory program in the examination of its member registrants (including FCMs) for the purpose of assessing whether each member registrant is in compliance with applicable SRO and Commission regulations governing net capital and related financial requirements, the obligations to segregate customer funds, risk management requirements, financial reporting requirements, recordkeeping requirements, and sales practices and other compliance requirements. The supervisory program also must adequately address the following elements: (1) The level, training, and independence of SRO examination staff; (2) The SRO's ongoing surveillance of member FCMs, including the review and analysis of financial reports and regulatory notices received; (3) The SRO's procedures for identifying and monitoring FCMs that are deemed to pose a high degree of financial risk; (4) The SRO's conduct of on-site examination of FCMs by SRO staff at least once every 18 months; and (5) The documentation of all aspects of the SRO's operation of its supervisory program.

The supervisory program also must, at a minimum, incorporate FCM examination standards addressing: (1) The ethics of an SRO examiner; (2) The independence of an SRO examiner; (3) The supervision, review, and quality control of an SRO examiner's work product; (4) The evidence and documentation to be reviewed and retained in connection with an examination; (5) The examination planning process; (6) Materiality assessment; (7) Quality control procedures to ensure that the SRO examinations maintain the level of quality expected; (8) Communications between an SRO examiner and the regulatory oversight committee, or the functional equivalent of the regulatory oversight committee, of the SRO of which the FCM is a member; (9) Communications between an SRO examiner and an FCM's audit committee of the board of directors or similar governing body; (10) Analytical review procedures; (11) Record retention; and (12) Required items for inclusion in the SRO's examination report, such as repeat violations, material items, and high risk issues.[26] Regulation 1.52 further provides that all aspects of an SRO's supervisory program, including the FCM examination standards, must conform to auditing standards issued by the Public Company Accounting Oversight Board (''PCAOB'') as such PCAOB standards would apply to a non-financial statement audit.[27]

Regulation 1.52 also requires each SRO to engage an ''examinations expert'' to evaluate its supervisory program prior to its initial use, and to evaluate the SRO's application of the supervisory program at least once every three years after its initial use.[28] For each evaluation, the SRO is required to obtain from the examinations expert a written report on findings and recommendations issued under the consulting services standards of the American Institute of Certified Public Accountants (''AICPA'') that includes: (1) A statement that the examinations expert has evaluated the supervisory program (including its design to detect material weaknesses in an FCM's system of internal controls), including any comments and recommendations regarding such evaluation; (2) A statement that the examinations expert has evaluated the application of the supervisory program by the SRO, including any comments and recommendations in connection with such evaluation; and, (3) A discussion and recommendations of any new or best practices as prescribed by industry sources, including the AICPA and PCAOB.

## II. Proposed Amendments to Regulation 1.52

### *A. Response To Request for Information*

The CME stated in its response to the Commission's Request for Information that it fully supported the Commission's objective of strengthening and enhancing SRO oversight programs for FCMs as set forth in the 2013 Customer Protection Rulemaking. CME further stated that it expended significant resources revising the FCM supervisory program to address the enhanced requirements of Regulation 1.52 that were imposed by the 2013 Customer Protection Rulemaking. In this regard, CME stated that it and NFA jointly engaged a public accounting firm as a consultant during the development of the FCM examination standards, and that the public accounting firm's expertise was extremely beneficial in drafting the initial FCM examination standards and revising its supervisory program to address such standards.

The CME, however, also suggested that the Commission should eliminate the requirement for an SRO to engage an examinations expert once every three years to evaluate the SRO's supervisory program. The CME expressed its view that the engagement of an examinations expert at least once every three years does not provide any meaningful regulatory benefit. The CME noted that under the current regulatory framework, staff of the Commission's Division of Swap Dealer and Intermediary Oversight (''DSIO'') provides effective oversight of the SRO FCM examination programs through the conduct of its SRO rule enforcement reviews. The CME noted that it revises the FCM examinations programs to incorporate any regulatory changes adopted by the Commission or SROs, and provides the actual FCM examination programs, with the revisions, to DSIO staff for review at least once each year.

Based upon the CME's response to the Commission's Request for Information, and Commission staff's firsthand experience in the CME's and NFA's implementation of their initial supervisory program,[29] the Commission

[24] For example, CME Rule 970 imposes capital and financial reporting requirements on member FCMs that are at least as stringent as the Commission's capital and financial reporting requirements. CME rules may be accessed via the CME's website: *http://www.cmegroup.com/rulebook/CME/I/9/9.pdf.*

NFA FCM capital and financial reporting requirements are set forth in Section 1 of the NFA's Financial Requirements section of its rulebook and may be accessed at NFA's website: *https://www.nfa.futures.org/rulebook/index.aspx.*

[25] Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations, 78 FR 68506 (Nov. 14, 2013) (the ''2013 Customer Protection Rulemaking'').

[26] Regulation 1.52(c) and (d).

[27] The PCAOB is a nonprofit corporation established by Congress to oversee the audits of public companies in order to protect investors and the public interest by promoting informative, accurate, and independent audit reports. The PCAOB also oversees the audits of brokers and dealers registered with the Securities and Exchange Commission. The PCAOB was not, however, vested with the authority to oversee the audits of FCMs.

[28] An ''examinations expert'' is defined in Regulation 1.52(a) as an accounting and auditing firm with substantial expertise in the audits of FCMs, risk assessment, and internal control reviews, and is an accounting and auditing firm that is acceptable to the Commission.

[29] Since adoption of the amendments to Regulation 1.52 resulting from the 2013 Customer Protection Rulemaking, Commission staff has participated in several meetings with the CME, NFA, and their examinations expert to address issues and questions arising during the drafting of the initial examination standards and programs. In 2015, Commission staff, through delegated

is proposing several amendments to Regulation 1.52 to revise the time interval between mandatory examinations expert evaluations of the SRO supervisory program, and to amend the scope of the examinations expert's evaluation to focus on changes to auditing standards adopted by the PCAOB since the last examinations expert's evaluation. The Commission also is proposing several technical amendments to eliminate redundancies in the rule text.

*B. Scope of the Examinations Expert's Evaluation*

The examinations expert is currently required to evaluate, at least once every three years, (1) the supervisory program of an SRO or a Joint Audit Committee (''JAC''),[30] and (2) the SRO's or JAC's application of its supervisory program.[31] The SRO or JAC also is required to obtain from the examinations expert a written report on finding and recommendations issued under the consulting services standards of the AICPA that includes statements that the examinations expert has evaluated the supervisory program and the SRO's or JAC's application of the supervisory program, and an analysis of the supervisory program's design to detect material weaknesses in internal controls.

The Commission is proposing to amend Regulations 1.52(c)(2)(iv) and (d)(2)(ii)(I) to remove from the scope of the examinations expert's evaluation the SRO's or JAC's application of its supervisory program during periodic reviews and the analysis of the supervisory program's design to detect material weaknesses in internal controls during both periodic reviews and the initial review prior to the programs' initial use. The Commission initially adopted in 2013 the requirement that the examinations expert issue a written report on its findings and recommendations of the SRO's application of its supervisory program, including its internal controls, due to concerns that a third-party assessment was necessary due to limited Commission resources and expertise to perform a comparable periodic assessment.[32] Since 2013, however, Commission staff has been actively involved with the NFA, CME, and their examinations expert in the development of a revised supervisory program that meets the requirements of Regulation 1.52, including the development of FCM examinations standards that are consistent with PCAOB auditing standards. Commission staff also has reviewed the detailed FCM examination programs, including several programs designed to assess the adequacy of an FCM's internal controls that were developed by the NFA and CME, for compliance with Regulation 1.52. Commission staff also has been performing scheduled oversight reviews of NFA's and CME's execution of its revised supervisory program, including its implementation and execution of programs designed to assess the FCM's internal controls.

Accordingly, following the adoption of the examination standards, the Commission believes that the scope of the examinations expert's review should be limited to the area of its expertise—auditing standards—and that engaging an independent third-party to review the entire program involves additional cost, but results only in a small, incremental benefit. Having assessed the implementation of the revised supervisory program, Commission staff has determined that it has adequate resources and expertise in the application of CFTC regulations to the operations of FCMs, and is appropriately situated to assess whether SRO and JAC staff are accurately and properly applying Commission requirements to FCMs in their execution of the examination programs. Commission staff's review of SRO and JAC supervisory programs includes detailed assessments of whether SRO or JAC staff complied with their respective FCM examination standards, including internal control testing and assessment, in the performance of FCM examinations. In this regard, Commission staff generally review, based on a risk-based approach, the most significant areas of an SRO's or JAC's FCM examination program during a review, including: (1) The staffing levels and adequate training and qualification of SRO or JAC staff members; (2) The detailed testing performed by SRO or JAC staff in each examination area (*e.g.,* segregation of customer funds, capital compliance, and recordkeeping); (3) The timeliness and effectiveness of the SRO's or JAC's review of FCM financial reporting, including FCM daily segregation computations, monthly unaudited and annual audited financial statements, periodic reporting of customer investments, and periodic regulatory notices; and (4) The effectiveness of the SRO's or JAC's disciplinary program. Accordingly, the Commission believes that a more efficient balance of oversight can be achieved by focusing the examinations expert's evaluation on the SRO's or JAC's examination standards, which is an area of the examinations expert's particular expertise. While the Commission still notes that it has limited resources to perform a holistic review of the SRO's or JAC's examination program, covering both the design of the standards and the effectiveness of the audit program, the Commission believes, as noted above, that the proposed amendments strike a reasoned balance between the Commission's expertise and that of the examinations expert.

The proposed amendments would continue to require an examinations expert to provide the SRO or JAC with a written report on the examinations expert's findings and recommendations. The Commission, however, is not mandating the form and content of the written report, other than that the report must accurately reflect the extent of the examinations expert's evaluation, and include any findings and recommendations resulting from its evaluation. The Commission is also proposing that the written report will be provided to the Director of the Division of Swap Dealer and Intermediary Oversight with the understanding that the report will be shared with the Commission.

*C. Frequency of the Examinations Expert's Evaluation of an SRO's Supervisory Program*

Regulations 1.52(c)(2)(iv) and (d)(2)(ii)(I) require an SRO and JAC, respectively, to engage an examinations expert to evaluate their FCM supervisory programs prior to the initiation of the programs, and at least once every three years thereafter. The Commission believes that an

authority, approved the initial FCM examination standards, and in 2017 approved the CME's and NFA's examination programs. The examination standards and programs are now fully implemented and are used in each DSRO examination of an FCM.

[30] As many FCMs are members of more than one SRO, Regulation 1.52 provides a permissive system that allows SROs to enter into agreements allocating primary, but not exclusive, financial oversight and examination responsibilities of FCMs that are members of two or more SROs to one of the SROs, which is termed the ''designated self-regulatory organization'' (''DSRO''). The term ''designated self-regulatory organization'' is generally defined in Regulation 1.3 to mean the SRO delegated the primary responsibility to monitor and exam registrants that are subject to oversight by more than one SRO for compliance with minimum financial and related reporting requirements, and for receiving financial reports from such registrants. SROs that agree to participate in a plan to allocate common members to a DSRO are referred to as JAC members under Regulation 1.52. The examination requirements proposed to be amended are effectively identical for SROs and JACs, and the Commission's proposed amendments would revise the examination requirements for both the SROs and JACs.

[31] Regulation 1.52(c)(2)(iv).

[32] Customer Protection Rulemaking, 78 FR 65506, 68562.

examinations expert's evaluation provides important oversight of the SRO FCM examination standards by an independent third-party that is an expert in the understanding and application of the auditing standards issued by the PCAOB. Accordingly, the Commission is not proposing to eliminate the requirement in Regulation 1.52 for an SRO or JAC to engage an examinations expert at the initiation of the development of its supervisory program, or at different periods of time after the initial evaluation.

The Commission, however, further believes that the frequency of an examinations expert's evaluation of an SRO's or JAC's FCM examination standards should not be based upon a fixed timeframe of once every three years and is therefore proposing amendments that provide for flexibility dependent upon changes in auditing standards issued by the PCAOB.

Accordingly, the Commission is proposing that SROs and JACs must review and revise their respective FCM examination standards promptly after the issuance of new or amended auditing standards by the PCAOB that have an impact on the FCM examination standards. The SRO or JAC also must engage an examinations expert to evaluate the consistency of the revised FCM examination standards with the PCAOB auditing standards whenever the SRO or JAC adopts material amendments to their respective FCM examination standards.[33] The proposal would further provide the DSIO Director with the authority to direct an SRO or JAC to engage an examinations expert. This will address cases where DSIO staff believes that new or amended PCAOB audit standards have a material impact on FCM examinations standards, when an SRO of JAC has not otherwise engaged an examinations expert.[34]

The proposal would also set a requirement that an SRO or JAC must engage an examinations expert at least once every five years to address situations where the SRO or JAC have not considered any new or amended PCAOB auditing standards issued during the preceding five years to be material to the FCM examination standards. The Commission is proposing this five-year limit based upon the importance of the FCM examination process by SROs and JACs and its belief that third-party experts should evaluate the FCM examination standards at least once every five years to ensure that they are consistent with PCAOB auditing standards. The Commission requests specific comment on whether the amended timeframe of five years is appropriate, or whether a different timeframe would be more appropriate.

In proposing the amendment to revise the FCM examination standards, the Commission is intending to limit the examinations expert's evaluation to those FCM examination standards that are new or revised since the last examinations expert's review or assessment. The Commission does not expect the examinations expert to re-assess each examination standard each time an evaluation is performed, but only those standards that may be susceptible to change based on the examinations expert's opinion, auditing standards adopted or amended by the PCAOB, and the examinations expert's understanding of the CFTC regulatory requirements in consultation with SRO or JAC.

### *D. Technical Amendments to Regulation 1.52*

The Commission is proposing several technical amendments to Regulation 1.52 which eliminate redundancies and simplify the intent of the rule. Specifically, the Commission is consolidating the FCM examination standards listed in paragraphs (c)(2)(ii) and (iii) of Regulation 1.52 governing SROs into a single revised Regulation 1.52(c)(2)(ii).[35] The Commission also is proposing to amend paragraph (d)(2)(ii)(F) to reflect the consolidation of the FCM examination standards in revised Regulation 1.52(c)(2)(ii).

## III. Cost-Benefit Considerations

### *A. Introduction*

Section 15(a) of the Act requires the CFTC to consider the costs and benefits of its actions before promulgating a regulation under the Act or issuing certain orders.[36] Section 15(a) of the Act further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The CFTC considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors below.

Where reasonably feasible, the CFTC endeavors to estimate quantifiable costs and benefits. Where quantification is not feasible, the CFTC identifies and describes costs and benefits qualitatively.

The CFTC requests comment on the costs and benefits associated with the proposed rule amendments. In particular, the CFTC requests that commenters provide data and any other information or statistics that the commenters relied on to reach any conclusions regarding the CFTC's proposed considerations of costs and benefits.

### *B. Economic Baseline*

The CFTC's economic baseline for this proposed rule amendment analysis is the requirements of Regulation 1.52 that exist today. Specifically, current Regulation 1.52 requires an SRO or a JAC to engage an examinations expert to evaluate its supervisory program prior to its initial use, and to evaluate the SRO's application of the supervisory

[33] The purpose of the proposal is for an SRO or JAC to promptly amend their respective FCM examination standards whenever the PCAOB issues new or revised auditing standards that are relevant to the SRO's or JAC's examinations of member FCMs. The SRO or JAC would further be required to engage an examinations expert to evaluate the consistency of any material amendments to the FCM examination standards with the PCAOB new or revised auditing standards. However, the Commission would not expect an SRO or JAC to engage an examinations expert if the amendments to the FCM examination standards are not material. The Commission also would not expect an SRO or JAC to engage an examinations expert more frequently than once every 12 months.

In the context of the JAC, the annual JAC meeting required by Regulation 1.52(d) may serve as the appropriate forum for discussing amendments to the FCM examination standards, and if necessary, a vote of JAC members could determine that engagement of the examinations expert to more fully assess the supervisory program standards in the context of a non-financial statement audit is warranted.

[34] The Commission also notes that proposal does not prescribe a specific timeframe for which the SRO or JAC should implement any revised examination standards, but only that the adoption must occur ''promptly.'' This is because the time needed to comport the newly adopted auditing standard into a newly adopted examination standard may vary depending on the complexity of the standard and whether the examinations expert has been engaged. For avoidance of any doubt, the Commission expects ''promptly'' adoption to occur within a reasonable amount of time under the circumstances. In the event that the adoption should take longer than one year from the time a PCAOB auditing standard is made effective, the SRO or JAC may petition the Director of the Division of Swap Dealer and Intermediary Oversight for a longer permitted adoption timeframe.

[35] The Commission notes that current paragraphs (c)(2)(ii) and (d)(2)(ii)(F) both contain an explanatory sentence of what topics within PCAOB auditing standards should be used in order to conform the examination standards. The Commission reads paragraph (c)(2)(iii), and by cross-reference (d)(2)(ii)(G), to already include each of these topics. Moreover, paragraph (c)(2)(iii) more appropriately uses in this context the term ''examination,'' as opposed to ''audit'' to articulate this construction.

[36] 7 U.S.C. 19(a).

program at least once every three years after its initial use.

The Commission's proposal would not alter the requirement for an SRO or JAC to engage an examinations expert to evaluate its supervisory program prior to the initial use of the supervisory program. The Commission is proposing, however, to eliminate the requirement that the examinations expert must review the SRO's or JAC's ongoing application of its supervisory program during periodic reviews and the analysis of the supervisory program's design to detect material weaknesses in internal controls during both periodic reviews and the initial review prior to the program's initial use. The Commission also is proposing to revise the frequency of when an SRO or JAC must engage an examinations expert, as discussed below.

The Commission's proposal to eliminate the requirement that an examinations expert evaluate an SRO's or JAC's application of its supervisory program and the program's design to detect material weaknesses in internal controls will reduce costs to the SROs and JACs. The proposal, however, would not substantially reduce the benefits obtained from an evaluation of the SROs' and JACs' supervisory program, including internal controls, as such reviews are performed by Commission staff on a routine basis. Commission staff evaluates the SRO's or JAC's execution of its supervisory program, including performing detailed reviews of SRO and JAC examination work papers, to assess the scope of the work performed by SRO and JAC staff members and to determine whether the conclusions reached by SRO and JAC staff members are supported by the work performed. Commission staff also reviews all SRO and JAC examination programs for conducting examinations of FCMs to assess the completeness of such programs and to determine that such programs properly reflect any regulatory updates, including rule amendments, adopted since the Commission staff's previous review of the examination programs. Reviews of execution and completeness of supervisory programs for FCMs occur no less frequently than annually. Commission staff has a particular expertise in determining whether registrants are in compliance with Commission regulatory requirements that makes a third-party review redundant.

The Commission proposes to continue to require that an examinations expert review the FCM examination standards contained in the supervisory program for consistency with PCAOB auditing standards, but is proposing to revise the timeframe for such reviews. Currently, Regulation 1.52 requires an SRO or JAC to engage an examinations expert at least once every three years to perform such a review. The Commission is proposing to amend Regulation 1.52 to require an SRO or JAC to engage an examinations expert if the PCAOB issued new or revised auditing standards that are material to the SRO's or JAC's examination of member FCMs.

The examinations expert's review, however, would be limited to only the new or revised PCAOB auditing standards that are applicable to the SRO's or JAC's examination of FCMs. Accordingly, the examinations expert would not have to review all of the SRO's or JAC's FCM examination standards for consistency with PCAOB audit standards. The proposal would further require an SRO or JAC to engage an examinations expert at least once every five years even if the SRO or JAC determined that the PCAOB did not issue new or revised auditing standards during the previous five-year period that are material to its examinations of member FCMs. Based on past experience, the Commission anticipates that the adoption of new or revised auditing standards that are material to examination standards applicable to FCMs will be infrequent, and therefore the triggering of an examinations expert review will also likely be an infrequent event.[37] Finally, the proposal would provide that an SRO or JAC must engage an examinations expert if directed to by the Director of the Division of Swap Dealer and Intermediary Oversight.[38]

The proposed amendments to Regulation 1.52 are intended to streamline the process under which examinations experts conduct their reviews and the time period between those reviews. The Commission believes that these amendments will make conducting the reviews more efficient and less costly, while still balancing the importance of having an independent third-party examinations expert in auditing standards evaluating the examination standards used by SROs and the JAC.

The Commission does not anticipate that there will be any significant increased costs associated with the proposed amendments. By narrowing the intended scope of examination reviews from an evaluation of the supervisory program to an assessment of the examinations standards for conformity with auditing standards established by the PCAOB as they apply to examinations, the Commission is purposely limiting the scope of the examinations expert's review. The Commission anticipates that this limitation, coupled with extending the time period between expert examiner reviews, will significantly limit the costs associated with engaging and hiring an examinations expert.[39] Nonetheless, the Commission believes that these amendments appropriately balance the integrity of the examination program with its costs while continuing to ensure that there is sufficient oversight over the minimum financial requirements at FCMs. As noted, Commission staff reviews no less frequently than annually all SRO and JAC examination programs and anticipates that it will continue to do so. These Commission staff reviews will continue to provide the benefits that have been associated with the examinations experts' reviews.

*C. CEA Section 15(a) Factors*

i. Protection of Market Participants and the Public

The Commission preliminarily believes that this proposal maintains the protection of market participants and the public provided by the current regulation. The proposal will continue to protect market participants and the public by ensuring that there is sufficient oversight over the minimum financial requirements at FCMs. As noted, the Commission believes that Commission staff is well-equipped to provide reviews that, under the proposal, would no longer be provided by outside examinations experts and Commission staff intends to continue to conduct such reviews.

ii. Efficiency, Competitiveness, and Financial Integrity of Markets

The Commission preliminarily believes that Regulation 1.52 as amended will continue to help ensure that FCMs can meet their financial and

[37] Since 2016 PCAOB has adopted approximately two new standards, neither of which had a significant impact on the examination standards applicable to FCMs. *See* PCAOB website available at: *https://pcaobus.org/Standards/Pages/Current_Activities_Related_to_Standards.aspx.*

[38] For example, in circumstances where an SRO or JAC has not engaged an examination expert yet DSIO staff believes a material change to PCAOB auditing standards warrants such engagement.

[39] In the 2013 Customer Protection Rulemaking, the Commission found that it was not feasible to quantify any costs associated with utilizing an examinations expert, largely because several nationally recognized accounting firms expressed their reluctance to provide such information. While it is likely not feasible to quantify such costs for the use of an examinations expert under the proposed amendments, such costs are likely much less than the costs under the existing rule. *See,* 2013 Customer Protection Rulemaking at 68605.

operational obligations to both customers and DCOs, which, along with the Commission's ongoing reviews, will continue to foster the efficiency and financial integrity of markets. The Commission has not identified any effect of Regulation 1.52 on the competitiveness of derivatives markets.

iii. Price Discovery

The Commission has not identified any material effect of the proposed amendments on the price discovery process in futures and swap markets.

iv. Sound Risk Management Practices

The Commission preliminarily believes that Regulation 1.52 as amended, along with the Commission's ongoing reviews, will continue to help ensure that FCMs can meet their financial and operational obligations to both customers and DCOs, which should continue to foster sound risk management practices.

v. Other Public Interest Considerations

The Commission has not identified any additional public interest considerations associated with the proposal.

*D. Consideration of Alternatives*

The Commission considered adopting the CME's suggestion to fully eliminate the requirement that a third-party public accounting firm perform periodic evaluations and assessments of an SRO's program to oversee its member FCMs' compliance with financial and related reporting requirements. The Commission determined instead to eliminate the requirement that the examinations expert must periodically review the SRO's or JAC's ongoing application of its supervisory program, while maintaining reviews of an FCM's examinations standards at a modified interval. The Commission preliminarily believes that there are significant benefits associated with having an outside auditor performing evaluations of examination standards at least every five years (and also when there are material and relevant changes in PCAOB auditing standards) as required by the proposed amendments. While, as noted, Commission staff is well-equipped to review the ongoing application of SRO and JAC supervisory programs and intends to continue to do so at least annually, the Commission believes that third-party public accounting firms are best equipped to perform evaluations of examination standards for conformity with auditing standards established by the PCAOB as they apply to examinations.

The Commission also considered maintaining the current rule, but the Commission anticipates that the proposal will significantly reduce costs to SROs and JACs without materially impacting benefits.

The CFTC requests comment on these alternatives as well as any other alternatives that commenters believe would present a superior cost-benefit profile to the proposal.

## IV. Related Matters

*A. Regulatory Flexibility Act*

The Regulatory Flexibility Act (''RFA'')[40] requires Federal agencies, in promulgating regulations, to consider the impact of those regulations on small entities. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on small entities in accordance with the RFA.[41] The proposed regulations would affect designated contract markets.

The Commission has previously determined that designated contract markets are not small entities for purposes of the RFA, and, thus, the requirements of the RFA do not apply to designated contract markets.[42] Accordingly, the Chairman, on behalf of the Commission, certifies pursuant to 5 U.S.C. 605(b) that the proposed regulations would not have a significant economic impact on a substantial number of small entities.

*B. Paperwork Reduction Act*

This proposed rulemaking does not amend existing information collection requirements. The Paperwork Reduction Act (''PRA'') provides that a federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number issued by the Office of Management and Budget (''OMB'').[43] The Commission is proposing amendments to rules that have previously identified collections of information under a pre-existing collection 3038–0052. The proposed amendments, however, only increase the respondents permitted time to file required information and reduce the requirements of review contained therein. As such, the previously identified response hours in collection 3038–0052 remain a reasonable burden hour estimate.

The collections contained in this rulemaking are mandatory collections. In formulating burden estimates for the collections in this rulemaking, to avoid double accounting of information collections that already have been assigned control numbers by OMB, or are covered as burden hours in collections of information pending before OMB, the PRA analysis provided in the proposed rulemaking, along with the information collection request (''ICR'') with burden estimates that were incorporated into the rulemaking by reference and submitted to OMB, accounted only burden estimates for collections of information that have not previously been submitted to OMB. The Commission invites comment on the collections of information contained in the proposed rulemaking only to the extent that the collections in the proposed rulemaking would increase the burden hours contained with respect to each of the related currently valid or proposed collections.

**List of Subjects in 17 CFR Part 1**

Brokers, Commodity futures, Consumer protection, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR part 1 as follows:

## PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

**Authority:** 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6*l,* 6m, 6n, 6*o,* 6p, 6r, 6s, 7, 7a–1, 7a–2, 7b, 7b–3, 8, 9, 10a, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24 (2012).

■ 2. Amend § 1.52 as follows:
■ a. Revise paragraphs (c)(2)(ii), (iii), (iv), and (v);
■ b. Remove paragraphs (c)(2)(vi) and (vii);
■ c. Revise paragraphs (d)(2)(ii)(F), (G), (H), and (I);
■ d. Remove paragraphs (d)(2)(ii)(J) and (K); and
■ e. Revise paragraph (d)(2)(iii).

The revisions read as follows:

**§ 1.52 Self-regulatory organization adoption and surveillance of minimum financial requirements.**

* * * * *

(c) * * *

(2) * * *

(ii) The supervisory program must, at a minimum, have examination standards addressing the following:

(A) The ethics of an examiner;

[40] 5 U.S.C. 601 *et seq.*

[41] 47 FR 18618 (Apr. 30, 1982).

[42] *Id.* at 18619.

[43] 44 U.S.C. 3501 *et seq.*

(B) The independence of an examiner;
(C) The supervision, review, and quality control of an examiner's work product;
(D) The evidence and documentation to be reviewed and retained in connection with an examination;
(E) The sampling size and techniques used in an examination;
(F) The examination risk assessment process;
(G) The examination planning process;
(H) Materiality assessment;
(I) Quality control procedures to ensure that the examinations maintain the level of quality expected;
(J) Communications between an examiner and the regulatory oversight committee, or the functional equivalent of the regulatory oversight committee, of the self-regulatory organization of which the futures commission merchant is a member;
(K) Communications between an examiner and a futures commission merchant's audit committee of the board of directors or other similar governing body;
(L) Analytical review procedures;
(M) Record retention; and
(N) Required items for inclusion in the examination report, such as repeat violations, material items, and high risk issues. The examination report is intended solely for the information and use of the self-regulatory organizations and the Commission, and is not intended to be and should not be used by any other person or entity.

(iii)(A) Prior to the initial implementation of the supervisory program, a self-regulatory organization must engage an examinations expert to evaluate the examination standards for consistency with auditing standards issued by the Public Company Accounting Oversight Board as such auditing standards are applicable in the context of the self-regulatory organization's examination of its futures commission merchant members. At least once every five years after the initial implementation of the supervisory program, a self-regulatory organization must engage an examinations expert to evaluate the examination standards for consistency with any new or amended auditing standards issued by the Public Company Accounting Oversight Board since the previous review performed by the examinations expert. At the conclusion of each evaluation, a self-regulatory organization must obtain a written report from the examinations expert in accordance with paragraph (c)(2)(iii)(C) of this section.

(B) Notwithstanding paragraph (c)(2)(iii)(A) of this section, a self-regulatory organization must review any new or amended auditing standards issued by the Public Company Accounting Oversight Board, and must revise its examination standards promptly to reflect any changes in such auditing standards that are applicable in the context of the self-regulatory organization's examination of its futures commission merchant members. A self-regulatory organization must engage an examinations expert to evaluate any material revisions that the self-regulatory organization makes to the examination standards to conform such standards with the Public Company Accounting Oversight Board's auditing standards, or if directed to engage an examinations expert by the Director of the Division of Swap Dealer and Intermediary Oversight. At the conclusion of each review, a self-regulatory organization must obtain a written report from the examinations expert in accordance with paragraph (c)(2)(iii)(C) of this section.

(C) At the conclusion of the examinations expert's engagement pursuant to paragraph (c)(2)(iii)(A) or (B) of this section, the self-regulatory organization must obtain from the examinations expert a written report on findings and recommendations issued under the consulting services standards of the American Institute of Certified Public Accountants. The self-regulatory organization must provide the Director of the Division of Swap Dealer and Intermediary Oversight with a copy of the examinations expert's written report, and the self-regulatory organization's written responses to any of the examinations expert's findings and recommendations, within thirty days of the receipt thereof. Upon resolution of any questions or comments raised by the Division of Swap Dealer and Intermediary Oversight, and upon written notice from the Division of Swap Dealer and Intermediary Oversight that it has no further comments or questions on the examinations standards as amended (by reason of the examinations expert's proposals, consideration of the Division of Swap Dealer and Intermediary Oversight's questions or comments, or otherwise), the self-regulatory organization shall commence applying such examinations standards for examining its registered futures commission merchant members for all examinations conducted with an ''as of'' date later than the date of the Division of Swap Dealer and Intermediary's written notification.

(iv) The supervisory program must require the self-regulatory organization to report to its risk and/or audit committee of the board of directors, or a functional equivalent committee, with timely reports of the activities and findings of the supervisory program to assist the risk and/or audit committee of the board of directors, or a functional equivalent committee, to fulfill its responsibility of overseeing the examination function.

(v) The examinations expert's written report, the self-regulatory organization's response, if any, as well as any information concerning the supervisory program is confidential.

(d) * * *
(2) * * *
(ii) * * *

(F) The Joint Audit Program must include examination standards addressing the items listed in paragraph (c)(2)(ii) of this section.

(G)(*1*) Prior to the initial implementation of the Joint Audit Program, the Joint Audit Committee must engage an examinations expert to evaluate the examination standards for consistency with auditing standards issued by the Public Company Accounting Oversight Board as such auditing standards are applicable in the context of the Joint Audit Committee's examination of its futures commission merchant members. At least once every five years after the initial implementation of the Joint Audit Program, the Joint Audit Committee must engage an examinations expert to evaluate the examination standards for consistency with any new or amended auditing standards issued by the Public Company Accounting Oversight Board since the previous review performed by the examinations expert. At the conclusion of each review, the Joint Audit Committee must obtain a written report from the examinations expert in accordance with paragraph (d)(2)(ii)(G)(*3*) of this section.

(*2*) Notwithstanding paragraph (d)(2)(ii)(G)(*1*) of this section, the Joint Audit Committee must review any new or amended auditing standards issued by the Public Company Accounting Oversight Board, and must revise its examination standards promptly to reflect any changes in such auditing standards that are applicable in the context of the Joint Audit Committee's examination of its futures commission merchant members. The Joint Audit Committee must engage an examinations expert to evaluate any material revisions that the Joint Audit Committee makes to the examination standards to conform such standards with the Public Company Accounting Oversight Board's auditing standards, or if directed to engage an examinations expert by the Director of the Division of

Swap Dealer and Intermediary Oversight. The Joint Audit Committee must obtain a written report from the examinations expert in accordance with paragraph (d)(2)(ii)(G)(*3*) of this section.

(*3*) At the conclusion of the examinations expert's engagement pursuant to paragraph (d)(2)(ii)(G)(*1*) or (*2*) of this section, the Joint Audit Committee must obtain from the examinations expert a written report on findings and recommendations issued under the consulting services standards of the American Institute of Certified Public Accountants. The Joint Audit Committee must provide the Director of the Division of Swap Dealer and Intermediary Oversight with a copy of the examinations expert's written report, and the Joint Audit Committee's written responses to any of the examinations expert's findings and recommendations, within thirty days of the receipt thereof. Upon resolution of any questions or comments raised by the Division of Swap Dealer and Intermediary Oversight, and upon written notice from the Division of Swap Dealer and Intermediary Oversight that it has no further comments or questions on the examinations standards as amended (by reason of the examinations expert's proposals, consideration of the Division of Swap Dealer and Intermediary Oversight's questions or comments, or otherwise), the Joint Audit Committee shall commence applying such examinations standards for examining its registered futures commission merchant members for all examinations conducted with an ''as of'' date later than the date of the Division of Swap Dealer and Intermediary's written notification.

(H) The Joint Audit Program must require the Joint Audit Committee members to report to their respective risk and/or audit committee of their respective board of directors, or a functional equivalent committee, with timely reports of the activities and findings of the Joint Audit Program to assist the risk and/or audit committee of the board of directors, or a functional equivalent committee, to fulfill its responsibility of overseeing the examination function.

(I) The examinations expert's written report, the Joint Audit Committee's response, if any, as well as any information concerning the supervisory program is confidential.

(iii) *Meetings of the Joint Audit Committee.* (A) The Joint Audit Committee members must meet at least once each year. During such meetings, the Joint Audit Committee members shall consider revisions to the Joint Audit Program as a result of regulatory changes, revisions to the examination standards resulting from new or amended auditing standards issued by the Public Company Accounting Oversight Board, or the results of an examinations expert's review.

(B) In addition to the items considered in paragraph (d)(2)(iii)(A) of this section, the Joint Audit Committee members must consider the following items during the meetings:

(*1*) Coordinating and sharing information between the Joint Audit Committee members, including issues and industry concerns in connection with examinations of futures commission merchants;

(*2*) Identifying industry regulatory reporting issues and financial and operational internal control issues and modifying the Joint Audit Program accordingly;

(*3*) Issuing risk alerts for futures commission merchants and/or designated self-regulatory organization examiners on an as-needed basis;

(*4*) Responding to industry issues; and

(*5*) Providing industry feedback to Commission proposals.

(C) Minutes must be taken of all meetings and distributed to all members on a timely basis.

(D) The Director of the Division of Swap Dealer and Intermediary Oversight must receive timely prior notice of each meeting, have the right to attend and participate in each meeting and receive written copies of the minutes required pursuant to paragraph (d)(2)(iii)(C) of this section, respectively.

* * * * *

Issued in Washington, DC, on June 28, 2018, by the Commission.

**Christopher Kirkpatrick,**

*Secretary of the Commission.*

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

## Appendix to Financial Surveillance Examination Program Requirements for Self-Regulatory Organizations—Commission Voting Summary

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

[FR Doc. 2018–14272 Filed 7–2–18; 8:45 am]

**BILLING CODE 6351–01–P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

### 29 CFR Part 1910

**[Docket No. OSHA–2018–0003]**

**RIN 1218–AB76**

## Revising the Beryllium Standard for General Industry

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** With this document, OSHA is withdrawing the proposed rule that accompanied its direct final rule (DFR) amending the beryllium standard for general industry to address the application of the standard to materials containing trace amounts of beryllium.

**DATES:** As of July 3, 2018, the proposed rule published May 7, 2018 (83 FR 19989) is withdrawn.

**FOR FURTHER INFORMATION CONTACT:**

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

*General information and technical inquiries:* William Perry or Maureen Ruskin, Directorate of Standards and Guidance, Room N–3718, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–1950; fax: (202) 693–1678.

*Copies of this* ***Federal Register*** *document and news releases:* Electronic copies of these documents are available at OSHA's web page at *http://www.osha.gov.*

**SUPPLEMENTARY INFORMATION:** On May 7, 2018, OSHA published a DFR amending the application of the beryllium standard to materials containing trace amounts of beryllium (83 FR 19936). OSHA also published a companion proposed rule proposing the same changes to the beryllium standard (83 FR 19989). In the DFR, OSHA stated that it would withdraw the companion proposed rule and confirm the effective date of the DFR if no significant adverse comments were submitted on the DFR by June 6, 2018. OSHA received seven comments in the record from Materion Brush, Inc., Mead Metals Inc., National Association of Manufacturers, Airborn, Inc., Edison Electric Institute, and two private citizens (Document ID OSHA–2018–0003–0004 thru OSHA–2018–0003–0010). The seven submissions

contained comments that were either supportive of the DFR or were considered not to be significant adverse comments (Document IDs OSHA–2018–0003–0004 thru OSHA–2018–0003–0010). Three of these submissions also contained comments that were outside the scope of the DFR and OSHA is not considering portions of those submissions that are outside the scope (OSHA–2018–0003–0004 thru OSHA–2018–0003–0006). Accordingly, OSHA is not proceeding with the proposed rule and is withdrawing it from the rulemaking process.

**List of Subjects in 29 CFR Part 1910**

Beryllium, General industry, Health, Occupational safety and health.

**Authority and Signature**

Loren Sweatt, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this document under the following authorities: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order 5–2007 (72 FR 31159), and 29 CFR part 1911.

Signed at Washington, DC, on June 27, 2018.

**Loren Sweatt,**

*Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2018–14275 Filed 7–2–18; 8:45 am]

**BILLING CODE 4510–26–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R09–OAR–2018–0222; FRL–9980–21—Region 9]**

## Approval of Arizona Air Plan; Hayden Lead Nonattainment Area Plan for the 2008 Lead Standard

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the State of Arizona to meet Clean Air Act (CAA or ''Act'') requirements applicable to the Hayden lead (Pb) nonattainment area (''Hayden Lead NAA''). The EPA is proposing to approve the base year emissions inventory, the attainment demonstration, the control strategy, including reasonably available control technology and reasonably available control measures demonstrations, the reasonable further progress demonstration, the contingency measure, and the new source review (NSR) provisions of the submittal as meeting the requirements of the CAA and the EPA's implementing regulations for the 2008 lead national ambient air quality standard (NAAQS).

**DATES:** Any comments on this proposal must arrive by August 2, 2018.

**ADDRESSES:** Submit comments, identified by docket number EPA–R09–OAR–2018–0222, at *http://www.regulations.gov*, or via email to *Vagenas.Ginger@epa.gov*. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, 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 EPA's full 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:** Ginger Vagenas, EPA Region IX, 415–972–3964, *vagenas.ginger@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document, the terms ''we,'' ''us,'' and ''our'' mean the EPA.

**Table of Contents**

I. Background
A. The Lead NAAQS
B. Designation of the Hayden Lead NAA
C. CAA Requirements for Lead Nonattainment Areas
D. Sources of Lead in the Hayden Lead NAA
II. Arizona's SIP Submittal To Address the Hayden Lead NAA
A. Arizona's SIP Submittal
B. CAA Procedural and Administrative Requirements for SIP Submittals
III. CAA and Regulatory Requirements for Lead Attainment SIPs
A. CAA and EPA Guidance
B. Infrastructure SIPs for Lead
IV. Review of the 2017 Hayden Lead Plan
A. Summary of the EPA's Proposed Actions
B. Emissions Inventories
C. Reasonably Available Control Measure/Reasonably Available Control Technology Demonstration and Adopted Control Strategy
D. Attainment Demonstration
E. Reasonable Further Progress Demonstration
F. Contingency Measures
G. New Source Review
V. The EPA's Proposed Action and Request for Public Comments
A. The EPA's Proposed Approvals
B. Request for Public Comments
VI. Statutory and Executive Order Reviews

## I. Background

### *A. The Lead NAAQS*

Under the CAA, the EPA must establish NAAQS for six pollutants, including lead. Lead is generally emitted in the form of particles that are deposited in water, soil, and dust. People may be exposed to lead by inhaling it or by ingesting lead-contaminated food, water, soil, or dust. Once in the body, lead is quickly absorbed into the bloodstream and can result in a broad range of adverse health effects including damage to the central nervous system, cardiovascular function, kidneys, immune system, and red blood cells. Children are particularly vulnerable to lead exposure, in part because they are more likely to ingest lead and in part because their still-developing bodies are more sensitive to the effects of lead. The harmful effects to children's developing nervous systems (including their brains) arising from lead exposure may include IQ [1] loss, poor academic achievement, long-term learning disabilities, and an increased risk of delinquent behavior.

The EPA first established a lead standard in 1978 at 1.5 micrograms per meter cubed ($\mu g/m^3$) as a quarterly average.[2] Based on new health and scientific data, the EPA revised the federal lead standard to 0.15 $\mu g/m^3$ and revised the averaging time for the standard on October 15, 2008.[3] A violation of the standard occurs when ambient lead concentrations exceed 0.15

[1] IQ (intelligence quotient) is a score created by dividing a person's mental age score, obtained by administering an intelligence test, by the person's chronological age, both expressed in terms of years and months. ''Glossary of Important Assessment and Measurement Terms,'' Philadelphia, PA: National Council on Measurement in Education. 2016.

[2] *See* 43 FR 46246 (October 5, 1978).

[3] *See* 73 FR 66964 (November 12, 2008) (''lead NAAQS rule'').

μg/m[3] averaged over a 3-month rolling period.

*B. Designation of the Hayden Lead NAA*

The process for designating areas following promulgation of a new or revised NAAQS is set forth in section 107(d) of the CAA. The CAA requires the EPA to complete the initial area designations process within two years of promulgating a new or revised NAAQS. Section 107(d) of the CAA allows the EPA to extend the period for initial designations for up to a year in cases where the available information is insufficient to promulgate designations. The initial designations for the 2008 lead NAAQS were established in two rounds and were completed on November 22, 2010 and November 22, 2011.[4] The EPA initially designated the Hayden, Arizona area as unclassifiable due to insufficient monitoring data.[5]

The CAA grants the EPA the authority to change the designation of areas (''redesignate'') in light of changes in circumstances. More specifically, the EPA has the authority under CAA section 107(d)(3) to redesignate areas based on air quality data, planning, and control considerations, or any other air quality-related considerations. In June 2013, we determined that quality assured, certified monitoring data collected in 2012 at the Arizona Department of Environmental Quality (ADEQ or ''State'') Globe Highway monitor showed that the area was violating the lead NAAQS. Accordingly, on May 2, 2014, the EPA issued a proposal to redesignate the Hayden area to nonattainment for the 2008 lead NAAQS. That proposal was finalized on September 3, 2014, effective October 3, 2014.[6] [7]

*C. CAA Requirements for Lead Nonattainment Areas*

Designation of an area as nonattainment starts the process for a state to develop and submit to the EPA a SIP under title 1, part D of the CAA. Under CAA sections 191(a) and 192(a), attainment demonstration SIPs for the lead NAAQS are due 18 months after the effective date of an area's nonattainment designation and must provide for attainment of the standard as expeditiously as practicable, but no later than five years after designation.[8] The CAA requires that the SIP include emissions inventories, a reasonable further progress (RFP) demonstration, a reasonably available control measures/reasonably available control technology (RACM/RACT) demonstration, an attainment demonstration, and contingency measures. In general, to demonstrate timely attainment, control measures need to be implemented as expeditiously as practicable.

*D. Sources of Lead in the Hayden Lead NAA*

Stationary sources of lead are generally large industrial sources, including metals processing, particularly primary and secondary lead smelters. Lead can also be emitted by iron and steel foundries, primary and secondary copper smelters, industrial, commercial and institutional boilers, waste incinerators, glass manufacturing, refineries, and cement manufacturing. ADEQ has determined that the cause of the nonattainment status in the Hayden area is the primary copper smelter owned and operated by ASARCO, LLC (''Asarco''). The State notes that this facility ''accounts for over 99 percent of Pb emissions'' and that the ''[e]missions generally come from the hot-metal smelting process and lead-bearing fugitive dust.'' [9]

Because regional ambient air lead concentrations indicate low ambient lead levels relative to the 2008 lead NAAQS, and because the only ambient levels exceeding the NAAQS were at sites near the Asarco facility, ADEQ's lead attainment strategy is focused on reducing lead emissions generated by this source.

## II. Arizona's SIP Submittal To Address for the Hayden Lead NAA

*A. Arizona's SIP Submittal*

ADEQ is the air quality agency that develops SIPs for the Hayden area. The SIP for the Hayden Lead NAA, entitled ''SIP Revision: Hayden Lead Nonattainment Area'' (''2017 Hayden Lead Plan'' or ''Plan'') was due April 3, 2016. It was adopted by ADEQ on March 3, 2017, and submitted to the EPA on the same day.[10]

*B. CAA Procedural and Administrative Requirements for SIP Submittals*

CAA sections 110(a)(1) and (2) and 110(l) require a state to provide reasonable public notice and opportunity for public hearing prior to the adoption and submittal of a SIP or SIP revision. To meet this requirement, every SIP submittal should include evidence that adequate public notice was given and a public hearing was held consistent with the EPA's implementing regulations in 40 CFR 51.102.

ADEQ has satisfied applicable statutory and regulatory requirements for reasonable public notice and hearing prior to adoption and submittal of the 2017 Hayden Lead Plan. The State provided a public comment period and held a public hearing prior to the adoption of the Plan on March 3, 2017. The SIP submittal includes notices of the State's public hearing as evidence that the hearing was properly noticed.[11] We therefore find that the submittal meets the procedural requirements of CAA sections 110(a) and 110(l).

CAA section 110(k)(1)(B) requires the EPA to determine whether a SIP submittal is complete within 60 days of receipt. This section also provides that any plan that the EPA has not affirmatively determined to be complete or incomplete will become complete six months after the date of submittal by operation of law. The EPA's SIP completeness criteria are found in 40 CFR part 51, appendix V. The 2017 Hayden Plan became complete by operation of law on September 3, 2017.

## III. CAA and Regulatory Requirements for Lead Attainment SIPs

*A. CAA and EPA Guidance*

Requirements for the lead NAAQS are set forth in title 1, part D, subparts 1 and 5 of the CAA, which includes section 172, ''Nonattainment plan provisions in general,'' and sections 191 and 192, ''Plan submission deadlines'' and ''Attainment dates,'' respectively.

Section 192(a) establishes that the attainment date for lead nonattainment areas is ''as expeditiously as practicable'' but no later than five years from the date of the nonattainment designation for the area. The EPA designated the Hayden area as a nonattainment area effective October 3, 2014, and thus the applicable attainment date is no later October 3, 2019. Under section 172(a)(2)(D), the Administrator is precluded from granting an extension of this attainment date because the statute separately establishes a specific attainment date in section 192(a).

Section 172(c) contains the general statutory planning requirements applicable to all nonattainment areas,

[4] *See* 75 FR 71033 and 76 FR 72097.

[5] Arizona Department of Environmental Quality's Globe Highway monitor registered four violations of the lead NAAQS in 2011; however, at the time of designation the data had not been quality assured and certified. Consequently, we did not rely on them as the basis for a nonattainment designation.

[6] *See* 79 FR 52205.

[7] For an exact description of the Hayden Lead NAA, *see* 40 CFR 81.303.

[8] For the Hayden Lead NAA, the attainment date is October 3, 2019.

[9] Plan, page 38.

[10] *See* letter dated March 3, 2017, from Timothy S. Franquist, Director, Air Quality Division, ADEQ, to Alexis Strauss, Acting Regional Administrator, EPA Region IX.

[11] *See* 2017 Hayden Lead Plan, Appendix F, Public Process Documentation.

including the requirements for emissions inventories, RACM/RACT, attainment demonstrations, RFP demonstrations, and contingency measures. When the EPA issued the lead NAAQS rule, we included some guidelines for implementing these planning requirements.[12] The EPA also issued several guidance documents related to planning requirements for the lead NAAQS.[13] These include:

- ''2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS) Implementation Questions and Answers,'' Memorandum from Scott L. Mathias, Interim Director, Air Quality Policy Division, EPA Office of Air Quality Planning and Standards, to Regional Air Division Directors, Regions I–X, July 8, 2011, (''Lead Q&A''); and
- ''Addendum to the 2008 Lead NAAQS Implementation Questions and Answers Signed on July 11, 2011, by Scott Mathias,'' August 10, 2012. (''Lead Q&A Addendum''); and
- *Implementation of the 2008 Lead National Ambient Air Quality Standards—Guide to Developing Reasonably Available Control Measures (RACM) for Controlling Lead Emissions,* EPA Office of Air Quality Planning and Standards, EPA–457/R–12–001, March 2012 (''Lead RACM Guidance'').

The lead NAAQS rule and its preamble and the guidance documents address the statutory planning requirements for emissions inventories, RACM/RACT, attainment demonstrations including air quality modeling requirements, RFP demonstrations, and contingency measures. The lead NAAQS rule also addresses other matters such as monitoring, designations, lead infrastructure SIPs, and exceptional events. We will discuss each of the CAA and regulatory requirements for lead attainment plans in the next section, which details our review of the 2017 Hayden Lead Plan.

### *B. Infrastructure SIPs for Lead*

Under section 110 of the CAA, all states (including those without nonattainment areas) are required to submit infrastructure SIPs within three years of the promulgation of a new or revised NAAQS. Because the lead NAAQS was signed and widely disseminated on October 15, 2008, the infrastructure SIPs were due by October 15, 2011. Section 110(a)(1) and (2) require states to address basic program elements, including requirements for emissions inventories, monitoring, and modeling, among other things. Subsections (A) through (M) of section 110(a)(2) set forth the elements that a state's program must contain in the SIP. Arizona's lead infrastructure SIP was approved by the EPA on August 10, 2015.[14]

## IV. Review of the 2017 Hayden Lead Plan

### *A. Summary of the EPA's Proposed Actions*

The EPA is proposing to approve the 2017 Hayden Lead Plan. We are proposing to approve the 2012 base year emissions inventory in this SIP revision as meeting the applicable requirements of the CAA and EPA guidance. We are also proposing to approve the attainment demonstration, RACM/RACT analysis, RFP demonstration, and the contingency measure as meeting the applicable requirements of the CAA and EPA guidance.

The EPA's analysis and findings are discussed below for each applicable requirement. The technical support document (TSD) for today's proposed action contains additional details on selected lead planning requirements.

### *B. Emissions Inventories*

#### 1. Requirements for Emissions Inventories

The emissions inventory and source emission rate data for an area serve as the foundation for air quality modeling and other analyses that enable states to estimate the degree to which different sources within a nonattainment area contribute to violations within the affected area. These analyses also enable states to assess the expected improvement in air quality within the nonattainment area due to the adoption and implementation of control measures. CAA section 172(c)(3) requires that states submit a ''comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant.'' Therefore, all sources of lead emissions in the nonattainment area must be included in the submitted inventory. A base year emissions inventory is required for the attainment demonstration and for meeting RFP requirements. In general, the base year emissions inventory should be derived from one of the years on which the nonattainment designation was based.[15]

In order to demonstrate attainment in accordance with CAA section 172, the state should also provide an attainment emissions inventory to identify the level of emissions in the area sufficient to attain the NAAQS. The attainment inventory should generally contain maximum allowable emissions for the attainment year for all sources within the modeling domain.[16]

In addition to inventory reporting requirements in CAA section 172(c)(3), 40 CFR 51.117(e)(1) requires that the inventory contain all point sources that emit 0.5 tons of lead emissions per year (tpy).[17] Based on annual emissions reporting for 2011, the only point source in the Hayden Lead NAA with a potential to emit over 0.5 tpy of lead is the Asarco primary copper smelter, located in Hayden, AZ (''Hayden Facility'' or ''Facility'').[18]

#### 2. Base Year Emissions Inventory

The base year emissions inventory establishes a baseline that is used to evaluate emission reductions achieved by the control strategy and to establish RFP requirements. ADEQ's discussion of emissions inventory development can be found in the Plan on pages 28–36, as well as in Appendices A and D. ADEQ selected 2012 as the base year for emissions inventory preparation for several reasons. At time of preparation, 2012 was the most recent year with verified ambient air monitoring data from a SLAMS (State or Local Air Monitoring Station) monitor.[19] It is also a representative year of exceedances of the primary lead NAAQS. In addition, the Hayden lead nonattainment designation was based upon 2012 monitoring data.

Lead emissions are grouped into two general categories: Stationary and mobile sources. Stationary sources can be further divided into ''point'' and ''area'' sources. Point sources are typically located at permitted facilities and have one or more identified and fixed pieces of equipment and

[12] *See* 73 FR 66964.

[13] These guidance documents can be found in the docket for today's action.

[14] 80 FR 47859.

[15] *See* Lead Q&A and Lead Q&A Addendum.

[16] *See* Lead Q&A Addendum p. 1.

[17] Additional emissions inventory reporting requirements are also found in EPA's Air Emissions Reporting Rule (AERR) (codified at 40 CFR part 51 subpart A) and 73 FR 76539. Although the AERR requirements are separate from the SIP-related requirements in CAA section 172(c)(3) and 40 CFR 51.117(e)(1), the AERR requirements are intended to be compatible with the SIP-related requirements.

[18] The Asarco primary copper smelter is a large complex that consists of smelter operations as well as concentrator operations. In sections of the Plan, ADEQ refers to these operations separately as the ''smelter complex'' and ''concentrator complex.'' Since the smelter and concentrator operations are permitted as a single stationary source, we use the term ''Hayden Facility'' and ''Facility'' to refer to the entirety of the smelter and concentrator operations.

[19] SLAMS include the ambient air quality sites and monitors that are required by the EPA's regulations and are needed to meet specific monitoring objectives, including NAAQS comparisons. *See* 40 CFR 58.1.

emissions points. These facilities are required to report their emissions to ADEQ on an annual basis. Conversely, area sources consist of widespread and numerous smaller emission sources, such as small permitted facilities, households, and other land uses. The mobile sources category can be divided into two major subcategories: ''On-road'' and ''off-road'' mobile sources. On-road mobile sources include light-duty automobiles, light-, medium-, and heavy-duty trucks, and motorcycles. Off-road mobile sources include aircraft, locomotives, construction equipment, mobile equipment, and recreational vehicles. A summary of ADEQ's 2012 base year inventory for each of these categories is included in Table 1 below.

TABLE 1—2012 BASE YEAR LEAD EMISSION INVENTORY FOR THE HAYDEN LEAD NAA

| Source category | Pb emissions (tpy) |
|---|---|
| Point | 3.43 |
| Area | <0.001 |
| Mobile Source (non-road) | 0.015 |
| Mobile Source (on-road) | |
| Total | 3.45 |

Source: Plan, Tables 12–16.

As seen above, the substantial majority of lead emissions in the Hayden Lead NAA are from the point source category (*i.e.,* the Hayden Facility). The Hayden Facility consists of multiple emission points that ADEQ further categorized into smelting point sources (stack emissions), smelting fugitives, road dust, and other process fugitives (from non-smelting process equipment). A more detailed summary of the Hayden Facility's lead emissions is included in Table 2 below.

TABLE 2—2012 BASE YEAR LEAD EMISSIONS INVENTORY FOR THE HAYDEN FACILITY

| Source category | Pb emissions (tpy) |
|---|---|
| Smelting point sources | 1.09 |
| Smelting fugitives | 1.88 |
| Road (paved and unpaved) | 0.14 |
| Non-smelting process fugitives | 0.32 |
| Total | 3.43 |

Source: *Id.*

3. Projected Year Emissions Inventory

The Hayden area was designated nonattainment for lead in 2014. The CAA provides that nonattainment areas must attain the NAAQS as expeditiously as practicable, but no later than five years after the effective date of designation. Therefore, the Hayden Lead NAA must attain the lead NAAQS by 2019. The projected emissions inventory for 2019 is part of the attainment demonstration required under CAA section 172 and informs the air quality modeling for 2019, which is discussed in detail below in section IV.D. ADEQ developed a projected 2019 lead emissions inventory for the Hayden Lead NAA as summarized in Table 3 below.

TABLE 3—BASE YEAR AND PROJECTED YEAR LEAD EMISSIONS INVENTORY FOR THE HAYDEN LEAD NAA

| Source category | 2012 base year Pb emissions (tpy) (actual emissions) | 2019 projected year Pb emissions (tpy) (allowable emissions) |
|---|---|---|
| Point | 3.43 | 4.60 |
| Area | <0.001 | <0.001 |
| Mobile Source (non-road) | 0.015 | 0.020 |
| Mobile Source (on-road) | | |
| Total | 3.45 | 4.62 |

Source: *Id.*

As with the base year inventory, the substantial majority of lead emissions for the projected year inventory are attributable to the point source category, which represents the Hayden Facility. A more detailed summary of the Hayden Facility's lead emissions is included in Table 4 below.

TABLE 4—COMPARISON OF BASE YEAR AND PROJECTED YEAR LEAD EMISSIONS INVENTORY FOR THE HAYDEN FACILITY

| Source category | 2012 base year Pb emissions (tpy) (actual emissions) | 2019 projected year Pb emissions (tpy) (allowable emissions) |
|---|---|---|
| Smelting point sources | 1.09 | 2.99 |
| Smelting fugitives | 1.88 | 1.44 |
| Road (paved and unpaved) | 0.137 | 0.043 |
| Non-smelting fugitives | 0.322 | 0.131 |
| Total | 3.43 | 4.60 |

Source: *Id.*

As seen in the tables above, the projected year emissions inventory, which is generally based on maximum allowable emissions (also referred to as potential to emit or PTE), is higher than the base year inventory, which is based on actual emissions. The use of actual emissions for the base year, as well as the use of maximum allowable

emissions for the projection year and the attainment modeling, is consistent with CAA requirements [20] and EPA guidance.[21] Use of maximum allowable emissions for the modeling ensures the attainment demonstration takes into account possible increases in emissions that are allowed by the underlying rules and permit conditions; however, *actual* emissions at the Facility are expected to decline. As shown in Table 5, the 2019 projected actual emissions are lower than actual emissions in the 2012 base year inventory. Furthermore, even assuming that the Facility were to emit at the maximum allowable levels in 2019, the submitted modeling shows that the Hayden area would still attain the lead NAAQS, primarily due to the nature of emission changes and their predicted ambient impact. The increase from base year actual emissions to projected year maximum allowable emissions is primarily attributable to smelting point sources at the Hayden Facility. Other source categories at the Facility, such as the roads and non-smelting fugitives, decrease from the base year inventory to the projected year inventory, and, due to their dispersion characteristics, these sources have more influence on the maximum predicted ambient impacts in the nonattainment area than the smelter point sources. As a result, while the reductions in road and non-smelting fugitive lead emissions are small compared to the emissions from the smelting point sources, these reductions occur at sources that are primary contributors to maximum predicted ambient impact in the nonattainment area.

TABLE 5—BASE YEAR, PROJECTED ACTUAL, AND MAXIMUM ALLOWABLE MODELED LEAD EMISSIONS FOR THE HAYDEN FACILITY

| Modeled source | Controls applied | 2012 actual Pb emissions (tpy) | 2019 projected actual Pb emissions (tpy) | Projected reductions in actual Pb emissions (%) | Maximum allowable-modeled Pb emissions (PTE) (tpy) [a] |
|---|---|---|---|---|---|
| Main stack | Secondary hood baghouse, improved primary and secondary hooding, tertiary hooding. | 1.08 | 0.904 | 16 | 2.99. |
| Flash furnace fugitives. | Matte tapping ventilation system | 0.495 | 0.1025 | 79.3 | 1.03. |
| Converter aisle fugitives. | Secondary hood baghouse, improved primary and secondary hooding, tertiary hooding. | 0.968 | 0.024 | 97.5 | 0.37. |
| Anode furnace fugitives. | Improved ventilation system | 0.417 | 0.04 | 89.7 | 0.04. |
| Anode baghouse stack. | Sent to the main stack | 0.0113 | Included in main stack | N/A | Included in main stack. |
| Slag dump | Restrictions on slag dumping location | 0.05 | 0.05 | | 0.05. |
| Gas cleaning waste material. | Thickener project | 0.26 | 0.07 | 73 | 0.07. |
| Concentrate storage area. | Wind fence, water sprays | 0.001 | 0.000056 | 94 | 0.00088. |
| Bedding area | Wind fence, water sprays | 0.00017 | 0.000015 | 91 | 0.00016. |
| Reverts operations | Wind fence, water sprays | 0.0122 | 0.00042 | 97 | 0.0041. |
| Paved roads | Sweepers | 0.091 | 0.015 [b] | 84 | 0.015. |
| Unpaved roads | Chemical dust suppressant (on a schedule achieving 90% control efficiency). | 0.046 | 0.028 [b] | 39 | 0.028. |

[a] PTE values for the concentrate storage area, bedding area, and reverts operations were derived using the same calculation methods that were applied to calculate 2019 projected actuals. However, for PTE values, Asarco supplied more conservative throughput. Also, the lead factors used for PTE calculations were based on mean lead assay values (source specific) plus two standard deviations.
[b] Projected actual values for paved and unpaved roads were based on PTE.
Source: ADEQ Modeling TSD, Table 8–1.

4. Proposed Action on the Base Year Emissions Inventory

We have reviewed the emissions inventory and calculation methodology used by ADEQ in the 2017 Hayden Lead Plan for consistency with CAA requirements, the lead NAAQS rule, and the EPA's guidance. We find that the 2012 base year inventory is a comprehensive, accurate, and current inventory of actual emissions of lead in the Hayden Lead NAA. We therefore propose to approve the 2012 base year inventory as meeting the requirements of CAA section 172(c)(3). We are not proposing action on the projected attainment inventory, since it is not a required SIP element. However, we have evaluated it for consistency with EPA guidance and find that it supports the attainment and RFP demonstrations, as discussed in the TSD and below.

*C. Reasonably Available Control Measure/Reasonably Available Control Technology Demonstration and Adopted Control Strategy*

1. Requirements for RACM/RACT

CAA section 172(c)(1) requires that each attainment plan provide for implementation of RACM (including RACT for existing sources) as expeditiously as practicable and provide for attainment of the NAAQS. The EPA defines RACM as measures that are both reasonably available and contribute to

[20] *See, e.g.,* CAA section 172(c)(3) (requiring ''a comprehensive, accurate, current inventory of *actual* emissions from all sources of the relevant pollutant or pollutants in such area.'' (emphasis added))

[21] *See, e.g.,* Lead Q&A Addendum p. 1.

attainment as expeditiously as practicable in the nonattainment area. Lead nonattainment plans must contain RACM (including RACT) that address sources of ambient lead concentrations. The EPA's historic definition of RACT is the lowest emissions limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility.[22] The EPA recommends that, at a minimum, all stationary sources emitting 0.5 tpy or more of lead should undergo a RACT review.[23] Based on the 2011 national emissions inventory (2011 NEI v2) and the 2012 base year emissions inventory, the Asarco copper smelter is the only point source in the Hayden Lead NAA that emits over 0.5 tpy of lead.[24]

2. RACM/RACT Demonstration in the 2017 Hayden Lead Plan

Because of lead's dispersion characteristics, the highest ambient concentrations of lead are expected to be near lead sources, such as the Hayden Facility. This RACM/RACT analysis focuses on evaluating controls at the Hayden Facility, and unlike in a typical RACM demonstration for other types of pollutants, we are not evaluating the broader set of source categories in the Hayden Lead NAA. This is an appropriate approach in this case because the Hayden Facility is the source of over 99 percent of lead emissions in the Hayden Lead NAA.[25]

ADEQ's control strategy relies on the implementation of two source-specific regulations in the Arizona Administrative Code: Rule R18–2–B1301 (Limits on Lead Emissions from the Hayden Smelter) and Rule R18–2–B1301.01 (Limits on Lead-Bearing Fugitive Dust from the Hayden Smelter), and two associated appendices. ADEQ submitted these rules to the EPA for SIP approval on April 6, 2017.[26] We approved Rule R18–2–B1301.01 and Appendix 15 into the Arizona SIP on February 22, 2018,[27] and proposed to approve Rule R18–2–B1301 and Appendix 14 on March 30, 2018.[28] The controls required under these rules are also required under a 2015 consent decree between Asarco and the United States.[29]

ADEQ's RACM/RACT analysis can be found on pages 60 through 121 of the 2017 Hayden Lead Plan. The EPA's Lead RACM Guidance did not provide specific guidance on what constituted RACM/RACT for primary copper smelters. Consistent with that guidance, ADEQ looked to other federal requirements for lead control at primary copper smelters, similar source categories for which the EPA had established lead control guidance, and other regulations that the EPA has approved as RACM/RACT for lead control. ADEQ used the following references for comparison of lead controls: The national emissions standard for hazardous air pollutants (NESHAP) requirements for primary copper smelters at 40 CFR 63, subpart QQQ and the NESHAP requirements for secondary lead smelters at 40 CFR 63, subpart X. For fugitive lead-bearing dust control, ADEQ also used the following references for comparison: Appendix 1 of the General Preamble for Implementation of Title I of the Clean Air Act,[30] which describes control measures for fugitive lead-bearing dust; South Coast Air Quality Management District (SCAQMD) Rule 1420.1 for lead battery recycling facilities (''Emissions Standards for Lead and Other Toxic Air Contaminants from Large Lead-Acid Battery Recycling Facilities''); and particulate matter (PM) fugitive dust rules enacted by other states and local agencies.

The EPA's TSDs on Rules R18–2–B1301 and R18–2–B1301.01 and Appendices 14 and 15 contain our detailed analysis on the enforceability, stringency, and SIP revision implications for the measures contained in these rules.[31] We evaluate below whether these measures satisfy the statutory requirements for RACM/RACT for the Hayden Lead NAA.

a. Rule R18–2–B1301 and Appendix 14

Rule R18–2–B1301 establishes a lead emission limit for the Hayden Facility's main stack and operations and maintenance (O&M) requirements, including the development of an O&M plan for the capture and control system, monitoring provisions for parametric limits required to ensure sufficient capture of fugitive lead emissions from the smelter, performance testing requirements, compliance determination requirements, recordkeeping requirements, and reporting requirements. Rule R18–2–B1301 also requires the completion of a fugitive emissions study to characterize lead emissions from the smelter structure that may contribute to nonattainment, but are not captured or controlled. Appendix 14 establishes specific requirements for the study, which is required to validate both the estimate of fugitive emissions used in the attainment demonstration and the operating conditions or ranges for the capture devices' O&M plan.

Rule R18–2–B1301 establishes a lead emission limit from the smelter's stack of 0.683 pounds of lead per hour. Fugitive lead emissions from the smelter structure are constrained through an improved fugitive gas capture system over the furnace taps and converter chambers. In lieu of a fugitive emissions limit, Asarco must operate its gas capture system within certain operating parameters as described in the facility's O&M plan. Rule R18–2–B1301 defines critical parameters and specifies operating limits on those parameters that the O&M plan must require, at a minimum, in order to sufficiently control fugitive emissions. The fugitive emissions rate will be validated through a year-long fugitive emission study as described in Appendix 14, and it must not exceed the modeled attainment emission rate. If actual fugitive emissions exceed the modeled emission rates shown in Table 5 above and Asarco is unable to demonstrate attainment of the NAAQS at the actual measured fugitive emissions levels, ADEQ will need to revise the O&M plan parametric limit minimums as required in R18–2–B1301 and, as necessary, require additional controls to further reduce fugitive emissions. ADEQ must submit these changes as revisions to the Arizona SIP. Other requirements include monitoring, recordkeeping, and reporting provisions to ensure compliance with the emission and parametric limits.

[22] *See,* for example, 44 FR 53761 (September 17, 1979) and footnote 3 of that notice.

[23] 73 FR 67038.

[24] 2017 Hayden Lead Plan, Chapter 3: *Emissions Inventories* and Appendix A: *Emission Inventory Technical Support Document for the 2008 Hayden Lead Nonattainment Area,* Chapter 5, *Base Year Emission Inventory for Lead in the Hayden Planning Area.*

[25] 2017 Hayden Lead Plan, page 38.

[26] *See* letter dated April 6, 2017, from Timothy S. Franquist, Director, Air Quality Division, ADEQ, to Alexis Strauss, Acting Regional Administrator, EPA Region IX.

[27] 83 FR 7614.

[28] 83 FR 13716.

[29] Consent Decree No. CV–15–02206–PHX–DLR (D. Ariz).

[30] 58 FR 67748 (December 22, 1993).

[31] *See* Technical Support Document for the EPA's Rulemaking for the Arizona State Implementation Plan: Arizona Department of Environmental Quality Rule R18–2–B1301.01, Limits on Lead-Bearing Fugitive Dust from the Hayden Smelter, and Appendix 15, Test Methods for Determining Opacity and Stabilization of Unpaved Roads (August 2017); Technical Support Document for the EPA's Rulemaking for the Arizona State Implementation Plan: Arizona Administrative Code Title 18, Chapter 2 Appendix 14 and Rule R18–2–715.02 (March 2018); and Technical Support Document for the EPA's Rulemaking for the Arizona State Implementation Plan: Arizona Administrative Code Title 18, Chapter 2, Article 13 Part B—Hayden, Arizona, Planning Area R18–2–B1301—Limits on Lead Emissions from the Hayden Smelter (March 2018).

We compared these requirements with the primary copper smelter NESHAP and the secondary lead smelter NESHAP in the TSD we prepared in support of our rulemaking action on R18–2–B1301, and we found the rule requirements to be generally consistent with those in the NESHAP. For example, the primary copper smelter NESHAP requires a capture system and control device O&M plan and requires that the smelter operate consistently with good air pollution control practices, similar to R18–2–B1301. The requirements of R18–2–B1301 are also similar to the secondary lead smelter NESHAP requirements, except that the NESHAP includes emissions limits of 1.0 milligrams of lead per dry standard cubic meter for any process vent gas and 0.20 milligrams of lead per dry cubic meter on a rolling 12-month average basis. We propose to find that these limits are not required as RACM for the Hayden Facility because they are intended for a different type of facility and, as discussed below, ADEQ's air quality modeling indicates that the main stack emission limit in R18–2–B1301 (0.683 pound of lead per hour) is sufficient for the Hayden area to attain the lead NAAQS.

b. Rule R18–2–B1301.01 and Appendix 15

Rule R18–2–B1301.01 establishes work practice requirements and control measures on sources of lead-bearing fugitive dust surrounding the Hayden Facility. Appendix 15 applies to unpaved roads at the Hayden Facility and includes the following: (1) A test method for determining opacity for fugitive dust from these rules, (2) a test method for determining silt content of the trafficked parts of unpaved roads, and (3) a Qualification and Testing section containing certification requirements and procedures, specifications, and calibration procedures.

Rule R18–2–B1301.01 specifies a range of operational standards and work practices for processes that may cause emissions of lead-bearing fugitive dust. The requirements must be detailed in a fugitive dust plan that at minimum includes the performance and housekeeping requirements. Subsection (D) includes the following minimum performance and housekeeping requirements, which must be met independent of the fugitive dust plan:

- Procedures for high wind events, including wetting of sources and cessation of operations if necessary;
- Physical inspection requirements of control equipment and dust-generating processes to ensure proper operation;
- Opacity limit of 20 percent and requirements to take corrective action if opacity exceeds 15 percent;
- Requirements for paved road cleaning at least daily, with vehicular track-out controls and 15 mile per hour speed limits;
- Requirements for the application frequency of chemical dust suppressant to unpaved roads, controls on silt loading on those roads (silt loading may not exceed 0.33 ounces per square feet or 6 percent), runoff collection requirements to prevent dust from becoming airborne, and 15 miles per hour speed limits;
- Materials storage, handling, and unloading requirements for copper concentrate and reverts, including requirements for storage on concrete pads, water sprayers, and wind fences;
- Bedding requirements (including loading and unloading operations requirements for wind fences and water spraying to maintain a nominal 10 percent surface moisture content), rumble grates to reduce trackout at exits, and a daily cleaning schedule inside and near the protected area; and
- Requirements for the acid plant scrubber blowdown drying system, which must be housed in an enclosed system that uses a venturi scrubber, thickener, filter press and electric dryer under negative pressure.

Subsection (E) of Rule R18–2–B1301.01 includes contingency requirements for increasing the frequency of road cleaning if the Hayden area does not attain the NAAQS by the attainment date or make RFP. The remainder of the rule includes monitoring, compliance demonstration, recordkeeping, and reporting requirements. Appendix 15 includes test methods and procedures for determining compliance with opacity limits on unpaved roads, silt content on trafficked parts of unpaved roads, and a qualification and testing section for certifying observers in measuring opacity and road stabilization. These requirements address the known sources of fugitive dust resulting from operations surrounding the Hayden Facility that may contribute to airborne lead emissions. We compared these requirements in our TSD reviewing Rule R18–2–B1301.01 with the primary copper smelter NESHAP and SCAQMD Rule 1420.1 for lead control. Rule R18–2–B1301.01 is more stringent than the primary copper smelter NESHAP. For example, Rule R18–2–B1301.01 includes specific fugitive dust requirements and a 20 percent opacity limit for lead-bearing fugitive dust, whereas the NESHAP contains more general requirements for a fugitive dust plan and no opacity limit for fugitive dust. We concluded that while the SCAQMD rule was more stringent in some respects (*i.e.,* requiring total enclosure of the facility, lower speed limits, more frequent sweeping schedules), it was also intended for a different type of facility (lead battery recycling) and therefore was not directly comparable to the Hayden Facility.

We also compared these requirements to those found in various RACM/RACT particulate matter (PM) rules, as the controls for lead-bearing fugitive dust in a context like the Hayden Facility are like those for controlling PM. We found that Rule R18–2–B1301.01 was as stringent or more stringent than those PM rules. For example, in addition to a 20 percent opacity limit and requirements for chemical dust suppressant and soil stabilization, which are also included in the PM rules, Rule R18–2–B1301.01 has requirements for unpaved roads and corrective measures for visible emissions that are not found in the PM rules.

3. Proposed Actions on RACM/RACT Demonstration and Adopted Control Strategy

For the reasons described above, we find that the control measures required under Rules R18–2–B1301 and R18–2–B1301.01 and reflected in the 2017 Hayden Lead Plan are reasonably available for the Hayden Facility. In addition, as explained in the following section, ADEQ's air quality modeling indicates these measures are sufficient to provide for attainment in the Hayden Lead NAA. These measures are required to be implemented by July 1, 2018 (for Rule R18–2–B1301) and December 1, 2018 (for Rule R18–2–B1301.01). We believe these are the most expeditious dates practicable, given the history of planning for this source, the current time frame for implementation, and the complexity of these control measures. Accordingly, we propose to find that the RACM/RACT measures are both reasonably available and provide for attainment as expeditiously as practicable in the Hayden Lead NAA. Therefore, we propose to find that the 2017 Hayden Lead Plan provides for the implementation of RACM/RACT as required by CAA section 172(c)(1).

*D. Attainment Demonstration*

1. Requirements for Attainment Demonstration

CAA section 172 requires a state to submit a plan for each of its

nonattainment areas that demonstrates attainment of the applicable ambient air quality standard as expeditiously as practicable but no later than the specified attainment date. This demonstration should consist of four parts:

(1) Technical analyses that locate, identify, and quantify sources of emissions that are contributing to violations of the lead NAAQS;

(2) Analyses of future year emissions reductions and air quality improvement resulting from already-adopted national, state, and local programs and from potential new state and local measures required to meet the RACT, RACM, and RFP requirements in the area;

(3) Additional emissions reduction measures with schedules for implementation; and

(4) Contingency measures required under section 172(c)(9) of the CAA.

The requirements for the first three parts are described in the sections on emissions inventories and RACM/RACT above and in the sections on air quality modeling and the attainment demonstration that follow immediately below. The requirements for the fourth part are described below in section IV.F.

2. Air Quality Modeling in the 2017 Hayden Lead Plan

In the following discussion we evaluate various features of the modeling that ADEQ used in its attainment demonstration. The lead attainment demonstration must include air quality dispersion modeling developed in accordance with EPA's Guideline on Air Quality Models, 40 CFR part 51, appendix W (''Appendix W'').[32] A more detailed description of the modeling used to support this action and our review can be found in the 2017 Hayden Lead Plan, Appendix B, *Modeling Technical Support Document: Hayden Pb State Implementation Plan Revision* (''ADEQ Modeling TSD'') and our TSD for today's proposed action.

a. Model Selection

In 2005, the EPA promulgated AERMOD as the Agency's preferred near-field dispersion model for a wide range of regulatory applications addressing stationary sources (*e.g.,* for estimating lead concentrations) in all types of terrain, based on extensive developmental and performance evaluation. The State used AERMOD version 15181 to model all emission sources using regulatory default options.[33] After submitting the Plan, ADEQ discovered an error in the processing of the Camera Hill meteorological data. In May 2018, ADEQ submitted revised modeling using corrected Camera Hill meteorological data and AERMOD version 16216r,[34] which the EPA designated as the regulatory version of AERMOD in January 2017.[35] All other inputs remained the same. The remainder of this section refers to results of the revised modeling, which effectively supersedes the modeling originally submitted with the Plan.

The modeling domain was centered on the Hayden Facility and extended to the edges of the Hayden Lead NAA. A grid spacing of 25 meters was used to resolve AERMOD model concentrations along the ambient air boundary surrounding the Hayden Facility and was increased toward the edges of the NAA. Receptors were excluded within the ambient air boundary, which is generally defined by the facility's physical fence line, except in certain areas where the State inspected the terrain and concluded steep topography precludes public access.[36] We conclude that the model receptors placed by the State adequately characterize ambient air conditions.

b. Meteorological Data

ADEQ conducted its modeling using meteorological data collected between August 2013 and August 2014 at two on-site surface meteorological stations: The Camera Hill site located approximately 0.35 kilometer (km) south of the smelter building, and the Hayden Old Jail site located approximately 1.06 km west of the concentrator and smelter complexes at the Hayden Facility. Due to the complex topography of the area, wind speed and direction can vary significantly between the two stations. The State conducted a performance evaluation to test which meteorological dataset performs best when AERMOD-predicted concentrations are compared to monitored concentrations.[37] The State concluded emissions from the main stack and those emanating from the smelter building roofline are best represented by Camera Hill, while lower elevation sources were best represented by Hayden Old Jail, and used these respective data sets for those sources. Accordingly, ADEQ ran the model separately for each set of sources and summed the results appropriately. The State provided audit reports for each monitoring station to document the station's installation and data collection procedures.[38] The State used AERMET version 16216 to process meteorological data for use with AERMOD.

The State used AERSURFACE version 13016 using data from the Camera Hill and Hayden Old Jail sites to estimate the surface characteristics (*i.e.,* albedo, Bowen ratio, and surface roughness ($z_o$)). The State estimated $z_o$ values for 12 spatial sectors out to 1 km at a seasonal temporal resolution for average conditions. We conclude that the State appropriately selected meteorological sites, properly processed meteorological data, and adequately estimated surface characteristics.

ADEQ used the Auer (1978) [39] land use method, with land cover data from the United States Geological Survey National Land Cover Data 1992 archives, to determine that the 3-km area around the Hayden Facility is composed of 96.2 percent rural land types. Therefore, the State selected rural dispersion coefficients for modeling. We agree with the ADEQ's determination that the facility should be modeled as a rural source.

c. Emissions Data

ADEQ developed a modeling emissions inventory based on 2012 data for sources within the Hayden Lead NAA and for the 50-km buffer zone extending from the NAA boundary. In 2012, the Hayden Facility emitted 3.43 tpy lead, accounting for more than 99 percent of lead emissions in the Hayden Lead NAA. The Freeport McMoRan Incorporated copper smelter, located 46 km north of the Hayden Facility, emitted 4.87 tons of lead in 2012; however, the two smelters are separated by large mountains, making these two airsheds distinct. The State determined that aside from the Hayden facility, no

[32] The EPA published revisions to Appendix Wat 82 FR 5182 (January 17, 2017).

[33] The EPA periodically releases updated versions of AERMOD. At the time the State conducted its modeling, version 15181, the then-current regulatory version, was released with several beta options. The regulatory default for version 15181 is the use of version 15181, as released by the EPA, without the use of any of the beta options. *See https://www.epa.gov/scram/air-quality-dispersion-modeling-preferred-and-recommended-models.*

[34] *See* email from Farah Mohammadesmaeili, ADEQ to Rynda Kay, EPA, Region 9, dated May 22, 2018.

[35] *See* 82 FR 5182, 5189 (January 17, 2017).

[36] Ambient air is considered to be the air in those areas where the public generally has access. Non-ambient air generally includes property owned or controlled by the source to which access by the public is prohibited by a fence or other effective physical barrier.

[37] *See* email from Farah Mohammadesmaeili, ADEQ, to Rynda Kay, EPA Region 9, dated May 25, 2018.

[38] *See* email from Farah Mohammadesmaeili, ADEQ, to Rynda Kay, EPA Region 9, dated May 22, 2018.

[39] *See* Auer, A.H., 1978. Correlation of Land Use and Cover with Meteorological Anomalies. *Journal of Applied Meteorology,* 17(5):636–643.

other sources were drivers of nonattainment or have the potential to cause significant concentration gradients in the vicinity of the Hayden Lead NAA. We agree with the State's determination that only Hayden Facility emissions need to be included in the attainment modeling.

Asarco is undertaking substantial upgrades to the Facility that will reduce lead and other pollutant emissions (*see* section IV.C, above). The State modeled post-upgrade lead emissions based on an emission limit of 0.67 lb/hour for the main stack and emission estimates for fugitive emission sources based on control requirements in Rules R18–2–B1301 and R18–2–B1301.01. These rules address roofline vents over the anode furnace, converter aisle, and the flash furnace; outdoor slag pouring; materials storage and handling (bedding area, revert piles, concentrate storage), paved and unpaved roads, crushing and screening, and a gas cleaning plant. The State provided details and supporting information for the control efficiencies assumed in developing model emission rates. This information, which we reviewed and agree is reasonable, is contained in multiple appendices [40] and supporting spreadsheets [41] that were submitted with the Plan.

The State adequately characterized source parameters (as described in detail in our TSD) as well as the Facility's building layout and locations in its modeling. Where appropriate, the Building Profile Input Program for PRIME, which is a component of AERMOD, was used to assist in characterizing building downwash.

d. Background Concentrations

ADEQ selected background lead concentrations using ambient air measurements recorded in 2013 at Children's Park monitor in Tucson, Arizona (AQS ID: 04–019–1028), a regionally representative site. This monitor began measuring 24-hour mean concentrations of lead in total suspended particulate in February 2012 and operated through May 2016. The State used all available measurements during 2013 and calculated a mean concentration of 0.0028 μg/m$^3$. The State used this as the background concentration, and added it to the modeled design values.[42] The State determined that it was more appropriate to base a background concentration on data from this site as opposed to using monitoring data near the Hayden Facility during smelter shut-down periods. During shut-downs an increased amount of material handling occurs throughout the facility, elevating the observed concentrations. We agree that ADEQ appropriately and conservatively calculated background concentrations.

e. Summary of Results

The EPA has reviewed ADEQ's attainment demonstration for the Hayden Lead NAA and is proposing to determine that the supporting modeling is consistent with CAA requirements and Appendix W. The State's modeling indicates that if the Facility were to emit at maximum allowed levels, the maximum 3-month average ambient concentration would be 0.14165 μg/m$^3$, which is below the NAAQS level of 0.15 μg/m$^3$.[43] [44] This modeled concentration includes the background lead concentration of 0.0028 μg/m$^3$. The modeling indicates that the controls required under Rules R18–2–B1301 and R18–2–B1301.01 are sufficient for the Hayden Lead NAA to attain the 2008 lead NAAQS.

*E. Reasonable Further Progress Demonstration*

1. Requirements for RFP

CAA section 172(c)(2) requires that attainment plans shall provide for RFP. RFP is defined in section 171(1) as such annual incremental reductions in emissions of the relevant air pollutant as are required by CAA title I, part D for nonattainment areas or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date. Historically, RFP has been met through generally linear incremental progress toward attainment by the applicable attainment date. However, the EPA believes that RFP for lead nonattainment areas should be met by ''adherence to an ambitious compliance schedule,'' which is expected to periodically yield significant emission reductions, and as appropriate, linear progress.[45]

The EPA recommends that SIPs for lead nonattainment areas provide a detailed schedule for compliance with RACM (including RACT) in the affected areas and accurately indicate the corresponding annual emission reductions to be achieved,[46] and expects that a detailed schedule would provide for periodic yields in significant emissions reductions.[47] We believe that it is appropriate to expect early implementation of less technology-intensive control measures (*e.g.,* controlling fugitive dust emissions at the stationary source, as well as required controls on area sources) while phasing in the more technology-intensive control measures, such as those involving the purchase and installation of new hardware. The expeditious implementation of RACM/RACT at affected sources within the nonattainment area is an appropriate approach to assure attainment of the lead NAAQS in an expeditious manner.[48]

2. RFP Demonstration in the 2017 Hayden Lead Plan

The RFP demonstration for the Hayden area is located in Chapter 4 of the 2017 Hayden Lead Plan. The Plan includes a detailed schedule for the expeditious implementation of key controls required under Rules R18–2–B1301 and R18–2–B1301.01, along with the emissions reductions associated with these controls, as shown in Table 6.[49] Failure to implement any of these control measures by the associated deadline would constitute a failure to make RFP and thus trigger implementation of contingency measures, as described in section IV.F below.

[40] *See* Plan Appendix B (ADEQ Modeling TSD), Section 5, and Appendix A (ADEQ Emission Inventory TSD), Section 7.

[41] Detailed information on 2019 projected emission estimates is contained in spreadsheet ''2012 Actuals & 2019 projections.xlsx,'' while supporting information for the maximum allowable PTE estimates is contained in ''Facility PTE.xlsm.''

[42] Data from 2013 were used because two months of data were missing in the 2012 base year.

[43] *See* ''Hayden-Pb-Modeling Notes-05142018'' (attached to email from Farah Mohammadesmaeili, ADEQ, to Rynda Kay, EPA Region 9, dated May 22, 2018), and Memo to Rulemaking Docket EPA–R09–OAR–2018–0222 titled ''Revised Attainment Demonstration and Contingency Measure Modeling—LEADPOST Output Files,'' from Rynda Kay, EPA Region 9, dated June 12, 2018.

[44] As illustrated in Table 5 of today's action, actual emissions are expected to be well below allowable levels.

[45] 73 FR 66964 at 67038.

[46] *Id.,* at 67039; Lead Q&A, p. 2.

[47] *Id.*

[48] See 73 FR 66964 (November 12, 2008) at 67038–67039.

[49] The Plan bases certain implementation dates on the date of EPA's approval of Asarco's fugitive dust plan under Consent Decree No. CV–15–02206–PHX–DLR (D. Ariz). *See* Plan Table 23. The EPA approved the wind fence elements of the fugitive dust plan on June 26, 2017 and December 20, 2017. *See* Letters from Matt Salazar, EPA Region 9, to Joseph Wilhelm, Asarco, dated June 26, 2017 and December 20, 2017. The remaining elements were approved on March 15, 2018. *See* Letter from Matt Salazar, EPA Region 9, to Joseph Wilhelm, Asarco, dated March 15, 2018. The implementation dates in Table 6 are calculated accordingly.

TABLE 6—CONTROL IMPLEMENTATION SCHEDULE AND EMISSION REDUCTIONS

| Control measure | Date of implementation | Pb emissions reduced per year (tpy) |
|---|---|---|
| Implementation of chemical dust suppression for unpaved roads | April 14, 2018 | 0.018 |
| Implementation of wind fences for materials piles (uncrushed reverts, reverts crushing and crushed reverts, bedding materials, and concentrate). | October 24, 2017 and April 18, 2018. | 0.00488 |
| Implementation of water sprays for materials piles (uncrushed reverts, reverts crushing and crushed reverts, bedding materials, and concentrate). | July 13, 2018. | |
| Implementation of new acid plant scrubber blowdown drying system | November 30, 2016 | 0.190 |
| Implementation of new primary, secondary, and tertiary hooding systems for converter aisle | July 1, 2018 | 1.318 |
| Implementation of new ventilation system for matte tapping and slag skimming for flash furnace. | July 1, 2018 | 0.393 |

Source: Plan, Table 23.

For informational purposes, Figures 7 and 8 in the Plan also depict past and projected changes to ambient concentrations of lead. These figures demonstrate that implementation of the controls required under the Plan will bring the ambient concentration in the Hayden Lead NAA into compliance with the lead NAAQS. The ambient concentration projections also support the State's contingency measure analysis, as discussed below.

3. Proposed Action on the RFP Demonstration

Consistent with EPA guidance, the Hayden lead SIP provides a detailed schedule for implementing required controls and accurately indicates the corresponding annual emission reductions to be achieved.[50] These reductions will occur at sources, such as unpaved roads and various non-smelting fugitive sources that have a greater influence on the maximum predicted ambient impacts than the smelter point sources and the schedule provides for periodic yields in significant emissions reductions sufficient to attain the NAAQS. We therefore propose to find that the 2017 Hayden Lead Plan meets the requirements of section 172(c)(2) for RFP.

*F. Contingency Measures*

1. Requirements for Contingency Measures

Under CAA section 172(c)(9), all lead attainment plans must include contingency measures to be implemented if an area fails to meet RFP or fails to attain the lead NAAQS by the applicable attainment date. These contingency measures must be fully adopted rules or control measures that are ready to be implemented quickly and without significant additional action by the state or the EPA if the area fails to meet RFP requirements or fails to meet its attainment date. They must also be measures not relied on to demonstrate RFP or attainment in the plan and should provide SIP-creditable emissions reductions generally equivalent to about one year's worth of RFP. The EPA has explained that, ''where a single source is responsible for nonattainment, it may be possible to identify the amount of reductions required by reference to reductions in ambient air concentrations.'' [51] Finally, the SIP should contain a trigger mechanism for the contingency measures and specify a schedule for their implementation.[52]

The EPA recognizes that certain actions, such as the notification of sources, modification of permits, *etc.,* may be needed before a measure can be implemented. However, states must show that their contingency measures can be implemented with only minimal further action on their part and with no additional rulemaking actions such as public hearings or legislative review. The EPA generally expects all actions needed to affect full implementation of the contingency measures to occur within 60 days after the EPA notifies the state of such failure.[53] The state should therefore ensure that the measures are fully implemented as expeditiously as practicable after the requirement takes effect.

2. Contingency Measure in the 2017 Hayden Lead Plan

Chapter 4 of the 2017 Hayden Lead Plan describes the contingency measure that will be implemented if the area fails to meet RFP or fails to attain by its attainment date. The contingency measure and the associated calculations are summarized below.

Because lead concentrations in the Hayden area are almost entirely attributable to the Asarco smelter, ADEQ chose to use ambient air concentrations to demonstrate equivalency to a year's worth of RFP. To determine the amount of emissions reductions needed for contingency measures (annual average RFP) ADEQ used the following equation:

(2012 highest monitored concentration—2019 modeled concentration)/7 years = Annual Average RFP

Using this equation, ADEQ initially calculated it would need a contingency measure that would achieve a reduction in ambient lead concentrations of at least 0.0114 μg/m$^3$.[54] Based on the revised modeling submitted by ADEQ in May 2018, the contingency measure would need to achieve a reduction of at least 0.0086 μg/m$^3$.[55]

ADEQ Rule R18–2–B1301.01 requires that Asarco increase the frequency of paved road cleaning from once per day to twice per day within 60 days of notification by the EPA that the area has failed to make RFP or to attain by the statutory attainment date.[56] To determine the benefit of the increased road cleaning frequency, ADEQ applied a 45 percent reduction to the paved road silt content percentage that Asarco reported in its 2015 emissions inventory (which reflected once-daily street sweeping).[57] The State determined that

[50] *See* Table 6.

[51] *See* Lead Q&A, p.3.

[52] *See* CAA section 172(c)(9).

[53] 73 FR 66964 at 67039.

[54] 0.20 μg/m$^3$ − 0.12 μg/m$^3$/7 years = 0.0114 μg/m$^3$.

[55] *See* Memo to Rulemaking Docket EPA–R09–OAR–2018–0222 titled ''Revised Attainment Demonstration and Contingency Measure Modeling—LEADPOST Output Files,'' from Rynda Kay, EPA Region 9, dated June 12, 2018.

[56] The EPA approved this rule on February 22, 2018 (83 FR 7614).

[57] To cross check the emissions inventory, ADEQ back-calculated the silt content percentage on paved roads to determine if it was consistent with emissions factors in AP–42. ADEQ assumed the 9.5 percent silt content was the result of a 45 percent reduction due to once daily street sweeping. The 45

the implementation of this measure would reduce the modeled design value from 0.14165 μg/m$^3$ to 0.12935 μg/m$^3$.[58] This amounts to a reduction of 0.0123 μg/m$^3$, which exceeds the amount of reductions required from contingency measures (one year's RFP).

3. Proposed Action on the Contingency Measures

Rule R18–2–B1301.01, which includes a schedule for prompt implementation of the contingency measure, is fully adopted by the State and has been approved by the EPA. The reductions generated by the contingency measure exceed one year's RFP. We therefore propose to find that the State has demonstrated that the 2017 Hayden Lead Plan meets the requirements of section 172(c)(9) for contingency measures that would be triggered for failure to make RFP and/or for failure to attain.

*G. New Source Review*

1. Requirements for NSR

States containing areas designated as nonattainment for the lead NAAQS must submit SIPs that address the requirements of nonattainment NSR. Specifically, CAA section 172(c)(5) requires states that have areas designated as nonattainment for the lead NAAQS to submit provisions requiring permits for the construction and operation of new or modified stationary sources anywhere in the nonattainment area, in accordance with the permit requirements under CAA section 173.

2. NSR in the 2017 Hayden Lead Plan

The 2017 Hayden Lead Plan explains that in 2012 ADEQ submitted a SIP revision to update its NSR program and that the EPA subsequently issued a limited approval/limited disapproval of this SIP revision.[59] ADEQ also noted that it had revised its rules to correct the deficiencies identified in the limited approval/limited disapproval and intended to submit these changes as a SIP revision. ADEQ subsequently submitted this revision and, on May 4, 2018, the EPA approved it into the SIP.[60] These two recent SIP revisions ensure that ADEQ's rules provide for appropriate NSR for lead sources undergoing construction or major modification in the Hayden Lead NAA. Therefore, the EPA concludes that the NSR requirements have been met for this area.

3. Proposed Action on NSR

We propose to find that the State has demonstrated that the Arizona SIP meets the requirements of CAA section 172(c)(5) for the Hayden Lead NAA.

## V. The EPA's Proposed Action and Request for Public Comments

*A. The EPA's Proposed Approvals*

This SIP submittal addresses CAA requirements and EPA regulations for expeditious attainment of the 2008 lead NAAQS for the Hayden Lead NAA. For the reasons discussed above, the EPA is proposing to approve under CAA section 110(k)(3) the following elements of the 2017 Hayden Lead Plan:

(1) The SIP's base year emissions inventory as meeting the requirements of CAA section 172(c)(3) and 40 CFR 51.117(e)(1);

(2) the attainment demonstration, including air quality modeling, as meeting the requirements of CAA section 172(c)(1);

(3) the RACM/RACT demonstration as meeting the requirements of CAA section 172(c)(1);

(4) the RFP demonstration as meeting the requirements of CAA section 172(c)(2); and

(5) the contingency measures as meeting the requirements of the CAA section 172(c)(9);

We are also proposing to find that the State has demonstrated that the Arizona SIP meets the requirements of CAA section 172(c)(5) for the Hayden Lead NAA.

*B. Request for Public Comments*

We are taking public comments for thirty days following the publication of this proposed rule in the **Federal Register**. We will take all comments into consideration in our final rule.

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

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percent figure is consistent with the Maricopa Association of Governments' Five Percent Plan for $PM_{10}$, which used a 55 percent reduction, but adds in a 10 percent safety margin. The EPA approved the Five Percent Plan on June 10, 2014 (79 FR 33107). Using this assumption, ADEQ calculated the silt content percentage on paved roads without once-daily street sweeping to be approximately 21 percent, which is in line with the range of values in AP–42 (15.4–21.7 percent).

[58] *See* ''Hayden-Pb-Modeling Notes-05142018'' (attached to email from Farah Mohammadesmaeili, ADEQ, to Rynda Kay, EPA Region 9, dated May 22, 2018), Section 4.7.3 and Appendix E of the Plan, and Memo to Rulemaking Docket EPA–R09–OAR–2018–0222 titled ''Revised Attainment Demonstration and Contingency Measure Modeling—LEADPOST Output Files,'' from Rynda Kay, EPA Region 9, dated June 12, 2018.

[59] 80 FR 67319 (November 2, 2015).

[60] 83 FR 19631 (May 4, 2018).

FR 67249, November 9, 2000). We have offered to consult with the San Carlos Apache Tribe, which has lands bordering on the Hayden Lead NAA.[61]

**List of Subjects in 40 CFR Part 52**

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

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

Dated: June 21, 2018.

**Michael Stoker,**

*Regional Administrator, Region IX.*

[FR Doc. 2018–14198 Filed 7–2–18; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 80

**[EPA–HQ–OAR–2018–0167; FRL–9980–42–OAR]**

**RIN 2060–AT93**

## Public Hearing for Standards for 2019 and Biomass-Based Diesel Volume for 2020 Under the Renewable Fuel Standard Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Announcement of public hearing.

**SUMMARY:** The Environmental Protection Agency (EPA) is announcing a public hearing to be held in Ypsilanti, MI on July 18, 2018 for the proposed rule ''Renewable Fuel Standard Program: Standards for 2019 and Biomass-Based Diesel Volume for 2020.'' This proposed rule will be published separately in the **Federal Register**. The pre-publication version of this proposal can be found at *https://www.epa.gov/renewable-fuel-standard-program/regulations-and-volume-standards-under-renewable-fuel-standard.* In the separate notice of proposed rulemaking, EPA has proposed amendments to the renewable fuel standard program regulations that would establish annual percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel, and renewable fuels that would apply to all gasoline and diesel produced in the U.S. or imported in the year 2019. In addition, the separate proposal includes a proposed biomass-based diesel applicable volume for 2020.

[61] *See* letter from Matthew Lakin, EPA Region 9, to Terry Rambler, San Carlos Apache Tribe, dated December 18, 2017.

**DATES:** The public hearing will be held on July 18, 2018 at the location noted below under **ADDRESSES**. The hearing will begin at 9:00 a.m. and end when all parties present who wish to speak have had an opportunity to do so. Parties wishing to testify at the hearing should notify the contact person listed under **FOR FURTHER INFORMATION CONTACT** by July 13, 2018. Additional information regarding the hearing appears below under **SUPPLEMENTARY INFORMATION.**

**ADDRESSES:** The hearing will be held at the following location: Ann Arbor Marriott Ypsilanti at Eagle Crest, 1275 S. Huron St., Ypsilanti, MI 48197 (phone number 734–487–2000). A complete set of documents related to the proposal will be available for public inspection through the Federal eRulemaking Portal: *http://www.regulations.gov,* Docket ID No. EPA–HQ–OAR–2018–0167. Documents can also be viewed at the EPA Docket Center, located at 1301 Constitution Avenue NW, Room 3334, Washington, DC between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Julia MacAllister, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4131; Fax number: (734) 214–4816; Email address: *RFS-Hearing@epa.gov.*

**SUPPLEMENTARY INFORMATION:** The proposal for which EPA is holding the public hearing will be published separately in the **Federal Register**. The pre-publication version can be found at *https://www.epa.gov/renewable-fuel-standard-program/regulations-and-volume-standards-under-renewable-fuel-standard.*

*Public Hearing:* The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposal (which can be found at *https://www.epa.gov/renewable-fuel-standard-program/regulations-and-volume-standards-under-renewable-fuel-standard*). The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearing. Written comments must be received by the last day of the comment period, as specified in the notice of proposed rulemaking.

**How can I get copies of this document, the proposed rule, and other related information?**

The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2018–0167. The EPA has also developed a website for the Renewable Fuel Standard (RFS) program, including the notice of proposed rulemaking, at the address given above.

Please refer to the notice of proposed rulemaking for detailed information on accessing information related to the proposal.

Dated: June 26, 2018.

**Christopher Grundler,**

*Director, Office of Transportation and Air Quality, Office of Air and Radiation.*

[FR Doc. 2018–14329 Filed 7–2–18; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Chapter I

**[EPA–HQ–OA–2018–0107; FRL–9980–45–OA]**

**RIN 2010–AA12**

## Increasing Consistency and Transparency in Considering Costs and Benefits in the Rulemaking Process

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Advance notice of proposed rulemaking; extension of comment period.

**SUMMARY:** On June 13, 2018, the Environmental Protection Agency (EPA) proposed an advance notice of proposed rulemaking titled, ''Increasing Consistency and Transparency in Considering Costs and Benefits in Rulemaking Process.'' The EPA is extending the comment period on the proposed rule, which was scheduled to close on July 13, 2018, until August 13, 2018. The EPA is making this change in response to public requests for an extension of the comment period.

**DATES:** The public comment period for the proposed rule published in the **Federal Register** on June 13, 2018 (83 FR 27524), is extended. Written comments must be received on or before August 13, 2018.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OA–2018–0107 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.*

EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system).

For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** For further information on this document, please contact Elizabeth Kopits, National Center for Environmental Economics, Office of Policy, 1200 Pennsylvania Avenue NW, Mail Code 1809T, Washington, DC 20460, Phone: (202) 566–2299; *kopits.elizabeth@epa.gov.*

**SUPPLEMENTARY INFORMATION:** This document extends the public comment period for the proposed rule to ensure that the public has sufficient time to review and comment on the proposal. EPA is proposing this rule under authority of 5 U.S.C. 301, in addition to the authorities listed in the April 30th document.

Dated: June 27, 2018.

**Brittany Bolen,**

*Acting Associate Administrator, Office of Policy.*

[FR Doc. 2018–14330 Filed 7–2–18; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 51 and 61

**[WC Docket No. 18–156; FCC 18–76]**

### 8YY Access Charge Reform

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission proposes to migrate interstate and intrastate originating end office and tandem switching and transport charges for toll free (8YY) calls to bill-and-keep, continuing the reform efforts that began with the *2011 USF/ICC Transformation Order.* The Commission also proposes to cap 8YY database query rates at the lowest rate charged by any price cap local exchange carrier, and to limit charges to one database query charge per call, regardless of the number of carriers are in the call path or the number of database queries conducted. These proposals should limit unreasonably inflated charges and reduce or eliminate incentives for parties to engage in the types of abuse described in the record.

**DATES:** Comments must be submitted on or before September 4, 2018. Reply comments must be submitted on or before October 1, 2018.

**ADDRESSES:** You may submit comments, identified by WC Docket No. 18–156, by any of the following methods:

- *Federal Communications Commission's Website: http://apps.fcc.gov/ecfs//.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 888–835–5322.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Irina Asoskov, Wireline Competition Bureau, Pricing Policy Division at 202–418–2196 or at *Irina.Asoskov@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Further Notice of Proposed Rulemaking (*FNPRM* or *Notice*), FCC 18–76, released on June 8, 2018. A full-text version of the Further Notice of Proposed Rulemaking may be obtained at the following internet address: *https://docs.fcc.gov/public/attachments/fcc-18-76a1.pdf.*

## I. Background

1. AT&T first introduced interstate toll free service, using 800 numbers, in 1967. The defining characteristic of that service, then known as Inward Wide Area Telecommunications Service (WATS), was that such calls were paid for by the company that received the calls and had subscribed to the toll free service. At the time, and for many years after, interstate calling rates were substantial, so the calling party received significant financial benefit from making a toll free call rather than a direct-dialed long distance (or toll) call. Today, by contrast, the prevalence of unlimited minutes plans for both wireless and wireline service and the advent of the internet and other advances in communications have reduced the financial benefit to the calling party of being able to make a telephone call and not pay for the toll portion of the call.

2. Nonetheless, many businesses and consumers continue to find 8YY numbers useful. Demand for 8YY numbers continues to grow. In fact, the Commission recently authorized a new 833 code to supplement the 800, 888, 877, 866, 855, and 844 codes already in use for 8YY calling. The record offers several explanations for the continued demand for 8YY numbers. A toll free number can give a business a national presence and ''project a professional image.'' Toll free numbers can also act as a powerful branding tool, particularly if the subscriber can obtain a vanity number, such as 1–800–FLOWERS, that promotes its business. Many businesses also use toll free numbers to track the effectiveness of their advertising and marketing strategy. These marketing efforts increase the demand for toll free numbers, as businesses need to assign unique numbers to each advertising campaign or even to different segments of the same advertising campaign.

3. The record indicates that 8YY minutes of use appear to be increasing, at least relative to other originating access minutes. As a result, according to some commenters, 8YY calls account for a substantial majority of originating access minutes. We seek comment on parties' experiences regarding demand for 8YY numbers and legitimate minutes of use. We also invite parties to provide additional information regarding the usefulness of 8YY numbers and demand for 8YY services.

### *A. History of Intercarrier Compensation for 8YY Calls*

4. Following the breakup of AT&T, the Commission analyzed the treatment of toll free originating and terminating switched access charges for purposes of carrier revenue recovery. In addition to end office rate elements, the Commission allowed LECs to recover a portion of fixed local loop costs through the carrier common line (CCL) charge that LECs were allowed to recover from IXCs. In devising the CCL rate element for toll free calls, the Commission recognized that toll free calls generally ''originated over regular local loops and terminated over a dedicated access line to the 8YY subscriber's premises.'' The Commission referred to the originating end of such calls as the ''open end'' and the terminating end as the ''closed end.'' In the *1986 WATS Order,* the Commission placed the bulk of CCL charges on terminating access minutes,

allowing carriers to recover the rest of their loop costs through traffic-sensitive charges. The Commission also exempted the ''closed end'' of the call from the CCL charges, based on a finding that the costs of the closed end of a toll free call were covered by special access charges. Exempting the ''closed end'' of 8YY calls from CCL charges, however, meant that ''800 traffic would be exempt from carrier common line charges altogether, despite the fact that it makes use of the public switched network.'' In other words, because LECs recovered the bulk of their loop costs from terminating access charges, and the terminating end of toll free calls was exempt from the CCL charge, LECs were not able to recover from IXCs the loop costs associated with originating 8YY calls. The Commission allowed LECs to recover their loop costs by treating the originating (open) end of interstate 8YY calls as terminating for purposes of assessing the CCL charge.

5. In 1997, the Commission reaffirmed its prior decision that the ''open end'' of an 8YY call should be treated as the terminating end for access charge purposes. The Commission noted that ''an IXC is unable to influence the end user's choice of access provider for originating access services because the end user on the terminating end is paying for the [8YY] call.'' In the early 2000s, the Commission eliminated the CCL charge, but did not specifically address 8YY services. At present, originating carriers receive payments from 8YY providers for originating interstate toll free calls through originating end office, tandem switching and transport, and database query charges.

6. *Database query charges.* From 1967, when AT&T first introduced toll free service, until late 1986, ''LECs were unable to provide access for 800 service to any IXC other than AT&T.'' In 1986, the Bell Operating Companies (BOCs) and other LECs began offering other IXCs 8YY access through an NXX-based methodology, whereby the first three digits following the 800 prefix of the dialed number were associated with a specific IXC. Toll free subscribers seeking a particular 800 number had to obtain it from the IXC to which the NXX in that number had been assigned and could not change carriers without changing their 800 number. For example, if MCI had been assigned all numbers beginning with 800–468, then someone who wanted to subscribe to 800–468–3927 (800–GO–TEXAS) would have to do business with MCI. In 1989, the BOCs and some other carriers began developing ''common channel signaling networks based on the CCS7 protocol,'' in which their CCS7 networks would be linked with databases containing the 800 service information. The Commission established a separate access element for the database cost recovery. The Commission required LECs to ''develop rates for 800 data base access based only on their data-base-specific costs'' and expressed an expectation that the costs associated with the 800 number database would be ''relatively modest.''

7. In 1993, the Commission determined that the newly-created 800 database was ''absolutely necessary to the provision of 800 service using the data base access system'' and concluded that access to the database must be provided pursuant to tariff. In contrast to NXX-based routing, which relied on LECs using their central office switches to process 800 calls, the new routing technology required originating LECs to route 8YY calls through a switch equipped with a ''service switching point'' (SSP). The SSP would then ''suspend'' routing of the call until it determined where to send it by transmitting a query over the signaling system 7 (SS7) to a regional service control point (SCP). The SCP would regularly obtain routing information from the central (SMS/800) database. Not all end offices of the LECs that owned an SCP were connected to the SCP. 8YY calls from consumers served by end offices that were not connected to an SCP were routed to one of the LEC's tandem switches equipped with an SCP and the call would be processed from there. Those LECs that did not own an SCP could purchase query services from a LEC that did.

8. In a series of orders, the Commission determined that certain costs associated with the provision of 8YY database query services were reasonable and allowed price cap and rate-of-return carriers to include them in their rate calculations.

### *B. Access Charge Reforms Adopted in the USF/ICC Transformation Order*

9. In the *USF/ICC Transformation Order,* the Commission found that, over time, the intercarrier compensation system had become ''riddled with inefficiencies and opportunities for wasteful arbitrage.'' To rid the system of arbitrage schemes that impose ''undue costs on consumers, inefficiently diverting capital away from more productive uses such as broadband deployment'' and to provide incentives to transition telecommunications networks to IP technology, the Commission adopted a national, default bill-and-keep framework as the ultimate end state of all telecommunications traffic exchanged with a LEC. As the first step in implementing that framework, the Commission adopted a multi-year transition to bill-and-keep for many terminating access charges, determined that ''the originating access regime should be reformed,'' and capped most originating access charges, with the exception of intrastate originating access charges of rate-of-return carriers. The cap applied to a wide range of originating access charges, including, but not limited to, database query charges. The Commission also adopted bill-and-keep as the default compensation regime for non-access traffic between LECs and commercial mobile radio service (CMRS) providers, thus bringing that traffic into parity with CMRS-related access traffic, which had long been subject to bill-and-keep.

10. Based on a determination that concerns regarding network inefficiencies, arbitrage, and costly litigation were ''less pressing with respect to originating access'' than with respect to terminating access, the Commission did not adopt any further reforms to originating access charges. In a Further Notice of Proposed Rulemaking that accompanied the *USF/ICC Transformation Order,* the Commission sought comment on the steps it should take to transition originating access and transport to bill-and-keep, as well as issues related to 8YY traffic. The Commission sought comment on the timing, transition, and possible need for a recovery mechanism for the remaining rate elements. The Commission explained that access charges for originating 8YY traffic have been treated similarly to terminating access charges for non-8YY calls. It sought comment on ''the appropriate treatment of 8YY originated minutes'' and on whether 8YY access reform should be treated differently from originating access reform more generally. Comments regarding these issues were mixed.

### *C. 8YY Routing and Related Access Elements*

11. To understand how the current 8YY system allows for arbitrage and fraud, it is necessary to understand the typical wireline call path for, and intercarrier charges associated with, 8YY calls. As described by various commenters, when a wireline customer places a call to an 8YY number, the call is initially carried by the caller's LEC to that carrier's end office switch. At that point, the LEC may conduct the database query from the end office switch to the SCP, where it obtains the routing information. Then the LEC may route the call to a tandem switch which

may or may not be owned by the same LEC. If the LEC did not conduct the database query at its end office, then it may conduct the query from a tandem office, or it may rely on a third-party tandem provider to perform the database query. Once the routing information has been obtained, the call is then routed to the IXC—either directly, or through an intermediate provider—and, ultimately, the 8YY customer.

12. Under our current rules, the LEC that originates an 8YY call is entitled to charge the IXC that terminates the 8YY call originating access charges for the specific services provided, which would typically include originating end office switching, database queries, interoffice transport and, often, tandem switching and transport. The amount of access charges an originating LEC receives for such calls is dependent on the applicable switching and transport rates, including the number of miles that are subject to the transport charge, which is billed on a per-minute, per-mile basis. In some cases, the originating LEC and a third-party tandem provider bill the IXC separately, but some intermediate carriers submit one bill for originating and tandem and transport charges to the IXC and subsequently reimburse the originating carrier pursuant to an agreement between the originating LEC and the tandem carrier. Because database queries can originate from either an end office or a tandem office, tandem providers can also charge the IXC for database queries. According to AT&T, it is not unusual for an IXC to be assessed a database dip charge by both the LEC that originates an 8YY call, and by the tandem provider that picks up that call. AT&T claims that database queries account for a significant share—approximately 19 percent—of the originating access charges it is billed for 8YY calls.

13. Thus, in the case of 8YY traffic, originating carriers involved in the call have incentives to route calls in ways that maximize the compensation they receive—regardless of whether they receive those access revenues directly or indirectly, via shared revenue arrangements. Moreover, the current system encourages bad actors to place fraudulent, or otherwise illegitimate, robocalls with the sole purpose of generating originating access revenues. These inflated charges raise costs for both IXCs and 8YY subscribers, which have no control over the choice of originating and intermediate providers.

14. While we have described the typical call paths for 8YY calls as laid out by commenters in the current record, to further our understanding of the issues, we invite commenters to provide additional information about their experiences with various call paths associated with 8YY calls.

*D. More Recent Procedural History*

15. On September 30, 2016, AT&T filed a petition seeking forbearance from, among other things, rules related to the tariffing of 8YY database query charges. AT&T alleged that ''some LECs are engaged in schemes to overcharge'' for certain originating 8YY traffic and claimed that ''arbitrage schemes are increasingly shifting to 8YY.'' AT&T pointed to a ''wide variation in the tariffed charges'' for 8YY database queries and asserted that the rates it had negotiated in contracts with some providers were generally lower—and more uniform—than the tariffed rates for those services.

16. Other IXCs echoed many of AT&T's concerns. Verizon argued that ''[t]raffic pumping involving sham 8YY calls already is a serious arbitrage problem'' and Sprint agreed that the charges for 8YY database queries are ''unjustifiably high.'' Even parties that opposed the forbearance petition acknowledged that the variances in 8YY database query charges may create arbitrage opportunities. AT&T withdrew its petition before the Commission reached a decision.

17. Subsequently, on May 19, 2017, the Ad Hoc Telecommunications Users Committee (Ad Hoc) filed an *ex parte* letter, urging the Commission to require carriers to ''apply the per minute charges for terminating traffic to the originating or 'open' end of 8YY calls.'' Ad Hoc asserts that the Commission could reduce or eliminate incentives to use 8YY for arbitrage and access stimulation schemes if it were to treat originating 8YY calls the same as terminating access calls for purposes of intercarrier compensation.

18. In a public notice dated June 29, 2017, the Wireline Competition Bureau invited interested parties to update the record on issues raised by the Commission in the *USF/ICC Transformation Order* with respect to access charges for 8YY. We incorporate the comments from the June 29, 2017 Public Notice and the FNPRM portion of the *USF/ICC Transformation Order* into this record and seek further comment on issues related to 8YY access charge reform, as discussed in greater detail below.

## II. Alleged Abuses of the 8YY Intercarrier Compensation Regime

19. Parties raise concerns about abuses of the 8YY intercarrier compensation regime. Based on the current record in this proceeding, we propose to revise our rules to change the incentives that are leading to these reported abuses.

20. In the *USF/ICC Transformation Order,* the Commission acted to ''reduce arbitrage and competitive distortions'' which had occurred over time. However, commenters allege that because the Commission left originating access charges ''largely unreformed and expensive,'' abuses of the intercarrier compensation system with respect to 8YY service have flourished. The record currently includes descriptions of at least four different categories of schemes by which carriers are reported to be exploiting the current regime governing intercarrier compensation for originating 8YY traffic. In the interest of having a robust record, we seek additional comment on the existence, prevalence, and impact of each of these reported schemes and on any other 8YY-related schemes that commenters propose we address.

21. *Benchmarking abuse.* Currently, pursuant to the competitive LEC benchmarking rule, competitive LECs are permitted to tariff interstate access charges at a level no higher than the tariffed rate for such services offered by the incumbent LEC serving the same geographic area. Commenters complain that some competitive LECs aggregate 8YY traffic from originating LECs and instead of ''benchmark[ing] its originating tandem switched transport rates to the rates tariffed by the incumbent LEC in the area where the call originated, the CLEC bills the higher rates tariffed by the incumbent LEC in the area where the call is handed off to the IXC.'' We seek comment on this practice and on whether it is a legitimate practice or an improper attempt to exploit a loophole in the Commission's rules. Are there examples of other forms of potential benchmarking abuse in addition to the one we describe here? How prevalent is benchmarking abuse? How much does it cost individual IXCs or 8YY subscribers in additional access charges? Are there legitimate reasons a LEC would choose to hand off 8YY traffic in an area other than where the call originated?

22. *Mileage pumping.* Because originating carriers charge IXCs for transport on a per-minute, per-mile basis, the farther they transport the originating traffic, the greater the compensation they receive from the IXC serving the 8YY subscriber. As a result, originating carriers have an incentive to artificially inflate their mileage in order to maximize the transport rates they charge to the IXC, particularly if

transport rates are materially higher than transport costs, as some commenters' filings suggest. In fact, AT&T alleges that carriers engage in ''mileage pumping'' schemes, in which ''a CLEC tariffs a per-mile charge for transport and then either (i) bills the IXC for transport it does not actually provide . . . or (ii) inefficiently routes traffic long distances—sometimes more than a hundred miles—to inflate the number of miles applied to the per-mile transport charge.'' We seek comment on this practice. Are there other examples of mileage pumping schemes that differ from the ones described by AT&T? If so, please describe them. How prevalent are mileage pumping schemes? How much do they cost 8YY providers or subscribers in inflated charges? Are there legitimate reasons a carrier would haul traffic 100 miles or more before handing it off to an IXC?

23. *Traffic pumping.* There is also evidence in the record that companies are using traffic pumping schemes to exploit inflated access rates. As described by commenters, in these schemes, a traffic pumper enters into a revenue sharing agreement with a LEC and subsequently uses automated software to place illegitimate calls to 8YY numbers. These calls often use auto dialers or ''robocallers'' to target Interactive Voice Response (IVR) systems and use varying means to keep the IVR engaged, preventing the call from ending. The LEC then bills the IXC for the calls—including the artificially inflated minutes of use—and shares the proceeds with the traffic pumper. These ''[a]nnoying and disruptive 8YY calls'' waste the targeted businesses' resources and ''devalue [providers'] 8YY products.'' We seek comment on this practice. How prevalent are traffic pumping schemes involving toll free calls? Are there examples of 8YY traffic pumping schemes that differ materially from those already described in the record? We encourage parties to quantify the costs these schemes impose on 8YY providers and subscribers.

24. *Database queries.* As the least regulated rate element of the 8YY traffic flow, database queries also appear to have been the subject of abuse. Commenters point out substantial variance in database charges and contend that query charges are excessive and unrelated to actual costs. For example, AT&T provides numerous examples of database query charges, ranging from as low as $0.0015 to as high as $0.015. IXCs also claim that there are times when they are billed for multiple queries on a single call. We invite commenters to provide information about the actual cost of a database query to a LEC compared to the amount IXCs are being assessed for the database dips. We also seek comment on the impact on IXCs and their customers of paying these database charges. Are there ways for IXCs to determine whether a call has been ''dipped'' more than once? Is there any legitimate reason for a call to be subjected to multiple dips?

25. *Other abuses.* We also seek comment on whether there are any other abuses related to 8YY access charges that are not described above. If so, what are they? What impact do any other 8YY-related abuses have on carriers and on 8YY subscribers? To the extent that commenters identify other abuses of the 8YY system, we seek comment on whether our proposed reforms would sufficiently address those abuses. If not, what additional measures would we need to take to eliminate those abuses?

## III. Addressing Alleged Abuses of the 8YY Intercarrier Compensation Regime

26. To address abuses of the current 8YY intercarrier compensation system, we propose to move, over time, all originating interstate and intrastate end office and tandem switching and transport charges related to 8YY calls to bill-and-keep. To avoid a flash cut to bill-and-keep for originating 8YY access charges, we propose a three-year transition period. We propose to allow originating carriers to recover their costs primarily through end-user charges, though we invite comment on allowing some recovery through Connect America Fund (CAF) support. We also propose to cap 8YY database query rates nationwide and to prohibit carriers from assessing more than one database query charge per call, even if more than one carrier handles the call before it is handed off to an IXC. Additionally, we seek comment on other issues related to 8YY traffic, including alternative approaches to address abuses related to 8YY calls.

### *A. Moving 8YY Originating End Office and Tandem Switching and Transport Charges to Bill-and-Keep*

27. Consistent with the bill-and-keep framework the Commission adopted as ''a default framework and end state for *all* intercarrier compensation traffic,'' we propose moving all interstate and intrastate originating access charges related to 8YY calls to bill-and-keep, except for database query charges. We seek comment on this proposal. We also seek comment on an alternative approach that would transition all originating interstate and intrastate end office 8YY access charges to bill-and-keep but move 8YY tandem switching and transport to bill-and-keep only where the originating carrier also owns the tandem.

#### 1. Moving Most Elements of Originating 8YY Access Charges to Bill-and-Keep Should Curtail Abuses of 8YY Calls

28. The current record shows that toll free subscribers are burdened by unpredictable and uncontrollable call volumes and associated charges for calls to their 8YY numbers. With the proliferation of unlawful robocalls, the volume of traffic routed to 8YY numbers no longer depends on the ''promotional efforts'' of the 8YY subscriber. Indeed, just the opposite is true—fraudulent calls are only ''controllable from the originating point.'' And there is significant evidence that some carriers are exploiting loopholes in the current intercarrier compensation system to inflate their bills to IXCs that serve 8YY customers. The intercarrier compensation system needs to adapt to this new reality.

29. Accordingly, in an effort to combat the abuses that appear to plague the existing 8YY regime, we propose to move interstate and intrastate originating 8YY end office, tandem switching and transport access charges to bill-and-keep. Consistent with the *USF/ICC Transformation Order,* we propose to allow carriers to negotiate private agreements that depart from bill-and-keep, but not permit carriers to tariff any originating end office or tandem switching and transport charges related to 8YY traffic. We seek comment on this approach. Are there any obstacles that would prevent carriers from moving to bill-and-keep for these charges? Would our proposal adequately address the problems currently plaguing the 8YY industry? As explained below, we expect our proposed changes to have numerous benefits, including: Removing incentives for abuse, reducing costs for consumers, potentially lowering rates or improving service for 8YY subscribers, encouraging the transition to IP services, and reducing the number of disputes over intercarrier compensation.

30. The basic logic underpinning our proposal is that each carrier should be responsible for the costs of the parts of the call path which it has discretion to choose. Should we adopt any exceptions to the proposal? For example, are there instances where an IXC, or some other party, may require the originating LEC to route traffic through a specific tandem? If so, should the originating LEC be allowed to charge the IXC for the costs it incurs in using that tandem? If the originating LEC routes 8YY traffic over a tandem that it does not own, how should the

originating LEC and the tandem owner recover their respective costs? Should the originating LEC be required to pay the tandem owner for the use of the tandem and recover those costs from its own end users? Are there situations where such an arrangement would not be just and reasonable?

31. *Curtailing abuses.* We seek comment on the extent to which our proposals will curtail 8YY abuses. In the *USF/ICC Transformation Order,* the Commission found that, over time, bill-and-keep will ''eliminate wasteful arbitrage schemes and other behaviors designed to take advantage of or avoid above-cost interconnection rates.'' The Commission's prediction has proven accurate, as filings submitted in this proceeding indicate that the transition to bill-and-keep has reduced fraud and abuse related to terminating traffic. However, the reforms adopted in the *USF/ICC Transformation Order* did not address 8YY traffic, and the record in this proceeding shows an increase in certain types of abuses ''designed to take advantage'' of the intercarrier compensation system, such as the inefficient routing of 8YY calls.

32. In light of the positive outcome of bill-and-keep for terminating traffic, we expect that our proposed reforms to 8YY originating access charges will eliminate abuses—including benchmarking, mileage pumping, and traffic pumping schemes—related to 8YY calls. All of these schemes arise from carriers' ability to bill IXCs inflated access charges relating to 8YY traffic. Moving the access elements associated with these abuses to bill-and-keep should eliminate any ability to profit from these activities. We expect the proposed reforms will provide originating carriers with the incentive to be as efficient and cost-effective as possible in routing 8YY traffic. We seek comment on this expectation.

33. Based on the current record in this proceeding, we propose to revise our rules to change the incentives that are leading to abuses of the intercarrier compensation system for 8YY. We seek comment on each of these alleged abuses, including mileage pumping, traffic pumping, benchmarking abuse, and excessive and unnecessary database dips. How should our rules be modified to curb such abuses? Will moving originating end office and tandem switching and transport rates for 8YY calls to bill-and-keep discourage carriers from engaging in traffic or mileage pumping? We seek comment on any costs and burdens on small entities associated with the proposed rules, including data quantifying the extent of those costs or burdens.

34. At least one competitive LEC that offers toll free services to businesses and also provides originating 8YY services opposes proposals to move originating access charges to bill-and-keep. This carrier asserts that fraudulent toll free calls should be addressed on a case-by-case basis through inter-carrier cooperation and by the Commission's Enforcement Bureau and the Federal Bureau of Investigation. This carrier's contracts require its customers to adopt anti-fraud measures and provide remedies against customers that are suspected of engaging in unlawful activity. Do other carriers use similar contract provisions? How effective are they? What efforts do carriers or their customers make to identify illegitimate 8YY calls? How effective are those efforts? What security mechanisms do wholesalers or traffic aggregators employ to screen incoming calls? What obstacles do carriers or 8YY subscribers face in distinguishing illegitimate traffic from legitimate traffic? We seek comment on these and other issues related to the alternative approach of addressing unlawful toll free calls on a case-by-case basis.

a. Benefits to Consumers

35. We seek comment on the extent to which our proposals will benefit consumers. In the *USF/ICC Transformation Order,* the Commission concluded that the intercarrier compensation regime distorted competition because carriers shifted their network costs onto other carriers and, as a result, consumers could not identify and switch to more efficient providers. At the same time, the Commission observed that ''because the calling party chooses the access provider but does not pay for the toll call, it has no incentive to select a provider with lower originating access rates.'' In the 8YY industry, consumers who call 8YY telephone numbers are not charged directly for the calls, do not know what their originating carrier is charging for routing their 8YY call and, therefore, cannot exercise effective consumer choice. Yet, inefficiencies and abuses of the intercarrier compensation system result in higher prices to 8YY subscribers, who must recover their costs from their customers—a group that likely includes originating 8YY callers. Thus, in the end, consumers indirectly subsidize inefficiencies and abuses of the 8YY intercarrier compensation system.

36. In the *USF/ICC Transformation Order,* the Commission reviewed economic evidence and concluded that, upon transitioning to bill-and-keep, ''carriers will reduce consumers' effective price of calling, through reduced charges and/or improved service quality.'' The Commission further predicted that these ''reduced quality-adjusted prices will lead to substantial savings on calls made, and to increased calling.'' This prediction appears to have proven true. For example, while there are several factors that may explain increased calling, significant growth has occurred in wireless subscribership since the Commission moved all CMRS traffic to bill-and-keep.

37. We recognize that consumers appear to find toll free calling an attractive way to reach certain businesses and do not expect that to change if we move originating access charges for 8YY calls to bill-and-keep. Given that the Commission has already moved wireless calls—including 8YY calls from wireless numbers—to bill-and-keep, consumers' use of wireless services may be instructive in helping predict the effects our proposed changes will have on consumers' use of toll free services. Are there any lessons we can learn from the effect bill-and-keep has had on wireless 8YY calls? We seek data on whether wireless 8YY originating calls have increased or decreased over the past five years. Do consumers make fewer toll free calls from wireless phones than they do from wireline phones? Has the number of 8YY calls decreased as more people have switched to wireless phones as their primary method of telecommunications?

38. We expect that transitioning 8YY calls to bill-and-keep will ultimately benefit consumers. We invite comment on this view and welcome commenters to provide economic analysis and data in support of their views.

b. Benefits to 8YY Subscribers

39. We seek comment on the extent to which our proposals will benefit 8YY subscribers. Because incentives in the 8YY industry are misaligned (8YY subscribers are paying originating carriers that they did not select), 8YY subscribers are likely paying higher rates than they otherwise would, even for legitimate 8YY traffic. We anticipate that, by correctly aligning carriers' incentives and pricing signals, bill-and-keep will lead to increased competition and ''reduced quality-adjusted prices'' for 8YY subscribers. In addition, we predict that moving to bill-and-keep will prompt ''carriers [to] engage in substantial innovation to attract and retain'' customers.

40. We seek comment on these expectations and predictions. Are our proposed changes to the 8YY access charge regime likely to result in lower

rates for 8YY subscribers? Will our proposed changes lead to more competition and innovation? In the *USF/ICC Transformation Order,* the Commission estimated that ''incumbent LECs will, on average, pass through at least 50 percent of ICC savings to end users, while CMRS providers and competitive LECs will pass through at least 75 percent of these savings.'' Should we expect similar passthrough levels by 8YY providers? Are there effects that resulted from the Commission's actions in the *USF/ICC Transformation Order* that might be instructive here?

c. Encouraging the Transition to All-IP Services

41. We seek comment on the extent to which our proposals will encourage the transition to all-IP services. We are concerned that the current compensation regime creates disincentives for carriers to transition to IP. For example, AT&T claims that ''CLECs engaged in arbitrage are resisting agreements to exchange traffic in IP format because they are reluctant to relinquish high access revenues from originating 8YY traffic that would go to bill-and-keep under an IP arrangement.'' Are other parties having similar experiences? Do other parties share AT&T's concerns that the current intercarrier compensation system is impeding the transition to all-IP services?

42. There is no obvious justification for using tandem switches in an IP environment. As a result, carriers might be reluctant to transition to IP-based services because of concerns about lost intercarrier compensation revenues. We seek comment on this issue. Are there carriers that are reluctant to move to IP-based interconnection due to concerns about losing intercarrier compensation revenues? Will moving originating 8YY access charges—particularly tandem switching and transport charges—to bill-and-keep expedite the transition to IP services? Will it discipline prices? Will it improve network efficiency?

d. Reducing Intercarrier Compensation Disputes

43. We seek comment on the extent to which our proposals will reduce intercarrier compensation disputes. The Commission found in the *USF/ICC Transformation Order* that ''bill-and-keep will . . . reduce ongoing call monitoring, intercarrier billing disputes, and contract enforcement efforts.'' Similarly, we expect that by eliminating the incentives to abuse the intercarrier compensation system for 8YY traffic, our proposed reforms will allow carriers to reduce the resources they currently dedicate to monitoring their 8YY call traffic and disputing 8YY invoices.

44. We invite comment on these expectations. What would be the monetary impact of such savings? Is there any reason that our proposed reforms would not reduce intercarrier disputes related to 8YY calls? Are there any other benefits that are likely to arise from moving most 8YY intercarrier compensation charges to bill-and-keep, in addition to the ones already discussed in this *Notice*?

2. Alternative Proposal

45. We recognize that our proposal to move all tandem switching and transport to bill-and-keep is a departure from the approach the Commission took in reforming terminating access charges. In the *USF/ICC Transformation Order,* the Commission adopted bill-and-keep for terminating tandem switching and transport only where the terminating price cap carrier owns the tandem. Accordingly, we invite comment on an alternative proposal to transition all originating interstate and intrastate end office 8YY access charges to bill-and-keep, but to move 8YY tandem switching and transport to bill-and-keep only where the originating carrier also owns the tandem. Under this approach, we propose to cap the mileage that carriers can charge for tandem switching and transport based on the number of miles between the originating end office and the nearest tandem in the same local access and transport area (LATA). As part of this alternative approach, we also propose to cap tandem switching and transport rates based on the rates charged by the incumbent LEC serving the LATA in which the call originates, without regard to the rates charged by the incumbent LEC serving the area where the tandem is located.

46. We seek comment on whether this alternative proposal would adequately address abuses in the 8YY marketplace, including benchmarking abuse and mileage pumping. If we adopt this approach, what are the relative benefits compared to our proposed framework for transitioning all tandem switching and transport elements of originating toll free traffic to bill-and-keep? For example, under this alternative approach, would there be less need for revenue recovery? How would common ownership of the end office and tandem be determined? Should we determine ownership at the holding company level? Is there any reason that an originating LEC should not be deemed to ''own'' a tandem that is owned or operated by an affiliate of the originating LEC? Finally, we seek comment on the drawbacks of this alternative proposal, particularly relative to our proposal to adopt bill-and-keep as the default methodology for all 8YY originating access charges, without regard to who owns the tandem.

*B. Providing a Transition Period*

47. We propose to provide a three-year transition period for moving originating end office and tandem switching and transport access charges for 8YY calls to bill-and-keep. In proposing this transition, we acknowledge concerns that a ''flash cut'' to bill-and-keep might be ''hugely disruptive for originating access providers and . . . could prompt 'financial distress.' '' Adopting a glide path will allow providers to evaluate their cost recovery options and make any appropriate changes to their end-user rates to offset the loss of 8YY access payments.

48. A three-year transition period would be consistent with the Commission's decision, in the *USF/ICC Transformation Order,* to adopt a glide path to a bill-and-keep methodology for many terminating access charges. That decision was prompted by a desire to ''provide industry with certainty and sufficient time to adapt to a changed regulatory landscape.'' As the Commission explained, ''adopting a gradual glide path to a bill-and-keep methodology for intercarrier compensation generally . . . will help avoid market disruption to service providers and consumers'' and ''moderate potential adverse effects on consumers and carriers of moving too quickly.''

49. We propose a three-step transition process that corresponds with the process for filing annual access tariffs, to become effective on July 1 of every year. Each step will last one year and apply to all LECs that tariff rates related to originating 8YY calls. The rules will apply directly to incumbent LECs, including both rate-of-return carriers and price cap LECs, and will apply to competitive LECs through the continuing application of the existing benchmarking rule. At the first step, to become effective on July 1 of the base year, we propose to require carriers to reduce all interstate and intrastate originating end office and tandem switching and transport tariffed rates for 8YY calls by one-third. At the second step, one year later, we propose to require carriers to further reduce their originating end office and tandem switching and transport rates for 8YY calls by an additional one-third. At the third and final step, two years after the base year filing, we propose to require

carriers to move their tariffed rates for originating 8YY end office and tandem switching and transport to bill-and-keep. We seek comment on this proposal.

50. Do commenters have concerns about the adoption of a transition period? Should we adopt different transition periods for originating end office access charges and for tandem switching and transport charges? If so, why and what should they be? Will our proposed transition adequately address concerns about problems associated with a flash cut? Conversely, would a shorter transition of 8YY traffic to bill-and-keep help speed the transition to IP services? Would the proposed transition impact some carriers differently than others? Are there any other aspects of 8YY traffic flow that we should address when we consider a transition period? We also seek comment on our proposed rules for effectuating this proposal. Do the proposed rules provide sufficient guidance for implementing our proposed transition period? Are there additional issues that we should address in the proposed rules to avoid confusion during implementation?

51. Consistent with the rules the Commission adopted to implement the transition to bill-and-keep for terminating end office access services in the *USF/ICC Transformation Order,* we propose to require carriers to first convert their originating 8YY access charges to single composite per-minute rates for each of the four categories of services being transitioned (interstate originating end office access, intrastate originating end office access, interstate originating tandem switched transport access, and intrastate originating tandem switched transport access). Our proposed rules require LECs to calculate their baseline rates—which will be the starting point for the rate reductions described above—by dividing their baseline revenues from a particular category of access charges (*e.g.,* interstate originating end office access charges for toll free calls) by the corresponding minutes of use for that category. We seek comment on this proposed approach. What lessons can be learned from implementation of the transition to bill-and-keep for terminating end office access services that we should apply here? Would this approach be reasonably straightforward to implement? Are there potential gaming or other implementation concerns about which we should be concerned?

52. In the alternative, should we require LECs to reduce all rate elements for originating end office and tandem switching and transport for toll free calls by one-third the first year, by an additional one-third the second year, and to bill-and-keep the third year? Would such an approach be simpler for carriers to implement from a tariffing and billing perspective? Does it make any difference to the carriers paying these access charges whether the transition involves composite rates? What are the advantages and disadvantages to one approach as compared to the other? Are there potential gaming or other implementation concerns about which we should be concerned if we adopt this three-year transition approach?

53. Unlike the rules the Commission adopted in the *Transformation Order,* our proposed rules do not specifically address the treatment of fixed charges (*e.g.,* non-recurring charges and some monthly recurring charges, such as those billed on a per-DS1 or per-DS3 basis). We seek comment on whether we should address such charges in connection with toll free calls by, for example, requiring LECs to allocate their fixed charges between 8YY and non-8YY calls. Or, should we bring per-minute charges related to originating toll free calls to bill-and-keep but defer action on fixed charges until we address originating access charges more broadly outside of the toll free context? Does the answer to this question depend on whether we require LECs to adopt composite rates as part of the transition of 8YY originating access charges to bill-and-keep?

54. If we decide to include fixed charges as part of our reforms of originating access charges for 8YY calls, should we dictate a specific methodology for allocating such charges between toll free and other originating traffic? If so, how should the rules allocate fixed charges between 8YY and non-8YY calls? In the *USF/ICC Transformation Order,* the Commission directed carriers to allocate fifty percent of their fixed charges to terminating access and fifty percent to originating access. Should we take a similar approach here and direct LECs to allocate half of their fixed charges for originating access to toll free traffic? Or should a greater percentage of fixed charges be allocated to toll free originating traffic, particularly given that filings in the record suggest that toll free calls account for significantly more than half of all originating access minutes billed to IXCs? In the alternative, should we allow LECs to allocate based on their particular traffic data, but establish a default allocation for carriers that lack sufficient information regarding their traffic data? If we establish a default allocation, should the percentage be fifty percent allocated to 8YY calls? Or should the percentage be different?

55. In the *USF/ICC Transformation Order,* the Commission modified the CLEC benchmarking rule and adopted ''a limited allowance of additional time to make tariff filings during the transition period'' in order ''to ensure smooth operation of our transition'' to bill-and-keep. We seek comment on whether a similar allowance is warranted here. For example, should we allow competitive LECs that benchmark their originating 8YY access charges to a competing incumbent LEC an additional 15 days from the effective date of the tariff to which a competitive LEC is benchmarking to make its modified tariff filing? Would such an allowance be necessary if we adopted our alternative proposal and required LECs to reduce their individual rate elements for toll free calls rather than converting their existing charges to composite per-minute rates? If all LECs were required to reduce their originating access rates for 8YY calls by the same proportions, would it be necessary to give competitive LECs additional time after incumbent LECs file their tariffs to come into compliance with the proposed reductions? We invite comments on these issues, as well as any other suggested modifications to the application of the CLEC benchmarking rule during the transition period, based on lessons learned during the transition to bill-and-keep for terminating access charges.

56. We seek comment on any costs and burdens on small entities associated with the proposed rule, including data quantifying the extent of those costs or burdens. We also invite suggested modifications to the proposed transition. Are there other issues we should consider? Are there lessons learned during the transition to bill-and-keep for terminating access charges that should inform our approach here? Any alternative approaches should also be supported by data and other evidence showing their relative advantages and disadvantages. We welcome specific comments on the language and the potential impact of the proposed rules accompanying this item.

### *C. Revenue Recovery*

57. Some commenters express concerns about the financial impact of moving 8YY calls to bill-and-keep and argue that some carriers may need a source of revenue recovery to mitigate the impact of lost access revenues. Other commenters express concern that moving originating access for 8YY calls to bill-and-keep might deter consumers

from making toll free calls. The latter concerns appear to be based on an assumption that carriers will directly bill consumers for originating 8YY access on a per-call or per-minute basis. We do not propose that carriers should recover any lost revenue through 8YY-specific charges, whether billed per-call, per-minute, or on a flat-rated monthly basis. Such an approach would be inconsistent with the way most customers are billed for voice services today (*e.g.,* flat-rated, unlimited calling plans). We seek comment on whether there are additional steps we should take to address concerns that our proposed reforms might discourage legitimate 8YY calls.

58. In the *USF/ICC Transformation Order,* the Commission adopted a transitional recovery mechanism to partially mitigate revenue reductions incumbent LECs would experience because of these intercarrier compensation reform measures. The recovery mechanism had two basic components. First, the Commission defined the revenue incumbent LECs were eligible to recover—referred to as ''Eligible Recovery.'' The Eligible Recovery calculation was different for price cap carriers and rate-of-return carriers, with the rate-of-return calculation based on a more complex formula, which included such carriers' 2011 interstate switched access revenue requirement. Second, the Commission specified that incumbent LECs may recover Eligible Recovery through limited end-user charges, and, where eligible, and a carrier elects to receive it, support from the CAF. The recovery mechanism differed between price cap carriers and rate-of-return carriers, with CAF ICC support for price cap carriers eventually phasing out, but no similar sunset for rate-of return carriers. The Commission declined to permit competitive LECs to participate in the recovery mechanism, explaining that, because competitive LECs lack market power for the provision of these services, they were free to recover reduced access revenue through regular end-user charges.

59. More recently, in the *Technology Transitions Order,* the Commission concluded that incumbent LECs, like competitive LECs, are ''non-dominant in their provision of interstate switched access services.'' Accordingly, incumbent LECs, like competitive LECs, should be able to recover revenues they may lose as a result of our proposals directly from their end users, subject only to the discipline of the market. This is similar to the approach the Commission took with competitive LECs in the *USF/ICC Transformation Order,* and to the approach the Commission adopted with CMRS providers. When those providers were transitioned to bill-and-keep, the Commission did not provide any revenue recovery mechanisms. Instead, the Commission relied on the competitive market to determine whether, and how much, those providers could increase their rates to recover any revenues lost due to the transition to bill-and-keep.

60. We seek comment on whether incumbent LECs, like competitive LECs, should be able to recover their lost access charge revenues from their end users. Should the market determine whether any rate increases are reasonable? Is there any reason consumers would not be able to switch providers—for example, moving from a wireline LEC to a wireless provider—if their existing carrier charges too much for its services? Is there any reason LECs cannot adjust their end-user rates to recover revenues they may lose due to our proposed changes to the intercarrier compensation regime for originating 8YY calls? Should we provide any additional revenue recovery? For example, should we allow incumbent LECs to recover lost revenue through mechanisms, such as the Access Recovery Charge (ARC)? Why would carriers need to rely on ARCs if they are nondominant in the provision of the originating switched access services at issue here? If we allow carriers to recover lost revenues through ARCs, would we need to raise the Residential Rate Ceiling, which currently prohibits providers from imposing an ARC on any consumer paying an inclusive local monthly phone rate of $30 or more, in order to allow sufficient revenue recovery? Would we need to increase the existing cap on ARCs? Are there other issues to consider if we allow price cap carriers and competitive LECs to rely on increased ARCs? Are there any regulatory barriers that might impede incumbent LECs' ability to recover a reasonable amount of lost revenue from their end users? Are there any state or local regulations that would prevent LECs from raising their end-user rates to recover reasonable lost revenues related to intrastate 8YY calls?

61. We also propose to exclude from any recovery mechanism revenues generated by illegitimate or unlawful 8YY calls, such as those involving autodialed calls to toll free numbers, because it would be unreasonable for a LEC to rely on access revenues generated by such calls. We seek comment on this issue. We also seek comment on how we should determine which portion of originating carriers' 8YY revenues are legitimate for purposes of establishing the need for revenue recovery. Do we need to make any determinations regarding what revenues LECs should reasonably be allowed to recover from their end users, or can we rely on the competitive market to discipline carriers' switched access rates?

62. *Rate-of-return carriers.* While we propose to allow rate-of-return carriers to recover their legitimate 8YY costs through reasonable increases in end-user rates—though not through new line items—we recognize that many rate-of-return carriers, particularly those serving rural areas, already require CAF ICC support to keep end-user rates at acceptable levels. We seek detailed comment on the effect transitioning originating 8YY charges to bill-and-keep will have on rural and high-cost areas. Would rate-of-return carriers be disproportionately affected compared to price cap and competitive LECs? For example, for rate-of-return carriers, what proportion of originating access revenues are attributable to 8YY calls? Does this proportion differ significantly from that of price cap carriers? What effect would our existing rate-averaging and rate-integration rules have on our proposed reforms? We seek comment on the need for originating LECs to replace the revenues they currently obtain from 8YY calls. We urge commenters, whenever possible, to provide quantifiable data or evidence supporting their views.

63. We also seek comment on whether we should provide rate-of-return carriers additional CAF ICC support to help cover the costs of originating 8YY access or to replace some or all of the revenue such carriers currently earn from originating access on legitimate 8YY calls. Would using CAF ICC support in this manner comport with the Commission's mandate under section 254 to advance universal service through ''specific, predictable and sufficient'' mechanisms?

*D. Limiting Database Query Charges*

1. Adopting a Uniform Cap

64. According to at least one commenter, database query charges comprise a significant proportion of the charges IXCs currently pay to originating LECs for 8YY calls. From the originating carrier's perspective, the database query is a cost a LEC must incur in order to route an 8YY call to the proper IXC, either by maintaining its own SCP database or by paying a third-party SCP for the database query.

65. Nonetheless, we recognize the need to rein in any unreasonable

charges for database queries. IXCs point out that 8YY database query rates vary widely among carriers and are typically untethered from the costs incurred in querying a database. We propose to address concerns about excessive and irrationally priced rates for database query charges by capping those charges nationwide at the lowest rate currently charged by any price cap LEC. We also propose to allow only one database query charge per 8YY call.

66. We invite comment on these proposals. In this item, we do not propose to move database query charges to bill-and-keep. Are there reasons that we should consider doing so immediately? Should we revisit that question after a set period of time? Are there harms that might arise if we moved other elements of originating access for 8YY to bill-and-keep, before we moved database query charges to bill-and-keep? We also seek comment on alternative methods of ensuring that database dip charges are just and reasonable.

67. Is the proposed cap on database query charges reasonable? Should we adopt a transition period for carriers to lower their rates to the proposed cap? If so, how should we structure such a transition period? Should we adopt a firm cap, as we propose, or should we establish a rebuttable presumption that rates above a certain threshold are presumptively unjust and unreasonable? Should we provide a specific waiver process for carriers that can demonstrate that their costs for database queries exceed the national cap? Should we build in automatic reductions to the permissible data base query charge to account for improvements in technology? If so, what amounts and over what timeframe? Conversely, should we allow adjustments to any rate caps to account for inflation? Does this proposal create the proper incentives for carriers to minimize access costs and route 8YY traffic as efficiently as possible? We also seek comment on any costs and burdens on small entities associated with this proposal, including data quantifying the extent of those costs or burdens.

2. Determining the Appropriate Cap

68. AT&T alleges that query rates currently range from $0.0015 to $0.015 per query, and that rates can vary widely even among corporate affiliates. We seek comment and additional data on the variability of 8YY database query rates. Do the rate examples provided by AT&T accurately reflect carriers' rates for database queries? We recognize that the rates were capped at their then-current levels by the adoption of the *USF/ICC Transformation Order,* but we seek comment on the underlying reason for the extreme variability in rates for database queries. Are these rates reflective of the costs carriers incur in providing database dip services? Do querying costs vary by geographic region? Do query rates (or costs) vary by the type of customer? How do incumbent LECs set their database query rates? What impact have high database query rates had on IXCs and 8YY subscribers?

69. Evidence provided by AT&T indicates that the lowest rate currently charged by a price cap LEC is $0.0015 per query, charged by CenturyTel. Is this correct? If so, is there any reason this rate should not serve as a nationwide cap for all 8YY database query charges? Are rates above $0.0015 per query unjust and unreasonable? Is there any reason to believe this rate is below the cost of querying the database? Inteliquent observes that,

> [r]ate structures between incumbent local exchange carriers trade off non-recurring setup charges, monthly recurring interconnect charges, 8YY query charge, per minute of use switching charges, and per minute per mile transport charges. For example, although some carriers charge a materially higher non-recurring set up charge or monthly recurring interconnect charge, those higher rates typically are offset by a lower per minute of use switching charge. Similarly, the 8YY DIP query charge may be high because the switched per minute of use charge is low, and vice versa.

70. Is this a correct representation of how LECs allocate their charges? Is there any reason to believe that CenturyTel's rate of $0.0015 is artificially low because CenturyTel allocates some database dip costs to other originating charges? Should we consider a cap based on the average or median rates currently charged by LECs?

71. What infrastructure is necessary to conduct a database query? How expensive is it to become an SCP owner/operator? How many SCP owner/operators are there? Is the market for database queries competitive? We encourage commenters to provide detailed information about the rates SCP's charge for database dips, the costs LECs incur in connecting to SCPs, and any other costs associated with database queries. Are there economies of scale associated with database dips?

72. We understand that Somos is offering a new product—RouteLink, which ''provides direct access to authoritative Toll-Free data,'' thus eliminating any need for an SCP intermediary. How many carriers, Responsible Organizations (''RespOrgs''), or other entities use Somos's RouteLink? What advantages does RouteLink provide compared to other ways to connect to Somos's database? What effect, if any, does the introduction of RouteLink have on what constitutes a reasonable rate for database queries?

3. One Dip per Call

73. Regarding our proposal to limit carriers to one database query charge per call, we recognize that the Commission has previously declined to impose such a requirement on LECs. Instead, the Commission deferred the matter to an industry association, the Ordering and Billing Forum of the Exchange Carrier Standards Association. Did this Association take any action on database query charges? Should the Commission act now, given the current concerns about carriers billing IXCs for more than one query per call? Specifically, we seek comment on whether billing for more than one query charge per 8YY call is an unjust and unreasonable practice, even if the duplicative queries are performed by different carriers in the call chain. Is there any legitimate reason that an IXC should reasonably be expected to pay for multiple database queries in connection with a single 8YY call?

*E. Legal Authority*

74. In the *USF/ICC Transformation Order,* the Commission determined that it had the authority to comprehensively reform intercarrier compensation and move all interstate and intrastate access charges to bill-and-keep, explaining that ''the legal authority to adopt the bill-and-keep methodology described herein applies to all intercarrier compensation traffic.'' Pursuant to this authority, the Commission adopted bill-and-keep as the end state for all traffic exchanged between carriers and adopted a glide path toward that methodology for all terminating access charges.

75. The Commission's actions in the *USF/ICC Transformation Order* were upheld on appeal, including the Commission's decision to prescribe bill-and-keep as the default methodology for intercarrier compensation for various categories of traffic. The Court specifically rejected challenges to Commission's regulation of originating charges, noting that the FCC's inclusion of originating access charges in its reform effort was ''reasonable'' and entitled to deference.

76. Our statutory authority to implement changes to pricing methodology governing the exchange of traffic with LECs flows directly from sections 251(b)(5) and 201(b) of the Act.

Section 251(b)(5) states that LECs have a ''duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.'' In addition to providing the substantive authority for various rules and requirements, the Supreme Court in *AT&T Corp.* v. *Iowa Utilities Board,* held that ''the grant in § 201(b) means what it says: The FCC has rulemaking authority to carry out the 'provisions of this Act,' which include §§ 251 and 252.''

77. In addition to our authority to reform originating 8YY access charges, we also have authority to establish a transition plan for moving toward that ultimate objective in a manner that will minimize market disruptions. Indeed, the Commission's pre-existing regimes for establishing reciprocal compensation rates for section 251(b)(5) traffic have been upheld as lawful, and can be applied to originating 8YY traffic, as provided by our transitional intercarrier compensation rules related to ''ultimately phasing down'' originating access charges. As the U.S. Court of Appeals for the D.C. Circuit has recognized, ''[w]hen necessary to avoid excessively burdening carriers, the gradual implementation of new rates and policies is a standard tool of the Commission,'' and the transition ''may certainly be accomplished gradually to permit the affected carriers, subscribers and state regulators to adjust to the new pricing system, thus preserving the efficient operation of the interstate telephone network during the interim.''

78. We invite comment on our legal authority to adopt the changes to the 8YY intercarrier compensation system that we are proposing in this Notice. Is there any reason that the precedents cited above would not apply to our current proposals? Does the Commission have the authority to create a revenue recovery mechanism and to cap database query charges as part of its reform of 8YY originating access? Does the Commission have the authority to make these changes pursuant to one or more different statutory provisions, other than sections 201(b) and 251(b)(5)?

*F. Related Issues*

1. Role of Intermediate Providers

79. To better inform our reform efforts, we seek comment on the role intermediate providers, such as third-party tandem providers, or other providers that are interposed in the call path between an originating carrier and 8YY providers, play in the 8YY market. We also seek comment on how wireless 8YY calls have been affected by the fact that CMRS providers cannot charge originating access charges.

80. Several parties express frustration with certain practices employed by intermediate providers in the 8YY call flow. In particular, some carriers complain about the role intermediate providers play in facilitating abuses of the 8YY intercarrier compensation system. We seek comment on whether intermediate providers perform a legitimate function that should be preserved. Once originating 8YY traffic moves to bill-and-keep, we expect the market will determine how much, if anything, aggregators or other ''middlemen'' should be paid for their services (including database queries). Should the Commission provide any regulations or guidance regarding the offering of these services or compensation for these services? Or can we rely on the marketplace?

2. Network Edge

81. Although we have issued a separate Public Notice to refresh the record on other intercarrier compensation issues, including the network edge, we seek comment on whether the network edge requires a distinct approach in the 8YY context, particularly in a scenario where an IXC seeks a direct connection for 8YY originating traffic. Parties argue that some carriers take advantage of the Commission's current rules by specifying inefficient transport routes for 8YY traffic. Should originating carriers be allowed to specify a certain transport route, particularly if they are financially responsible for the transport? Should we develop separate rules for certain locations (*e.g.,* Alaska) with respect to 8YY traffic? What role, if any, should states continue to play in determining the network edge for 8YY traffic?

3. Traffic Imbalances

82. Some parties argue that bill-and-keep is inappropriate for toll free calls because the traffic flow is unbalanced, *i.e.,* 8YY subscribers are unlikely to call consumers and, therefore, the traffic always flows from the consumer to the 8YY subscriber. These arguments do not strike us as persuasive. As the Commission explained in the *USF/ICC Transformation Order,* ''both parties generally benefit from participating in a call, and therefore . . . both parties should split the cost of the call.'' This reasoning applies to 8YY calls. If callers did not benefit from placing an 8YY call, then we would expect to see a decline in demand for 8YY numbers as well as in volume of 8YY calls, especially as more and more consumers have moved to wireless-only methods of telecommunications. This is not the case, however, as demand for 8YY numbers appears to be growing, as do minutes of use. Thus, it is clear that 8YY calls confer some benefit not only to the 8YY subscriber, but also to the calling party.

83. Indeed, the Commission has previously ''reject[ed] claims that, as a policy matter, bill-and-keep is only appropriate in the case of roughly balanced traffic.'' We continue to reject such claims and reiterate that ''bill-and-keep is most consistent with the models used for wireless and IP networks, models that have flourished and promoted innovation and investment without any symmetry or balanced traffic requirement.'' Nonetheless, we seek comment on whether there is a legitimate reason to find that traffic imbalances make 8YY calls ill-suited for bill-and-keep.

4. CMRS Providers

84. We do not include CMRS providers in our proposals because wireless carriers are already subject to bill-and-keep for 8YY calls and their end-user rates remain largely unregulated. We seek comment on whether there are any CMRS-related issues we need to address in this proceeding. Have CMRS providers been able to meet their revenue needs for originating 8YY calls through pre-existing end-user charges? If not, what other mechanisms have CMRS providers used to meet their revenue needs related to originating 8YY calls?

85. Some commenters assert that CMRS providers collect revenue for originating 8YY calls pursuant to revenue sharing arrangements with intermediate providers. We seek comment on this allegation. Are there wireless carriers that refuse to connect directly with other providers in order to facilitate revenue sharing arrangements? If so, how prevalent is this practice? What rationale do wireless providers use for refusing direct connection? How are 8YY access charges and database dips affected by a refusal of direct connection?

86. We also seek comment on what lessons we can learn from the wireless experience with bill-and-keep as we reform originating access for wireline 8YY calls. What is the typical call path for wireless 8YY calls? Does it differ materially from the call path for wireline 8YY calls? Have wireless rates increased to account for access costs for which CMRS providers cannot charge other carriers? If so, how large have these rate increases been? Has competition effectively disciplined

CMRS providers' ability to increase their rates to account for ''lost'' access charge revenues?

5. Unintended Consequences

87. Although we expect our proposals to bring numerous benefits to both carriers and end users, we do not want to overlook any potentially negative unintended consequences that could result from our proposed reforms. We therefore seek comment on the potential risks related to our proposals.

a. Potential Effects on Consumers

88. Some commenters object that moving 8YY calls to bill-and-keep would undermine consumer expectations that 8YY calls are ''free'' to the calling party. Other parties counter that, ''from the beginning,'' the term ''toll-free'' has meant that ''the caller doesn't pay *toll—i.e.,* long distance—charges, not that the caller's monthly charge on his or her local bill will never change.'' Under our proposal, 8YY calls will remain ''toll free'' because originating callers will not be charged for the long-distance portion of the call. Nonetheless, we seek comment on whether 8YY calls will continue to meet consumers' expectations of ''toll free.'' Would it still be accurate to label these calls ''toll free'' since the long distance, or ''toll'' portion of the call would be free to the caller and paid by the 8YY subscriber?

89. Some carriers claim they will need to educate their customers if toll free calls are no longer ''free.'' Would any consumer education be necessary or appropriate if we were to adopt our proposals? Do consumers need to be informed of the change in our originating access charge regime for 8YY calls? If so, what would it cost to disseminate such information? Who should bear the costs of educating consumers about these changes? Is there any merit to claims that transitioning 8YY to bill-and-keep would leave providers open to ''false advertising'' claims because ''toll free'' calls will not be completely free? Are there any other possible negative consequences for consumers resulting from transitioning 8YY traffic to bill-and-keep?

b. Potential Effects on 8YY Subscribers

90. Some commenters argue that moving originating 8YY access charges to bill-and-keep would harm 8YY subscribers, because consumers will be reluctant to place 8YY calls. Despite these concerns, the largest toll free subscribers appear to favor transitioning 8YY traffic to bill-and-keep. Would our proposed reforms disproportionately affect some 8YY subscribers more than others? From the 8YY subscriber perspective, do the benefits of transitioning to bill-and-keep outweigh the adverse consequences from it?

91. What is the proportion of the originating 8YY access charges (including end office, tandem switching and transport) to the remaining 8YY charges that 8YY subscribers pay, on average? Will 8YY subscribers continue to pay a larger proportion of the total costs of an 8YY call, or will the callers be responsible for the larger share? Will this calculus vary by geography?

92. We also note that, despite evidence of abuse, 8YY numbers continue to be in high demand. What factors explain this dynamic? It is our understanding that this growth in demand is at least partially due to businesses using 8YY numbers in new ways, such as call tracking to determine which advertisements generate the most responses. Will the transition to bill-and-keep reduce the benefits of 8YY calls?

c. Other Consequences

93. In this *Notice,* we propose to move 8YY originating end office and tandem switching and transport charges to bill-and-keep before reforming the remaining rate elements not yet affected by changes in the *USF/ICC Transformation Order,* including non-8YY originating traffic. Would doing so create new opportunities for abuses of the intercarrier compensation system, or shift abuses to other forms of originating access? If so, how? How would our proposed changes affect network efficiency?

94. Are there any other possible unintended negative consequences of our proposals? Would our proposed reforms result in call completion issues, as predicted by some commenters? Would they ''lead smaller competitors to exit all or part of the market?''

6. Additional Proposals for Reform

95. We invite parties to propose additional, or alternative, methods for reforming originating 8YY access charges. We also seek comment on proposals already in the record. We encourage commenters to consider how any proposal would reduce abusive practices related to 8YY calls. We particularly invite comparison of the relative benefits and drawbacks of these proposals compared to the proposals we have set forth in the *Notice.*

## IV. Rule Revisions

96. We seek comment on the rule changes proposed in Appendix A. Among other changes, we propose to add new definitions for the following terms: Baseline Composite Interstate Originating End Office Access Rate for Toll Free Calls, Baseline Composite Interstate Tandem-Switched Transport Access Service Rate for Toll Free Calls, Baseline Composite Intrastate Originating End Office Access Rate for Toll Free Calls, Baseline Composite Intrastate Tandem-Switched Transport Access Service Rate for Toll Free Calls, Database Query Charge, and Toll Free Call. The proposed rules also discuss the proposed transition of originating access charges for toll free calls to bill-and-keep, proposed new limitations on database query charges for toll free calls, and proposed modifications to the CLEC benchmarking rules. What, if any, other rule additions or modifications would need to be made to codify these proposals? Are there any conforming rule changes that commenters consider necessary? Are there any conflicts or inconsistencies between existing rules and those proposed herein? We ask commenters to provide any other proposed actions and rule additions or modifications we should consider to address the issues regarding 8YY calls described in this *Notice* including updates to any relevant comments or proposals made in response to the *USF/ICC Transformation FNPRM,* and the June 29, 2017 Public Notice.

## V. Procedural Matters

97. *Filing Instructions.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *https://www.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW, Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

• U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.

98. *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

99. *Ex Parte Requirements.* This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must: (1) List all persons attending or otherwise participating in the meeting at which the ex parte presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with Rule 1.1206(b). In proceedings governed by Rule 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

100. *Paperwork Reduction Act Analysis.* This document contains proposed new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

101. *Initial Regulatory Flexibility Act Analysis.* Pursuant to the Regulatory Flexibility Act (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and actions considered in this Notice. The text of the IRFA is set forth in Appendix B. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

102. *Contact Person.* For further information about this proceeding, please contact Irina Asoskov, FCC, Wireline Competition Bureau, Pricing Policy Division, Room 5–A235, 445 12th Street SW, Washington, DC 20554, (202) 418–2196, *irina.asoskov@fcc.gov.*

## VI. Initial Regulatory Flexibility Analysis

103. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *FNPRM.* The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the *FNPRM.* The Commission will send a copy of the Further Notice of Proposed Rulemaking, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *FNPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

### *A. Need for, and Objectives of, the Proposed Rules*

104. In the *USF/ICC Transformation Order,* the Commission adopted a bill-and-keep framework—under which a carrier generally looks to its end users to pay for its network costs—''as the default methodology for all intercarrier compensation traffic.'' In the *FNPRM* portion of that item, the Commission also sought comment on additional steps to implement a bill-and-keep cost recovery mechanism for certain access charges and sought comment on outstanding issues subject to reform in the future, including originating access charges and cost recovery for toll free (8YY) calls. In this *FNPRM,* we propose transitioning interstate and intrastate originating end office and tandem switching and transport charges for 8YY traffic to bill-and-keep, consistent with the Commission's reforms and policy directives in the *USF/ICC Transformation Order.* In the *FNPRM* we also propose capping database query charges associated with 8YY calls. We also propose amending our rules to limit charges to one database query per 8YY call. The *FNPRM* also asks for comment on various issues related to the 8YY network generally and 8YY cost recovery specifically.

### *B. Legal Basis*

105. The legal basis for any action that may be taken pursuant to this Notice is contained in sections 1, 2, 4(i), 201–206, 251, 252, 254, 256, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 201–206, 251, 252, 254, 256, 303(r), and 403.

### *C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply*

106. 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 rule revisions, if adopted. The RFA generally defines the term ''small entity'' as having the same

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

107. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry-specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general, a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 28.8 million businesses. Next, the type of small entity described as 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 August 2016, there were approximately 356,494 small organizations, based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS). Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2012 Census of Governments indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number, there were 37,132 General Purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,184 Special Purpose governments (independent school districts and special districts) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category show that the majority of these governments have populations of less than 50,000. Based on this data, we estimate that at least 49,316 local government jurisdictions fall in the category of ''small governmental jurisdictions.''

108. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as ''establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

109. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers as defined above. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. The Commission therefore estimates that most providers of local exchange carrier service are small entities that may be affected by the proposed rules.

110. *Incumbent LECs.* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers as defined above. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 3,117 firms operated in that year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted. Three hundred and seven (307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers. Of this total, an estimated 1,006 have 1,500 or fewer employees.

111. Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers, as defined above. Under that size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Based on this data, the Commission concludes that the majority of Competitive LECS, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. Also, 72 carriers have reported that they are Other Local Service Providers. Of this total, 70 have 1,500 or fewer employees. Consequently, based on internally researched FCC data, the Commission estimates that most Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.

112. We have included small incumbent LECs in this RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no

effect on Commission analyses and determinations in other, non-RFA contexts.

113. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS Code category is Wired Telecommunications Carriers, as defined above. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of this total, an estimated 317 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of IXCs are small entities.

114. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 show that 1,341 firms provided resale services during that year, all of which operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, all of these resellers can be considered small entities.

115. *Toll Resellers.* The Commission has not developed a definition for Toll Resellers. The closest NAICS Code Category is Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of this total, an estimated 857 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of toll resellers are small entities.

116. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of IXCs, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable NAICS Code category is for Wired Telecommunications Carriers, as defined above. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to internally developed Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules proposed in the Notice.

117. *Prepaid Calling Card Providers.* The SBA has developed a definition for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to the Commission's Form 499 Filer Database, 500 companies reported that they were engaged in the provision of prepaid calling cards. The Commission does not have data regarding how many of these 500 companies have 1,500 or fewer employees. Consequently, the Commission estimates that there are 500 or fewer prepaid calling card providers that may be affected by the rules proposed in the Notice.

118. *Wireless Telecommunications Carriers (except Satellite).* This industry is comprised of establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1,000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

119. The Commission's own data—available in its Universal Licensing System—indicate that, as of October 25, 2016, there are 280 Cellular licensees that may be affected by our proposed rules. The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service, and Specialized Mobile Radio Telephony services. Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

120. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions.

121. *Wireless Telephony.* Wireless telephony includes cellular, personal

communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Commission data, 413 carriers reported that they were engaged in wireless telephony. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Therefore, a little less than two thirds of these entities can be considered small.

122. *All Other Telecommunications.* The ''All Other Telecommunications'' industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing internet services or voice over internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. The SBA has developed a small business size standard for ''All Other Telecommunications,'' which consists of all such firms with gross annual receipts of $32.5 million or less. For this category, U.S. Census data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than $25 million. Thus a majority of ''All Other Telecommunications'' firms potentially affected by our action can be considered small.

*D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities*

123. In this *FNPRM,* the Commission seeks public comment on additional steps to complete its intercarrier compensation reform regarding toll free or 8YY calls. The transition to complete the reform of new intercarrier compensation rules could affect all carriers, including small entities, and may include new administrative processes. In proposing these reforms, we seek comment on various reporting, recordkeeping, and other compliance requirements that may apply to all carriers, including small entities. We seek comment on any costs and burdens on small entities associated with the proposed rules, including data quantifying the extent of those costs or burdens. These issues include the appropriate path or transition to move 8YY originating access charges to bill-and-keep and on the appropriate recovery of 8YY database costs. We also seek data to analyze the effects of proposed reforms and need for revenue recovery.

124. Compliance with a transition to a new system for 8YY originating access may impact some small entities and may include new or reduced administrative processes. For carriers that may be affected, obligations may include certain reporting and recordkeeping requirements to determine and establish their eligibility to receive recovery from other sources as 8YY originating access revenue is reduced. Modifications to the rules to address potential arbitrage opportunities will affect certain carriers, potentially including small entities. However, these impacts are mitigated by the certainty and reduced litigation that should occur as a result of the reforms adopted. The *FNPRM* seeks comment on several issues relating to bill-and-keep implementation for 8YY originating access as well as cost recovery for 8YY database dips. The *FNPRM* also seeks comment on how reduced intercarrier compensation revenues in the future would impact carriers, and how recovery, if any, for those reduced revenues should be addressed. The Commission asks if the recovery approach adopted should be different depending on the type of carrier or regulation.

*E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

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

126. This *FNPRM* invites comment on a number of proposals and alternatives to modify or adopt 8YY originating access and database dip rules. As a general matter, actions taken as a result of our actions should benefit all service providers, including small entities, by providing greater regulatory certainty and by moving toward the Commission's goal of bill-and-keep for all access charges. In the *FNPRM,* we encourage small entities to bring to the Commission's attention any specific concerns that they have, including on any issues or measures that may apply to small entities in a unique fashion. We especially encourage commenters to discuss the proposed transitional recovery mechanism to help transition LECs away from existing revenues. Our proposed tailored approach to transitional recovery is designed to balance the different circumstances facing the different carrier types and provide all carriers with necessary predictability, certainty, and stability to transition from the current intercarrier compensation system. The *FNPRM* also seeks comment on other actions the Commission could take to further discourage or eliminate abuse of the intercarrier compensation regime that governs 8YY calls. Finally, we seek comment on alternatives to our proposals that we should consider to achieve our objectives with less impact on small entities.

*F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules*

127. None.

**I. Ordering Clauses**

128. Accordingly, *it is ordered* that, pursuant to sections 1, 2, 4(i), 201–206, 251, 252, 254, 256, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 201–206, 251, 252, 254, 256, 303(r), 403, and § 1.1 of the Commission's rules, 47 CFR 1.1, this Further Notice of Proposed Rulemaking *is adopted.*

129. *It is further ordered* that pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on this Further Notice of Proposed Rulemaking on or before September 4, 2018 and reply comments on or before October 1, 2018.

130. *It is further ordered* that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of the Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects in 47 CFR Parts 51 and 61**

Telephone.

Federal Communications Commission.

**Katura Jackson,**

*Federal Register Liaison Officer, Office of the Secretary.*

**Proposed Rules**

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 51 and 61 as follows:

## PART 51—INTERCONNECTION

■ 1. The authority citation for part 51 continues to read as follows:

**Authority:** 47 U.S.C. 151–55, 201–05, 207–09, 218, 220, 225–27, 251–54, 256, 271, 303(r), 332, 1302.

■ 2. Revise § 51.903 to read as follows:

**§ 51.903 Definitions.**

(a) *Access Reciprocal Compensation* means telecommunications traffic exchanged between telecommunications service providers that is interstate or intrastate exchange access, information access, or exchange services for such access, other than special access.

(b) *Baseline Composite Interstate Originating End Office Access Rate for Toll Free Calls* means originating End Office Access Service billed revenue from interstate Toll Free Calls for [Base Year − 1] divided by end office switching interstate Toll Free calling minutes for [Base Year − 1].

(c) *Baseline Composite Interstate Tandem-Switched Transport Access Service Rate for Toll Free Calls* means originating Tandem-Switched Transport Access Service billed revenue from interstate Toll Free Calls for [Base Year − 1] divided by tandem-switched interstate Toll Free calling minutes for [Base Year − 1].

(d) *Baseline Composite Intrastate Originating End Office Access Rate for Toll Free Calls* means originating End Office Access Service billed revenue from intrastate Toll Free Calls for [Base Year − 1] divided by end office switching intrastate Toll Free calling minutes for [Base Year − 1].

(e) *Baseline Composite Intrastate Tandem-Switched Transport Access Service Rate for Toll Free Calls* means originating Tandem-Switched Transport Access Service billed revenue from intrastate Toll Free Calls for [Base Year − 1] divided by tandem-switched intrastate Toll Free calling minutes for [Base Year − 1].

(f) *Competitive Local Exchange Carrier.* A Competitive Local Exchange Carrier is any local exchange carrier, as defined in § 51.5, that is not an incumbent local exchange carrier.

(g) *Composite Terminating End Office Access Rate* means terminating End Office Access Service revenue, calculated using demand for a given time period, divided by end office switching minutes for the same time period.

(h) *Database Query Charge* means a charge that is expressed in dollars and cents that an originating carrier or tandem switch provider assesses upon an interexchange carrier for obtaining routing information for a Toll Free Call and includes any charges for signaling or transport services used to obtain such routing information.

(i) *Dedicated Transport Access Service* means originating and terminating transport on circuits dedicated to the use of a single carrier or other customer provided by an incumbent local exchange carrier or any functional equivalent of the incumbent local exchange carrier access service provided by a non-incumbent local exchange carrier. Dedicated Transport Access Service rate elements for an incumbent local exchange carrier include the entrance facility rate elements specified in § 69.110 of this chapter, the dedicated transport rate elements specified in § 69.111 of this chapter, the direct-trunked transport rate elements specified in § 69.112 of this chapter, and the intrastate rate elements for functionally equivalent access services. Dedicated Transport Access Service rate elements for a non-incumbent local exchange carrier include any functionally equivalent access services.

(j) *End Office Access Service* means:

(1) The switching of access traffic at the carrier's end office switch and the delivery to or from of such traffic to the called party's premises;

(2) The routing of interexchange telecommunications traffic to or from the called party's premises, either directly or via contractual or other arrangements with an affiliated or unaffiliated entity, regardless of the specific functions provided or facilities used; or

(3) Any functional equivalent of the incumbent local exchange carrier access service provided by a non-incumbent local exchange carrier. End Office Access Service rate elements for an incumbent local exchange carrier include the local switching rate elements specified in § 69.106 of this chapter, the carrier common line rate elements specified in § 69.154 of this chapter, and the intrastate rate elements for functionally equivalent access services. End Office Access Service rate elements for an incumbent local exchange carrier also include any rate elements assessed on local switching access minutes, including the information surcharge and residual rate elements. End office Access Service rate elements for a non-incumbent local exchange carrier include any functionally equivalent access service.

**Note to paragraph (j):** For incumbent local exchange carriers, residual rate elements may include, for example, state Transport Interconnection Charges, Residual Interconnection Charges, and PICCs. For non-incumbent local exchange carriers, residual rate elements may include any functionally equivalent access service.

(k) *Fiscal Year 2011* means October 1, 2010 through September 30, 2011.

(l) *Incumbent Local Exchange Carrier* means a Price Cap Carrier or Rate-of-Return Carrier.

(m) *Price Cap Carrier* has the same meaning as that term is defined in § 61.3(aa) of this chapter.

(n) *Rate-of-Return Carrier* is any incumbent local exchange carrier not subject to price cap regulation as that term is defined in § 61.3(aa) of this chapter, but only with respect to the territory in which it operates as an incumbent local exchange carrier.

(o) *Tandem-Switched Transport Access Service* means:

(1) Tandem switching and common transport between the tandem switch and end office; or

(2) Any functional equivalent of the incumbent local exchange carrier access service provided by a non-incumbent local exchange carrier via other facilities. Tandem-Switched Transport rate elements for an incumbent local exchange carrier include the rate elements specified in § 69.111 of this chapter, except for the dedicated transport rate elements specified in that section, and intrastate rate elements for functionally equivalent service. Tandem Switched Transport Access Service rate elements for a non-incumbent local exchange carrier include any functionally equivalent access service.

(p) *Toll Free Call* means a call to a toll free number, as defined in § 52.101(f) of this subchapter.

(q) *Transitional Intrastate Access Service* means terminating End Office Access Service that was subject to intrastate access rates as of December 31, 2011; terminating Tandem-Switched Transport Access Service that was subject to intrastate access rates as of December 31, 2011; and originating and terminating Dedicated Transport Access Service that was subject to intrastate access rates as of December 31, 2011.

■ 3. Add § 51.921 to Subpart J to read as follows:

**§ 51.921 Transition of Originating Access Charges for Toll Free Calls.**

(a) Effective [July 1, base year], notwithstanding any other provision of the Commission's rules, each Incumbent LEC shall calculate:

(1) A single per-minute Baseline Composite Intrastate Originating End Office Access Rate for Toll Free Calls for each state in which it provides such service;

(2) A single per-minute Baseline Composite Interstate Originating End Office Access Rate for Toll Free Calls;

(3) A single per-minute Baseline Composite Intrastate Originating Tandem-Switched Transport Access Service Rate for Toll Free Calls for each state in which it provides such service; and

(4) A single per-minute Baseline Composite Interstate Originating Tandem-Switched Transport Access Service Rate for Toll Free Calls.

(b) Step 1. Beginning July 1, [base year], notwithstanding any other provision of the Commission's rules:

(1) Each Incumbent LEC shall establish rates for intrastate originating End Office Access Service for Toll Free Calls in each state in which it provides such service using the following methodology:

(i) Each Incumbent LEC shall calculate its [base year] Target Composite Intrastate Originating End Office Access Rate for Toll Free Calls. The [base year] Target Composite Intrastate Originating End Office Access Rate for Toll Free Calls means two-thirds of the Baseline Composite Intrastate Originating End Office Access Rate for Toll Free Calls.

(ii) Beginning [July 1, base year], a LEC is prohibited from filing an intrastate access tariff that includes an Originating End Office Rate for intrastate Toll Free Calls that exceeds its [base year] Target Composite Intrastate Originating End Office Access Rate for Toll Free Calls for that particular state.

(2) Each Incumbent LEC shall establish rates for interstate originating End Office Access Service for Toll Free Calls using the following methodology:

(i) Each Incumbent LEC shall calculate its [base year] Target Composite Interstate Originating End Office Access Rate for Toll Free Calls. The [base year] Target Composite Interstate Originating End Office Access Rate for Toll Free Calls means two-thirds of the Baseline Composite Interstate Originating End Office Access Rate for Toll Free Calls.

(ii) Beginning [July 1, base year], a LEC is prohibited from filing an interstate access tariff that includes an Originating End Office Rate for interstate Toll Free Calls that exceeds its [base year] Target Composite Interstate Originating End Office Access Rate for Toll Free Calls.

(3) Each Incumbent LEC shall establish rates for intrastate originating Tandem-Switched Transport Access Service for Toll Free Calls in each state in which it provides such service using the following methodology:

(i) Each Incumbent LEC shall calculate its [base year] Target Composite Intrastate Originating Tandem-Switched Transport Access Service Rate for Toll Free Calls. The [base year] Target Composite Intrastate Originating Tandem-Switched Transport Access Service Rate for Toll Free Calls means two-thirds of the Baseline Composite Intrastate Tandem-Switched Transport Access Service Rate for Toll Free Calls.

(ii) Beginning [July 1, base year], a LEC is prohibited from filing an intrastate access tariff that includes an originating Tandem-Switched Transport Access Service Rate for intrastate Toll Free Calls that exceeds its [base year] Target Composite Intrastate Originating Tandem-Switched Transport Access Service Rate for Toll Free Calls for that particular state.

(4) Each Incumbent LEC shall establish rates for interstate originating Tandem-Switched Transport Access Service for Toll Free Calls using the following methodology:

(i) Each Incumbent LEC shall calculate its [base year] Target Composite Interstate Originating Tandem-Switched Transport Access Service Rate for Toll Free Calls. The [base year] Target Composite Interstate Originating Tandem-Switched Transport Access Service Rate for Toll Free Calls means two-thirds of the Baseline Composite Interstate Tandem-Switched Transport Access Service Rate for Toll Free Calls.

(ii) Beginning [July 1, base year], a LEC is prohibited from filing an interstate access tariff that includes an originating Tandem-Switched Transport Access Service Rate for interstate Toll Free Calls that exceeds its [base year] Target Composite Interstate Originating Tandem-Switched Transport Access Service Rate for Toll Free Calls.

(c) Step 2. Beginning July 1, [base year + 1], notwithstanding any other provision of the Commission's rules:

(1) Each Incumbent LEC shall establish intrastate rates for originating End Office Access Service for Toll Free Calls in each state in which it provides such service using the following methodology:

(i) Each Incumbent LEC shall calculate its [base year + 1] Target Composite Intrastate Originating End Office Access Rate for Toll Free Calls. The [base year + 1] Target Composite Intrastate Originating End Office Access Rate for Toll Free Calls means one-third of the Baseline Composite Intrastate Originating End Office Access Rate for Toll Free Calls.

(ii) Beginning July 1, [base year + 1], a LEC is prohibited from filing an intrastate access tariff that includes an Originating End Office Access Rate for intrastate Toll Free Calls that exceeds its [base year + 1] Target Composite Intrastate Originating End Office Access Rate for Toll Free Calls for that particular state.

(2) Each Incumbent LEC shall establish interstate rates for originating End Office Access Service for Toll Free Calls using the following methodology:

(i) Each Incumbent LEC shall calculate its [base year + 1] Target Composite Interstate Originating End Office Access Rate for Toll Free Calls. The [base year + 1] Target Composite Interstate Originating End Office Access Rate for Toll Free Calls means one-third of the Baseline Composite Interstate Originating End Office Access Rate for Toll Free Calls.

(ii) Beginning July 1, [base year + 1], a LEC is prohibited from filing an interstate access tariff that includes an Originating End Office Access Rate for interstate Toll Free Calls that exceeds its [base year + 1] Target Composite Interstate Originating End Office Access Rate for Toll Free Calls.

(3) Each Incumbent LEC shall establish rates for originating Tandem-Switched Transport Access Service for intrastate Toll Free Calls in each state in which it provides such service using the following methodology:

(i) Each Incumbent LEC shall calculate its [base year + 2] Target Composite Intrastate Originating Tandem-Switched Transport Access Service Rate for Toll Free Calls. The [base year + 2] Target Composite Intrastate Originating Tandem-Switched Transport Access Service Rate for intrastate Toll Free Calls means one-third of the [base year] Baseline Composite Intrastate Originating Tandem-Switched Transport Access Service Rate for Toll Free Calls.

(ii) Beginning July 1, [base year + 2], a LEC is prohibited from filing an intrastate access tariff that includes an Originating Tandem-Switched Transport Access Service Rate for intrastate Toll Free Calls that exceeds its [base year + 2] Target Composite Originating Tandem-Switched Transport Access Service Rate for intrastate Toll Free Calls for that particular state.

(4) Each Incumbent LEC shall establish rates for interstate originating Tandem-Switched Transport Access Service for Toll Free Calls using the following methodology:

(i) Each Incumbent LEC shall calculate its [base year + 2] Target Composite Interstate Originating Tandem-Switched Transport Access Service Rate for Toll Free Calls. The [base year + 2] Target Composite Interstate Originating Tandem-Switched Transport Access Service Rate for Toll Free Calls means one-third of the [base year] Baseline Composite Interstate Originating Tandem-Switched Transport Access Service Rate for Toll Free Calls.

(ii) Beginning July 1, [base year + 2], a LEC is prohibited from filing an interstate access tariff that includes an Originating Tandem-Switched Transport Access Service Rate for interstate Toll Free Calls that exceeds its [base year + 2] Target Composite Interstate Originating Tandem-Switched Transport Access Service Rate for Toll Free Calls.

(d) Step 3. Beginning July 1, [base year + 2], notwithstanding any other provision of the Commission's rules, all LECs shall, in accordance with bill-and-keep, revise and refile their interstate and intrastate switched access reciprocal compensation tariffs and any state tariffs to remove any intercarrier charges applicable to interstate and intrastate originating End Office Access Service and Tandem-Switched Transport Access Service for all interstate and intrastate rate elements for Toll Free Calls.

(e) Nothing in this section shall prevent a LEC from negotiating a rate for Originating End Office Access Service for Toll Free Calls or for Originating Tandem-Switched Transport Access Service for Toll Free Calls that is different from its tariffed rates, or that is different from bill-and-keep if there is no tariffed rate for such services.

■ 4. Add § 51.923 to Subpart J to read as follows:

**§ 51.923 Limitation on Database Query Charges for Toll Free Calls.**

(a) Notwithstanding any other provision of the Commission's rules, on [the first July 1/annual tariff filing after rule adoption], every Incumbent LEC shall cap the rates for database query charges in its interstate or intrastate tariffs at $.0015 per Toll Free Call.

(b) Notwithstanding any other provision of the Commission's rules, on [the first July 1/annual tariff filing after rule adoption], LECs involved in the routing of a Toll Free Call to a provider of Toll Free calling services may not, collectively, charge the provider of Toll Free calling services more than one database query charge per Toll Free Call.

## PART 61—TARIFFS

■ 5. The authority citation for part 61 continues to read as follows:

**Authority:** Secs 1, 4(i), 4(j), 201–205 and 403 of the Communications Act of 1934, as amended; 47 U.S.C. 151, 154(i), 154(j), 201–205 and 403, unless otherwise noted.

■ 6. Amend § 61.26 by revising paragraphs (a)(3)(i) and (e) to read as follows:

**§ 61.26 Tariffing of Competitive Interstate Switched Exchange Access Services.**

(a) * * *

(3) * * *

(i) The functional equivalent of the ILEC interstate exchange access services typically associated with the following rate elements: Carrier common line (originating); carrier common line (terminating); local end office switching; interconnection charge; information surcharge; tandem switched transport termination (fixed); tandem switched transport facility (per mile); tandem switching; and *Database Query Charge, as that term is defined in section [51.903(m)] of this chapter;*

* * * * *

(e) Rural exemption. Except as provided in paragraph (g) of this section, and notwithstanding paragraphs (b) through (d) of this section, a rural CLEC competing with a non-rural ILEC shall not file a tariff for its interstate exchange access services that prices those services above the rate prescribed in the NECA access tariff, assuming the highest rate band for local switching. In addition to that NECA rate, the rural CLEC may assess a presubscribed interexchange carrier charge if, and only to the extent that, the competing ILEC assesses this charge. Beginning July 1, 2013, all CLEC reciprocal compensation rates for intrastate switched exchange access services subject to this subpart also shall be no higher than that NECA rate. *The rural exemption in this section does not apply to Toll Free Calls.*

* * * * *

[FR Doc. 2018–14150 Filed 7–2–18; 8:45 am]

**BILLING CODE 6712–01–P**

# Notices

Federal Register
Vol. 83, No. 128
Tuesday, July 3, 2018

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. APHIS–2018–0033]**

### Oral Rabies Vaccine Trial; Availability of a Supplemental Environmental Assessment

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of availability and request for comments.

**SUMMARY:** We are advising the public that the Animal and Plant Health Inspection Service has prepared a supplemental environmental assessment (EA) relative to an oral rabies vaccination field trial in New Hampshire, New York, Ohio, Vermont, and West Virginia. The supplemental EA analyzes expanding the field trial for an experimental oral rabies vaccine for wildlife to additional areas in Ohio and West Virginia. The proposed field trial is necessary to evaluate whether the wildlife rabies vaccine will produce sufficient levels of population immunity against raccoon rabies. We are making the supplemental EA available to the public for review and comment.

**DATES:** We will consider all comments that we receive on or before August 2, 2018.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2018-0033.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2018–0033, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

The supplemental environmental assessment and any comments we receive may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2018-0033* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

This notice and the supplemental environmental assessment are also posted on the Animal and Plant Health Inspection Service website at *http://www.aphis.usda.gov/regulations/ws/ws_nepa_environmental_documents.shtml*.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Chipman, Rabies Program Coordinator, Wildlife Services, APHIS, 59 Chennell Drive, Suite 7, Concord, NH 03301; (603) 223–9623, email: *richard.b.chipman@aphis.usda.gov*. To obtain copies of the supplemental environmental assessment, contact Ms. Beth Kabert, Staff Wildlife Biologist, Wildlife Services, 140–C Locust Grove Road, Pittstown, NJ 08867; (908) 735–5654, fax (908) 735–0821; email: *beth.e.kabert@aphis.usda.gov*.

**SUPPLEMENTARY INFORMATION:** The Wildlife Services (WS) program in the Animal and Plant Health Inspection Service (APHIS) cooperates with Federal agencies, State and local governments, and private individuals to research and implement the best methods of managing conflicts between wildlife and human health and safety, agriculture, property, and natural resources. Wildlife-borne diseases that can affect domestic animals and humans are among the types of conflicts that APHIS–WS addresses. Wildlife is the dominant reservoir of rabies in the United States.

APHIS–WS conducts an oral rabies vaccination (ORV) program to control the spread of rabies. The ORV program has utilized a vaccinia-rabies glycoprotein (V–RG) vaccine. APHIS–WS' use of the V–RG vaccine has resulted in several notable accomplishments, including the elimination of canine rabies from sources in Mexico, the successful control of gray fox rabies virus variant in western Texas, and the prevention of any appreciable spread of raccoon rabies in the eastern United States. While the prevention of any appreciable spread of raccoon rabies in the eastern United States represents a major accomplishment in rabies management, the V–RG vaccine has not been effective in eliminating raccoon rabies from high-risk spread corridors. This fact prompted APHIS–WS to evaluate rabies vaccines capable of producing higher levels of population immunity against raccoon rabies to better control the spread of this disease.

Since 2011, APHIS–WS has been conducting field trials to study the immunogenicity and safety of an experimental oral rabies vaccine, a human adenovirus type 5 rabies glycoprotein recombinant vaccine called ONRAB (produced by Artemis Technologies Inc., Guelph, Ontario, Canada). The field trials began in portions of West Virginia, including U.S. Department of Agriculture Forest Service National Forest System lands.

Beginning in 2012, APHIS–WS has expanded the field trials into portions of New Hampshire, New York, Ohio, Vermont, and new areas of West Virginia, including National Forest System lands, in order to further assess the immunogenicity of ONRAB in raccoons and skunks for raccoon rabies virus variant.

APHIS–WS is now proposing to add Belmont and Monroe Counties in Ohio, and Brooke, Hancock, Marshall, and Ohio Counties in West Virginia to the field trial bait zone. Based on favorable results from previous U.S. ONRAB field trials and pressure from rabies cases in Pennsylvania and the West Virginia panhandle, we determined the need to use ONRAB vaccine baits in the remaining areas of the Ohio and West Virginia where rabies cases may still persist.

APHIS–WS has prepared a supplemental environmental assessment (EA) in which we analyze expanding the area of the field trial zone in Ohio and West Virginia. We are making the supplemental EA available to the public for review and comment. We will consider all comments that we receive on or before the date listed under the heading **DATES** at the beginning of this notice.

The supplemental EA may be viewed on the *Regulations.gov* website or in our reading room (see **ADDRESSES** above for instructions for accessing *Regulations.gov* and information on the location and hours of the reading room). In addition, paper copies may be obtained by calling or writing to the

individual listed under **FOR FURTHER INFORMATION CONTACT**.

The EA has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 27th day of June 2018.

**Kevin Shea,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2018–14307 Filed 7–2–18; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Foreign Agricultural Service

### WTO Agricultural Quantity-Based Safeguard Trigger Levels

**AGENCY:** Foreign Agricultural Service, U.S. Department of Agriculture.

**ACTION:** Notice of product coverage and trigger levels for safeguard measures provided for in the World Trade Organization (WTO) Agreement on Agriculture.

**SUMMARY:** This notice lists the updated quantity-based trigger levels for products which may be subject to additional import duties under the safeguard provisions of the WTO Agreement on Agriculture. This notice also includes the relevant period applicable for the trigger levels on each of the listed products.

**DATES:** July 3, 2018.

**ADDRESSES:** Safeguard Staff, Import Policies and Export Reporting Division, Office of Trade Programs, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1020, 1400 Independence Avenue SW, Washington, DC 20250–1020.

**FOR FURTHER INFORMATION CONTACT:** Souleymane Diaby, (202) 720–0638, *Souleymane.Diaby@fas.usda.gov.*

**SUPPLEMENTARY INFORMATION:** Article 5 of the WTO Agreement on Agriculture provides that additional import duties may be imposed on imports of products subject to tariffication as a result of the Uruguay Round, if certain conditions are met. The agreement permits additional duties to be charged if the price of an individual shipment of imported products falls below the average price for similar goods imported during the years 1986–88 by a specified percentage. It also permits additional duties when the volume of imports of that product exceeds the sum of (1) a base trigger level multiplied by the average of the last three years of available import data and (2) the change in yearly consumption in the most recent year for which data are available (provided that the final trigger level is not less than 105 percent of the three-year import average). The base trigger level is set at 105, 110, or 125 percent of the three-year import average, depending on the percentage of domestic consumption that is represented by imports. These additional duties may not be imposed on quantities for which minimum or current access commitments were made during the Uruguay Round negotiations, and only one type of safeguard, price or quantity, may be applied at any given time to an article. Section 405 of the Uruguay Round Agreements Act requires that the President cause to be published in the **Federal Register** information regarding the price and quantity safeguards, including the quantity trigger levels, which must be updated annually based upon import levels during the most recent 3 years. The President delegated this duty to the Secretary of Agriculture in Presidential Proclamation No. 6763, dated December 23, 1994, 60 FR 1005 (Jan. 4, 1995). The Secretary of Agriculture further delegated this duty, which lies with the Administrator of the Foreign Agricultural Service (7 CFR 2.43(a)(2)). The Annex to this notice contains the updated quantity trigger levels, which are set at 125 percent of the most recent 3-year average level of imports for each commodity, consistent with the provisions of Article 5.

Additional information on the products subject to safeguards and the additional duties which may apply can be found in subchapter IV of Chapter 99 of the Harmonized Tariff Schedule of the United States (2018) and in the Secretary of Agriculture's Notice of Uruguay Round Agricultural Safeguard Trigger Levels, published in the **Federal Register** at 60 FR 427 (Jan. 4, 1995).

*Notice:* As provided in Section 405 of the Uruguay Round Agreements Act, consistent with Article 5 of the WTO Agreement on Agriculture, the safeguard quantity trigger levels previously notified are superseded by the levels indicated in the Annex to this notice. The definitions of these products were provided in the Notice of Safeguard Action published in the **Federal Register**, at 60 FR 427 (Jan. 4, 1995).

Issued at Washington, DC, this 18th day of June 2018.

**Ken Isley,**

*Administrator, Foreign Agricultural Service.*

| Product | Quantity-based safeguard trigger | | |
|---|---|---|---|
| | Trigger level | Unit | Period |
| Beef | 298,248 | MT | Jan 1, 2018–Dec 31, 2018. |
| Mutton | 5,103 | MT | Jan 1, 2018–Dec 31, 2018. |
| Cream | 1,323,021 | Liters | Jan 1, 2018–Dec 31, 2018. |
| Evaporated or Condensed Milk | 3,867,417 | Kilograms | Jan 1, 2018–Dec 31, 2018. |
| Nonfat Dry Milk | 1,267,208 | Kilograms | Jan 1, 2018–Dec 31, 2018. |
| Dried Whole Milk | 12,116,875 | Kilograms | Jan 1, 2018–Dec 31, 2018. |
| Dried Cream | 10,167 | Kilograms | Jan 1, 2018–Dec 31, 2018. |
| Dried Whey/Buttermilk | 245,833 | Kilograms | Jan 1, 2018–Dec 31, 2018. |
| Butter [1] | 29,959,300 | Kilograms | Jan 1, 2018–Dec 31, 2018. |
| Butteroil | 8,183,833 | Kilograms | Jan 1, 2018–Dec 31, 2018. |
| Chocolate Crumb | 10,487,292 | Kilograms | Jan 1, 2018–Dec 31, 2018. |
| Lowfat Chocolate Crumb | 163,000 | Kilograms | Jan 1, 2018–Dec 31, 2018. |
| Animal Feed Containing Milk | 1,154,583 | Kilograms | Jan 1, 2018–Dec 31, 2018. |
| Ice Cream | 5,925,091 | Liters | Jan 1, 2018–Dec 31, 2018. |
| Dairy Mixtures | 18,623,423 | Kilograms | Jan 1, 2018–Dec 31, 2018. |
| Infant Formula Containing Oligosaccharides | 3,909,000 | Kilograms | Jan 1, 2018–Dec 31, 2018. |
| Blue Cheese | 4,179,292 | Kilograms | Jan 1, 2018–Dec 31, 2018. |
| Cheddar Cheese | 11,799,917 | Kilograms | Jan 1, 2018–Dec 31, 2018. |

| Product | Quantity-based safeguard trigger | | |
|---|---|---|---|
| | Trigger level | Unit | Period |
| American-Type Cheese | 1,121,250 | Kilograms | Jan 1, 2018–Dec 31, 2018. |
| Edam/Gouda Cheese | 8,804,167 | Kilograms | Jan 1, 2018–Dec 31, 2018. |
| Italian-Type Cheese | 21,480,750 | Kilograms | Jan 1, 2018–Dec 31, 2018. |
| Swiss Cheese with Eye Formation | 29,604,667 | Kilograms | Jan 1, 2018–Dec 31, 2018. |
| Gruyere Process Cheese | 3,801,292 | Kilograms | Jan 1, 2018–Dec 31, 2018. |
| NSPF Cheese | 52,789,750 | Kilograms | Jan 1, 2018–Dec 31, 2018. |
| Lowfat Cheese | 443,875 | Kilograms | Jan 1, 2018–Dec 31, 2018. |
| Peanut Butter/Paste | 4,314 | MT | Jan 1, 2018–Dec 31, 2018. |
| Peanuts [1] | 14,577 | MT | April 1, 2017–Mar 31, 2018. |
| | 40,078 | MT | April 1, 2018–Mar 31, 2019. |
| Raw Cane Sugar [1] | 723,461 | MT | Oct 1, 2017–Sept 30, 2018. |
| | 574,933 | MT | Oct 1, 2018–Sept 30, 2019. |
| Refined Sugars and Syrups [1] | 444,126 | MT | Oct 1, 2017–Sept 30, 2018. |
| | 396,386 | MT | Oct 1, 2018–Sept 30, 2019. |
| Articles over 65% Sugar | 451 | MT | Oct 1, 2017–Sept 30, 2018. |
| | 405 | MT | Oct 1, 2018–Sept 30, 2019. |
| Articles over 10% Sugar | 15,540 | MT | Oct 1, 2017–Sept 30, 2018. |
| | 8,028 | MT | Oct 1, 2018–Sept 30, 2019. |
| Blended Syrups | 233 | MT | Oct 1, 2017–Sept 30, 2018. |
| | 362 | MT | Oct 1, 2018–Sept 30, 2019. |
| Sweetened Cocoa Powder | 81 | MT | Oct 1, 2017–Sept 30, 2018. |
| | 111 | MT | Oct 1, 2018–Sept 30, 2019. |
| Mixes and Doughs | 234 | MT | Oct 1, 2017–Sept 30, 2018. |
| | 243 | MT | Oct 1, 2018–Sept 30, 2019. |
| Mixed Condiments and Seasonings | 692 | MT | Oct 1, 2017–Sept 30, 2018. |
| | 473 | MT | Oct 1, 2018–Sept 30, 2019. |
| Short Staple Cotton [2] | 3,376,608 | Kilograms | Sep 20, 2017–Sep 19, 2018. |
| | 2,592,880 | Kilograms | Sep 20, 2018–Sep 19, 2019. |
| Harsh or Rough Cotton | 13 | Kilograms | Aug 1, 2017–July 31, 2018. |
| | 32,958 | Kilograms | Aug 1, 2018–July 31, 2019. |
| Medium Staple Cotton | 0 | Kilograms | Aug 1, 2017–July 31, 2018. |
| | 8,333 | Kilograms | Aug 1, 2018–July 31, 2019. |
| Extra Long Staple Cotton | 1,219,841 | Kilograms | Aug 1, 2017–July 31, 2018. |
| | 722,750 | Kilograms | Aug 1, 2018–July 31, 2019. |
| Cotton Waste [2] | 1,232,012 | Kilograms | Sep 20, 2017–Sep 19, 2018. |
| | 1,019,017 | Kilograms | Sep 20, 2018–Sep 19, 2019. |
| Cotton, Processed, Not Spun [2] | 23,004 | Kilograms | Sep 11, 2017–Sep 10, 2018. |
| | 198,226 | Kilograms | Sep 11, 2018–Sep 10, 2019. |

[1] Includes change in U.S. consumption.
[2] 12-month period from October to September.

[FR Doc. 2018–14312 Filed 7–2–18; 8:45 am]
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## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the Florida Advisory Committee

**AGENCY:** U.S. Commission on Civil Rights.

**ACTION:** Announcement of meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Florida Advisory Committee (Committee) will hold a meeting on Tuesday July 24, 2018, at 12:00 p.m. EST for the purpose discussing civil rights concerns in the state.

**DATES:** The meeting will be held on Tuesday July 24, 2018, at 12:00 p.m. EST. Public Call Information: Dial: 888–417–8465, Conference ID: 7051072.

**FOR FURTHER INFORMATION CONTACT:** Jeff Hinton, DFO, at *jhinton@usccr.gov.*

**SUPPLEMENTARY INFORMATION:** Members of the public can listen to the discussion. This meeting is available to the public through the above toll-free call-in number. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Written comments may be mailed to the Regional Program Unit Office, U.S. Commission on Civil Rights, 230 S. Dearborn St., Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324 or may be emailed to the Regional Director, Jeff Hinton at *jhinton@usccr.gov.* Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Florida Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Southern Regional Office at the above email or street address.

**Agenda**

Welcome and Introductions
Discussion: Civil Rights Issues in Florida
Public Comment
Adjournment

Dated: June 27, 2018.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2018–14231 Filed 7–2–18; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before July 23, 2018. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. at the U.S. Department of Commerce in Room 3720.

*Docket Number:* 17–017. Applicant: University of Pittsburgh of the Commonwealth System of Higher Education, 116 Atwood Street, Suite 201, Pittsburgh, PA 15260. Instrument: Photonic Professional GT System. Manufacturer: Nanoscribe, Germany. Intended Use: The instrument will be used to support the fabrication of devices comprised primarily of both commercially available and in house developed UV curable polymers. Biomaterials and other biopolymers that have been specifically designed to be cured using a radical polymerization process will also be investigated in this device. Any polymer or biomaterial that can be ablated using the wavelength and power available in the Nanoscribe system will also be used for subtractive manufacturing. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: August 2, 2017.

*Docket Number:* 18–001. Applicant: William March Rice University, 6100 Main Street, Houston, TX 77005. Instrument: 3D-Discovery Bioprinter and Direct Write Electrospinner. Manufacturer: regenHU, Switzerland. Intended Use: The instrument will be used for a multitude of techniques across disciplines ranging from biology to materials science, chemical engineering and bioengineering. Techniques like thermoplastic and hydrogel extrusion, 3D printing, 2-component printing, cell-bioprinting, electrospinning/direct write electrospinning, drug/factor encapsulation. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: February 28, 2018.

*Docket Number:* 18–002. Applicant: Centers for Disease Control and Prevention, 1600 Clifton Road NE, Building #17, Room 5225, Atlanta, GA 30333. Instrument: CelloScope Optical Screening Instrument. Manufacturer: BioSense Solutions ApS, Denmark. Intended Use: The instrument will be used for research use only to study several Gram-negative and Gram-positive bacterial pathogens. Use of this optical screening instrument, will be developing and evaluating an automated antimicrobial susceptibility test for bacterial pathogens based on time-lapse imaging of cells incubating in broth microdilution drug panels. Experiments to be conducted include growth assessment of these bacterial pathogens in the presence and absence of clinically relevant antibiotics. The antibiotics selected for our studies are those recommended by the Clinical and Laboratory Standards Institute (CLSI) for primary testing. The objectives of the investigations are to more rapidly determine antimicrobial susceptibility of bacterial pathogens. Currently, the gold-standard method for antimicrobial susceptibility testing requires 16–20 or 24–48 hours, depending on the species. The techniques required to perform these experiments include inoculation of a testing drug panel with a bacterial suspension and assessing susceptibly by optical screening. The research conducted using this instrument may substantially reduce the time required to make an informed therapeutic decision. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: March 15, 2018.

*Docket Number:* 18–003. Applicant: University of Virginia, Physics Department, 382 McCormick Road, Charlottesville, VA 22903. Instrument: Superconducting Magnet System. Manufacturer: Cryogenic Ltd., United Kingdom. Intended Use: The instrument will be used to study the beta decay of neutrons. Neutrons are elementary constituents of any matter in our universe. The experiments require measuring the kinetic energies of electrons and protons, two of the particles that are produced in neutron decay. The Nab spectrometer is to extract the neutrino-electron correlation coefficient ''a'' and the Fierz term ''b'' which describes the dynamic properties of the decay particles; the results test our understanding of the Standard Model of Elementary Particle Physics. The Nab spectrometer, electrons and protons are guided by the magnetic field, produced by the magnet system that we are importing. Electrons and protons eventually reach detectors. The detectors allow us to determine the kinetic energies of both particles, respectively. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: April 17, 2018.

*Docket Number:* 18–004. Applicant: University of Nebraska-Lincoln, Procurement Services, 1700 Y Street, Lincoln, NE 68588–0645. Instrument: Closed Cycle Cryogen Free Cryostat. Manufacturer: Autocue Systems, Germany. Intended Use: The instrument will be used to study the optoelectronic properties of novel atomically thin semiconductor materials such as metal chalcogenides, which are promising for application in energy conversion (for example solar cells) and micro-/nanoelectronics. Leading-edge fundamental research on the optoelectronic properties of novel nanomaterials, with the goal of developing advanced materials to support the needs for new energy conversion processes and next-generation electronics and computing. Justification for Duty-Free Entry: There are no instruments of the same general category manufactured in the United States. Application accepted by Commissioner of Customs: April 17, 2018.

Dated: June 27, 2018.

**Gregory W. Campbell,**

*Director, Subsidies Enforcement, Enforcement and Compliance.*

[FR Doc. 2018–14264 Filed 7–2–18; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**FOR FURTHER INFORMATION CONTACT:** Brenda E. Brown, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

**Background**

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (Commerce) conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting date.

**Respondent Selection**

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 21 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. Commerce invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, Commerce finds that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of a review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to a review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete a Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of a proceeding where Commerce considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

*Deadline for Withdrawal of Request for Administrative Review*

Pursuant to 19 CFR 351.213(d)(1), a party that requests a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

*Opportunity to Request a Review:* Not later than the last day of July 2018,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in July for the following periods:

| | Period of review |
|---|---|
| **Antidumping Duty Proceedings** | |
| INDIA: Corrosion-Resistant Steel Products, A–533–863 | 7/1/17–6/30/18 |
| INDIA: Polyethylene Terephthalate (Pet) Film, A–533–824 | 7/1/17–6/30/18 |
| IRAN: In-Shell Pistachios, A–507–502 | 7/1/17–6/30/18 |
| ITALY: Certain Pasta, A–475–818 | 7/1/17–6/30/18 |
| ITALY: Corrosion-Resistant Steel Products, A–475–832 | 7/1/17–6/30/18 |
| JAPAN: Clad Steel Plate, A–588–838 | 7/1/17–6/30/18 |
| JAPAN: Cold-Rolled Steel Flat Products, A–588–873 | 7/1/17–6/30/18 |
| JAPAN: Polyvinyl Alcohol, A–588–861 | 7/1/17–6/30/18 |
| JAPAN: Stainless Steel Sheet and Strip in Coils, A–588–845 | 7/1/17–6/30/18 |
| JAPAN: Steel Concrete Reinforcing Bar, A–588–876 | 3/7/17–6/30/18 |
| MALAYSIA: Steel Nails, A–557–816 | 7/1/17–6/30/18 |
| MALAYSIA: Welded Stainless Steel Pressure Pipe, A–557–815 | 7/1/17–6/30/18 |
| OMAN: Steel Nails, A–523–808 | 7/1/17–6/30/18 |
| REPUBLIC OF KOREA: Corrosion-Resistant Steel Products, A–580–878 | 7/1/17–6/30/18 |

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when Commerce is closed.

| | Period of review |
|---|---|
| REPUBLIC OF KOREA: Stainless Steel Sheet and Strip in Coils, A–580–834 | 7/1/17–6/30/18 |
| REPUBLIC OF KOREA: Steel Nails, A–580–874 | 7/1/17–6/30/18 |
| SOCIALIST REPUBLIC OF VIETMAN: Steel Nails, A–552–818 | 7/1/17–6/30/18 |
| SOCIALIST REPUBLIC OF VIETMAN: Welded Stainless Pressure Pipe, A–552–816 | 7/1/17–6/30/18 |
| TAIWAN: Corrosion-Resistant Steel Products, A–583–856 | 7/1/17–6/30/18 |
| TAIWAN: Polyethylene Terephthalate (Pet) Film, A–583–837 | 7/1/17–6/30/18 |
| TAIWAN: Stainless Steel Sheet and Strip in Coils, A–583–831 | 7/1/17–6/30/18 |
| TAIWAN: Steel Nails, A–583–854 | 7/1/17–6/30/18 |
| THAILAND: Carbon Steel Butt-Weld Pipe Fittings, A–549–807 | 7/1/17–6/30/18 |
| THAILAND: Weld Stainless Steel Pressure Pipe, A–549–830 | 7/1/17–6/30/18 |
| THE PEOPLE'S REPUBLIC OF CHINA: Carbon Steel Butt-Weld Pipe Fittings, A–570–814 | 7/1/17–6/30/18 |
| THE PEOPLE'S REPUBLIC OF CHINA: Certain Potassium Phosphate Salts, A–570–962 | 7/1/17–6/30/18 |
| THE PEOPLE'S REPUBLIC OF CHINA: Certain Steel Grating, A–570–947 | 7/1/17–6/30/18 |
| THE PEOPLE'S REPUBLIC OF CHINA: Circular Welded Carbon Quality Steel Pipe, A–570–910 | 7/1/17–6/30/18 |
| THE PEOPLE'S REPUBLIC OF CHINA: Cold-Rolled Steel Flat Products, A–570–029 | 7/1/17–6/30/18 |
| THE PEOPLE'S REPUBLIC OF CHINA: Corrosion-Resistant Steel Products, A–570–026 | 7/1/17–6/30/18 |
| THE PEOPLE'S REPUBLIC OF CHINA: Persulfates, A–570–847 | 7/1/17–6/30/18 |
| THE PEOPLE'S REPUBLIC OF CHINA: Xanthan Gum, A–570–985 | 7/1/17–6/30/18 |
| TURKEY: Certain Pasta, A–489–805 | 7/1/17–6/30/18 |
| TURKEY: Steel Concrete Reinforcing Bar, A–489–829 | 3/7/17–6/30/18 |
| **Countervailing Duty Proceedings** | |
| INDIA: Corrosion-Resistant Steel Products, C–533–864 | 1/1/17–12/31/17 |
| INDIA: Polyethylene Terephthalate (Pet) Film, C–533–825 | 1/1/17–12/31/17 |
| ITALY: Certain Pasta, C–475–819 | 1/1/17–12/31/17 |
| ITALY: Corrosion-Resistant Steel Products, C–475–833 | 1/1/17–12/31/17 |
| REPUBLIC OF KOREA: Corrosion-Resistant Steel Products, C–580–879 | 1/1/17–12/31/17 |
| SOCIALIST OF REPUBLIC OF VIETMAN: Steel Nails, C–552–819 | 1/1/17–12/31/17 |
| THE PEOPLE'S REPUBLIC OF CHINA: Certain Potassium Phosphate Salts, C–570–963 | 1/1/17–12/31/17 |
| THE PEOPLE'S REPUBLIC OF CHINA: Circular Welded Carbon Quality Steel Pipe, C–570–911 | 1/1/17–12/31/17 |
| THE PEOPLE'S REPUBLIC OF CHINA: Cold-Rolled Steel Flat Products, C–570–030 | 1/1/17–12/31/17 |
| THE PEOPLE'S REPUBLIC OF CHINA: Corrosion-Resistant Steel Products, C–570–027 | 1/1/17–12/31/17 |
| THE PEOPLE'S REPUBLIC OF CHINA: Prestressed Concrete Steel Wire Strand, C–570–946 | 1/1/17–12/31/17 |
| THE PEOPLE'S REPUBLIC OF CHINA: Steel Grating, C–570–948 | 1/1/17–12/31/17 |
| TURKEY: Certain Pasta, C–489–806 | 1/1/17–12/31/17 |
| TURKEY: Steel Concrete Reinforcing Bar, C–489–830 | 3/1/17–12/31/17 |
| **Suspension Agreements** | |
| UKRAINE: Oil Country Tubular Goods, A–823–815 | 7/1/17–6/30/18 |

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party Commerce was unable to locate in prior segments, Commerce will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011), Commerce clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.[2]

Commerce no longer considers the non-market economy (NME) entity as an exporter conditionally subject to an antidumping duty administrative reviews.[3] Accordingly, the NME entity will not be under review unless Commerce specifically receives a request for, or self-initiates, a review of the NME entity.[4] In administrative

[2] *See also* the Enforcement and Compliance website at *http://trade.gov/enforcement/.*

[3] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[4] In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of

reviews of antidumping duty orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, Commerce will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity). Following initiation of an antidumping administrative review when there is no review requested of the NME entity, Commerce will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) on Enforcement and Compliance's ACCESS website at *http://access.trade.gov.*[5] Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

Commerce will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of July 2018. If Commerce does not receive, by the last day of July 2018, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, Commerce will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period of the order, if such a gap period is applicable to the period of review.

This notice is not required by statute but is published as a service to the international trading community.

Dated: June 21, 2018.

**James Maeder,**

*Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2018–14263 Filed 7–2–18; 8:45 am]

**BILLING CODE 3510–DS–P**

entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

[5] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Renewal of the Renewable Energy and Energy Efficiency Advisory Committee and Solicitation of Nominations for Membership

**AGENCY:** International Trade Administration, U.S. Department of Commerce.

**ACTION:** Notice of renewal of the Renewable Energy and Energy Efficiency Advisory Committee and solicitation of nominations for membership.

**SUMMARY:** Pursuant to provisions of the Federal Advisory Committee Act, the Department of Commerce announces the renewal of the Renewable Energy and Energy Efficiency Advisory Committee (the Committee). The Committee shall advise the Secretary of Commerce regarding the development and administration of programs and policies to expand the competitiveness of U.S. exports of renewable energy and energy efficiency goods and services. The Committee's work on energy efficiency will focus on technologies, services, and platforms that provide system-level energy efficiency to electricity generation, transmission, and distribution. These include smart grid technologies and services, as well as equipment and systems that increase the resiliency of power infrastructure such as energy storage. For the purposes of this Committee, covered goods and services will not include vehicles, feedstock for biofuels, or energy efficiency as it relates to consumer goods. Non-fossil fuels that are considered renewable fuels (*e.g.,* liquid biofuels and pellets) are included. This notice also requests nominations for membership.

**DATES:** Nominations for members must be received on or before 5:00 p.m. Eastern Daylight Time (EDT) on August 17, 2018.

**ADDRESSES:** Nominations may be emailed *Victoria.Gunderson@trade.gov*; faxed to the attention of Victoria Gunderson at 202–482–5665; or mailed to Victoria Gunderson, Office of Energy & Environmental Industries, Room 28018, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Victoria Gunderson, Office of Energy & Environmental Industries, Room 28018, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; phone 202–482–7890; fax 202–482–5665; email *Victoria.Gunderson@trade.gov.*

**SUPPLEMENTARY INFORMATION:** The Committee shall consist of approximately 35 members appointed by the Secretary in accordance with applicable Department of Commerce guidance and based on their ability to carry out the objectives of the Committee. The Secretary of Commerce invites nominations to the Committee of qualified individuals who will represent U.S. companies, U.S. trade associations, and U.S. private sector organizations with activities focused on the export competitiveness of U.S. renewable energy and energy efficiency goods and services. Members shall reflect the diversity of this sector, including in terms of entity or organization size, geographic location, and subsector represented. The Committee shall also represent the diversity of company or organizational roles in the development of renewable energy and energy efficiency projects, including, for example, project developers, technology integrators, financial institutions, and manufacturers.

Prospective applicants and nominees are strongly encouraged to review materials and information on the Committee website, including the Committee's charter, to gain an understanding of the Committee's responsibilities, matters on which the Committee will provide recommendations, and expectations for members based on the work of previous Committees: *http://export.gov/reee/reeeac.*

Members serve at the pleasure of the Secretary from the date of appointment to the Committee to the date on which the Committee's charter terminates. Members serve in a representative capacity presenting the views and interests of a U.S. entity or U.S. organization, as well as their particular

subsector; they are, therefore, not Special Government Employees.

Members of the Committee must not be registered as foreign agents under the Foreign Agents Registration Act. No member may represent a company that is majority owned or controlled by a foreign government entity (or foreign government entities). Members of the Committee will not be compensated for their services or reimbursed for their travel expenses.

If you are interested in applying or nominating someone else to become a member of the Committee, please provide the following information:

(1) Sponsor letter on the company's, trade association's or organization's letterhead containing the name, title, and relevant contact information (including phone, fax, and email address) of the individual who is applying or being nominated;

(2) An affirmative statement that the nominee will be able to meet the expected time commitments of Committee work. Committee work includes (1) attending in-person committee meetings roughly four times per year (lasting one day each), (2) undertaking additional work outside of full committee meetings including subcommittee conference calls or meetings as needed, and (3) frequently drafting, preparing, or commenting on proposed recommendations to be evaluated at Committee meetings;

(3) Short biography of nominee, including credentials;

(4) Brief description of the company, trade association, or organization to be represented and its business activities; company size (number of employees and annual sales); and export markets served;

(5) An affirmative statement that the nominee meets all Committee eligibility requirements.

Please do not send company, trade association, or organization brochures or any other information.

See the **ADDRESSES** and **DATES** captions above for how and the deadline for submitting nominations.

Nominees selected for appointment to the Committee will be notified by mail.

Dated: June 28, 2018.

**Edward OMalley,**

*Director, Office of Energy and Environmental Industries.*

[FR Doc. 2018–14276 Filed 7–2–18; 8:45 am]

**BILLING CODE 3510–DR–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Charter Renewal of Department of Defense Federal Advisory Committees

**AGENCY:** Department of Defense.

**ACTION:** Renewal of federal advisory committee.

**SUMMARY:** The Department of Defense is publishing this notice to announce that it is renewing the charter for the Uniform Formulary Beneficiary Advisory Panel (''the Panel'').

**FOR FURTHER INFORMATION CONTACT:** Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

**SUPPLEMENTARY INFORMATION:** The Panel's charter is being renewed pursuant to 10 U.S.C. 1074g(c)(1) and in accordance with the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended) and 41 CFR 102–3.50(a). The Panel's charter and contact information for the Panel's Designated Federal Officer (DFO) can be found at *http://www.facadatabase.gov/.*

The Panel provides the Secretary of Defense and the Deputy Secretary of Defense, through the Under Secretary for Personnel and Readiness, and the Assistant Secretary of Defense for Health Affairs, independent advice and recommendations on the development of the uniform formulary. The Secretary of Defense shall consider the comments of the Panel before implementing the uniform formulary or implementing changes to the uniform formulary.

The Panel shall be composed of no more than 15 members and shall include members that represent: a. Non-governmental organizations and associations that represent the views and interests of a large number of eligible covered beneficiaries; b. Contractors responsible for the TRICARE retail pharmacy program; c. Contractors responsible for the national mail-order pharmacy program; and d. TRICARE network providers. All members of the Panel are appointed to provide advice on behalf of the Government on the basis of their best judgment without representing any particular point of view and in a manner that is free from conflict of interest. Except for reimbursement of official Panel-related travel and per diem, Panel members serve without compensation.

The public or interested organizations may submit written statements to the Panel membership about the Panel's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Panel. All written statements shall be submitted to the DFO for the Panel, and this individual will ensure that the written statements are provided to the membership for their consideration.

Dated: June 28, 2018.

**Shelly Finke,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2018–14290 Filed 7–2–18; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Charter Amendment of Department of Defense Federal Advisory Committees

**AGENCY:** Department of Defense.

**ACTION:** Amendment of federal advisory committee.

**SUMMARY:** The Department of Defense (DoD) is publishing this notice to announce that it is amending the charter for the Defense Innovation Board (''the Board'').

**FOR FURTHER INFORMATION CONTACT:** Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

**SUPPLEMENTARY INFORMATION:** The Board's charter is being amended in accordance with the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended) and 41 CFR 102–3.50(d). The DoD is amending the charter for the Board previously announced in the **Federal Register** on April 18, 2018 (83 FR 17153) to reflect a change in the committee's sponsor. The Under Secretary of Defense for Research and Engineering will be the sponsor for the Board. The amended charter and contact information for the Designated Federal Officer (DFO) can be obtained at *http://www.facadatabase.gov/.*

Dated: June 28, 2018.

**Shelly E. Finke,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2018–14262 Filed 7–2–18; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE.

### Office of the Secretary

### Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces; Notice of Federal Advisory Committee Meeting

**AGENCY:** General Counsel of the Department of Defense, Department of Defense.

**ACTION:** Notice of federal advisory committee meeting.

**SUMMARY:** The Department of Defense (DoD) is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces will take place.

**DATES:** Open to the public, Friday, July 20, 2018 from 9:00 a.m. to 5:00 p.m.

**ADDRESSES:** One Liberty Center, 875 N. Randolph Street, Suite 1432, Arlington, Virginia 22203.

**FOR FURTHER INFORMATION CONTACT:** Dwight Sullivan, 703–695–1055 (Voice), *dwight.h.sullivan.civ@mail.mil* (Email). Mailing address is DACIPAD, One Liberty Center, 875 N. Randolph Street, Suite 150, Arlington, Virginia 22203. Website: *http://dacipad.whs.mil/*. The most up-to-date changes to the meeting agenda can be found on the website.

**SUPPLEMENTARY INFORMATION:** This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

*Purpose of the Meeting:* In section 546 of the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113–291), as modified by section 537 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114–92), Congress tasked the DAC–IPAD to advise the Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces. This will be the eighth public meeting held by the DAC–IPAD. The purpose of the meeting is to gather information for the Committee to make an assessment and recommendations to the Secretary of Defense regarding the military justice data collection standards and criteria required by Article 140a, UCMJ. The Committee will receive testimony from each of the Military Services regarding their perspectives on best practices for implementing Article 140a, followed by Committee deliberations on its findings and recommendations with respect to Article 140a implementation. The Committee will also receive status update briefings from the DAC–IPAD Director, Data Working Group, and Case Review Working Group.

*Agenda:* 9:00 a.m.–9:15 a.m. Public Meeting Begins—Welcome and Introduction; 9:15 a.m.–10:15 a.m. Military Services' Perspectives on Best Practices for Implementing Article 140a, UCMJ, Case management; data collection and accessibility; 10:15 a.m.–10:30 a.m. Break; 10:30 a.m.–12:30 p.m. Presentation by DAC–IPAD Policy Working Group Members and Deliberations on Best Practices for Implementing Article 140a, UCMJ, Case management; data collection and accessibility; 12:30 p.m.–1:30 p.m. Lunch; 1:30 p.m.–4:00 p.m. Deliberations on Best Practices for Implementing Article 140a, UCMJ, Case management; data collection and accessibility; 4:00 p.m.–4:40 p.m. Updates from the Staff Director, Data Working Group and the Case Review Working Group; 4:40 p.m.–5:00 p.m. Public Comment; 5:00 p.m. Public Meeting Adjourned.

*Meeting Accessibility:* Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is limited and is on a first-come basis. Visitors are required to sign in at the One Liberty Center security desk and must leave government-issued photo identification on file and wear a visitor badge while in the building. Department of Defense Common Access Card (CAC) holders who do not have authorized access to One Liberty Center must provide an alternate form of government-issued photo identification to leave on file with security while in the building. All visitors must pass through a metal detection security screening. Individuals requiring special accommodations to access the public meeting should contact the DAC–IPAD at *whs.pentagon.em.mbx.dacipad@mail.mil* at least five (5) business days prior to the meeting so that appropriate arrangements can be made. In the event the Office of Personnel Management closes the government due to inclement weather or for any other reason, please consult the website for any changes to the public meeting date or time.

*Written Statements:* Pursuant to 41 CFR 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written comments to the Committee about its mission and topics pertaining to this public session. Written comments must be received by the DAC–IPAD at least five (5) business days prior to the meeting date so that they may be made available to the Committee members for their consideration prior to the meeting. Written comments should be submitted via email to the DAC–IPAD at *whs.pentagon.em.mbx.dacipad@mail.mil* in the following formats: Adobe Acrobat or Microsoft Word. Please note that since the DAC–IPAD operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection. Oral statements from the public will be permitted, though the number and length of such oral statements may be limited based on the time available and the number of such requests. Oral presentations by members of the public will be permitted from 4:40 p.m. to 5:00 p.m. on July 20, 2018, in front of the Committee members.

Dated: June 27, 2018.

**Shelly E. Finke,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2018–14257 Filed 7–2–18; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF EDUCATION

### Applications for New Awards; Educational Technology, Media, and Materials for Individuals With Disabilities—Stepping-up Technology Implementation

**AGENCY:** Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Notice.

**SUMMARY:** The Department of Education is issuing a notice inviting applications for new awards for fiscal year (FY) 2018 for Educational Technology, Media, and Materials for Individuals with Disabilities—Stepping-up Technology Implementation, Catalog of Federal Domestic Assistance (CFDA) number 84.327S.

**DATES:**

*Applications Available:* July 3, 2018.

*Deadline for Transmittal of Applications:* August 2, 2018.

**ADDRESSES:** For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the

**Federal Register** on February 12, 2018 (83 FR 6003) and available at *www.gpo.gov/fdsys/pkg/FR-2018-02-12/pdf/2018-02558.pdf.*

**FOR FURTHER INFORMATION CONTACT:** Terry Jackson, U.S. Department of Education, 400 Maryland Avenue SW, Room 5158, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: (202) 245–6039.

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

**SUPPLEMENTARY INFORMATION:**

## Full Text of Announcement

## I. Funding Opportunity Description

*Purpose of Program:* The purposes of the Educational Technology, Media, and Materials for Individuals with Disabilities Program are to: (1) Improve results for students with disabilities by promoting the development, demonstration, and use of technology; (2) support educational activities designed to be of educational value in the classroom for students with disabilities; (3) provide support for captioning and video description that is appropriate for use in the classroom; and (4) provide accessible educational materials to students with disabilities in a timely manner.[1]

*Priority:* In accordance with 34 CFR 75.105(b)(2)(v), the absolute priority and the competitive preference priority within this priority are from allowable activities specified in sections 674(c)(1)(D) and 681(d) of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1474(c)(1)(D) and 1481(d).

*Absolute Priority:* For FY 2018 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is: *Stepping-up Technology Implementation.*

*Background:*

The mission of the Office of Special Education and Rehabilitative Services (OSERS) is to improve early childhood, educational, and employment outcomes and raise expectations for all people with disabilities, their families, their communities, and the Nation.

The purpose of this priority is to fund three cooperative agreements to: identify strategies needed to effectively implement evidence-based (as defined in this notice) technology tools [2] that benefit students with disabilities and children or students with high needs,[3] and develop and disseminate products [4] that will help a broad range of sites to effectively implement these technology tools. This priority is consistent with Priority 5 of the Secretary's Final Supplemental Priorities and Definitions for Discretionary Grant Programs (Supplemental Priorities) [5]—Meeting the Unique Needs of Students and Children With Disabilities and/or Those With Unique Gifts and Talents; and Priority 2 of the Supplemental Priorities—Promoting Innovation and Efficiency, Streamlining Education With an Increased Focus on Improving Student Outcomes, and Providing Increased Value to Students and Taxpayers. Priority 5 emphasizes meeting the unique needs of students with disabilities, including their academic needs, by offering students the opportunity to meet challenging objectives and receive an educational program that is both meaningful and appropriately ambitious in light of each student's circumstances. Priority 2 emphasizes supporting innovative strategies or research that has the potential to lead to significant and wide-reaching improvements in the delivery of educational services or other significant and tangible educational benefits to students, educators, or other Department stakeholders.

Congress recognized in IDEA that ''almost 30 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by . . . supporting the development and use of technology, including assistive technology devices and assistive technology services, to maximize accessibility for children with disabilities'' (section 601(c)(5) of IDEA).

The use of technology, including assistive technology devices and assistive technology services, enhances instruction and access to the general education curriculum. ''Innovative technology tools, programs, and software can be used to promote engagement and enhance the learning experience'' (Brunvand & Byrd, 2011). Innovative technology tools and programs are especially helpful as educators work to engage and motivate students who struggle with the general education curriculum. However, having access alone does not translate to outcomes. Judge et al. (2004) argued that there is a rapid expansion in technology in early childhood settings, and teachers need support in understanding its usage and value to ensure quality learning experiences for young students. When teachers receive the necessary professional development supports to use technology effectively, technology integration in early childhood settings has been demonstrated to increase social awareness and collaborative behaviors, improve abstract reasoning and problem solving abilities, and enhance visual-motor coordination (McManis & Gunnewig, 2012).

Technologies (*e.g.,* online career-readiness tools, computer-based writing tools to support literacy, web-based curriculum to support 21st-century learning) can support State educational agencies (SEAs) and local educational agencies (LEAs) by: (a) Improving student learning and engagement; (b) accommodating the special needs of students; (c) facilitating student and teacher access to digital content and resources; and (d) improving the quality of instruction through personalized learning and data (Duffey & Fox, 2012; Fletcher, Schaffhauser, & Levi, 2012; U.S. Department of Education, 2010). As stipulated in section 4109 of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (ESSA), technologies can be used to support

[1] Applicants should note that other laws, including the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.;* 28 CFR part 35) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794; 34 CFR part 104), may require that State educational agencies and local educational agencies provide captioning, video description, and other accessible educational materials to students with disabilities when such materials are necessary to provide students with disabilities with equally integrated and equally effective access to the benefits of the educational program or activity, or as part of a ''free appropriate public education'' as defined in the Department of Education's Section 504 regulation.

[2] For the purposes of this priority, ''technology tools'' may include, but are not limited to, digital math text readers for students with visual impairments, reading software to improve literacy and communication development, and text-to-speech software to improve reading performance. These tools must assist or otherwise benefit students with disabilities.

[3] For the purposes of this priority, ''children or students with high needs'' means children or students at risk of educational failure or otherwise in need of special assistance or support, such as children and students who are living in poverty, who are English Learners, who are academically far below grade level, who have left school before receiving a regular high school diploma, who are at risk of not graduating with a regular high school diploma on time, who are homeless, who are in foster care, who have been incarcerated, or are children or students with disabilities.

[4] For the purposes of this priority, ''products'' may include, but are not limited to, instruction manuals, lesson plans, demonstration videos, ancillary instructional materials, and professional development modules such as collaborative groups, coaching, mentoring, or online supports.

[5] The Secretary's Final Supplemental Priorities and Definitions for Discretionary Grant Programs was published in the **Federal Register** on March 2, 2018 (83 FR 9096) and can be found at *www.gpo.gov/fdsys/pkg/FR-2018-03-02/pdf/2018-04291.pdf.*

LEAs and SEAs to increase student access to personalized, rigorous learning experiences.

Notwithstanding the potential benefits of using technology to improve learning outcomes, research suggests that implementation can be a significant challenge. For example, data from a survey of more than 1,000 kindergarten through grade 12 (K–12) teachers, principals, and assistant principals indicated that more than half of teachers who did not use technology identified issues of implementation (*e.g.,* necessity, applicability to lessons) rather than availability as reasons for their non-use (Grunwald & Associates, 2010). Additionally, ''research indicates that technology must be used in ways that align with curricular and teacher goals, and offer students opportunities to use these tools in their learning'' (Center on Innovation and Improvement, 2011). Even as schools have started to deliver coursework online, and the number of students involved in online learning has grown, many of these online learning technologies are not readily accessible to students with disabilities (Center on Online Learning and Students with Disabilities, 2012). These findings demonstrate a need for products and resources that can assist educators to readily implement technology tools for students with disabilities.

In response to this need, Stepping-up Technology Implementation projects have built on technology development efforts by identifying, developing, and disseminating products and resources that promote the effective implementation [6] of instructional and assistive technology tools in early childhood programs or K–12 settings.[7]

*Priority:*

The purpose of this priority is to fund three cooperative agreements to: (a) Identify strategies needed to readily implement existing evidence-based technology tools that benefit students with disabilities and children or students with high needs; and (b) develop and disseminate products (See footnote 3; *e.g.,* instruction manuals, lesson plans, demonstration videos, ancillary instructional materials) that will assist personnel in early childhood programs or K–12 settings to readily use, understand, and implement these technology tools.

To be considered for funding under this priority, applicants must meet the application requirements. Any project funded under this absolute priority must also meet the programmatic and administrative requirements specified in the priority.

*Application Requirements*

An applicant must include in its application—

(a) A project design that is evidence-based;

(b) A logic model (as defined in this notice) or conceptual framework that depicts at a minimum, the goals, activities, project evaluation, methods, performance measures, outputs, and outcomes of the proposed project.

**Note:** The following websites provide more information on logic models and conceptual frameworks: *www.osepideasthatwork.org/logicModel; www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework; www2.ed.gov/policy/elsec/leg/essa/guidanceuseseinvestment.pdf;* and *http://ies.ed.gov/pubsearch/pubsinfo.asp?pubid=REL2015057.*

(c) A plan to implement the activities described in the *Project Activities* section of this priority;

(d) A plan, linked to the proposed project's logic model, for a formative evaluation of the proposed project's activities. The plan must describe how the formative evaluation will use clear performance objectives to ensure continuous improvement in the operation of the proposed project, including objective measures of progress in implementing the project and ensuring the quality of products and services;

(e) Documentation ensuring that the final products disseminated to help sites effectively implement technology tools will be both open educational resources (OER) [8] and licensed through an open access licensing authority;

(f) Documentation that the technology tool used by the project is fully developed,[9] evidence-based, and addresses, at a minimum, the following principles of universal design for learning:

(1) Multiple means of presentation so that students can approach information in more than one way (*e.g.,* specialized software and websites, screen readers that include features such as text-to-speech, changeable color contrast, alterable text size, or selection of different reading levels);

(2) Multiple means of expression so that all students can demonstrate knowledge through options such as writing, online concept mapping, or speech-to-text programs, where appropriate; and

(3) Multiple means of engagement to stimulate interest in and motivation for learning (*e.g.,* options among several different learning activities or content for a particular competency or skill and providing opportunities for increased collaboration or scaffolding); [10]

(g) A plan for how the project will sustain project activities after funding ends;

(h) A plan, which includes appropriate consideration of sites other than traditional public elementary and secondary school settings, including private schools, after school programs, juvenile justice facilities, early childhood programs, and settings where students are supported under IDEA, for recruiting and selecting [11] the following:

(1) Three development sites. Development sites are the sites in which iterative development [12] of the products and resources intended to support the implementation of technology tools will occur. The project must start implementing the technology tool with one development site in year one of the project period and two additional development sites in year two;

(2) Four pilot sites. Pilot sites are the sites in which try-out, formative evaluation, and refinement of the products and resources will occur. The project must work with the four pilot sites during years three and four of the project period; and

(3) Ten dissemination sites. Dissemination sites will be selected if

[6] In this context, ''effective implementation'' means ''making better use of research findings in typical service settings through the use of processes and activities (such as accountable implementation teams) that are purposeful and described in sufficient detail such that independent observers can detect the presence and strength of these processes and activities'' (Fixsen, Naoom, Blase, Friedman, & Wallace, 2005).

[7] For the purposes of this priority, ''settings'' include: General education classrooms; special education classrooms; high-quality early childhood programs; private schools; home education; after school programs; juvenile justice facilities; and settings other than those listed above in which students may receive services under IDEA.

[8] Open educational resources (OER) are teaching and learning materials that the public may freely use and reuse at no cost. Unlike fixed, copyrighted resources, OER have been authored or created by an individual or organization that chooses to retain few, if any, ownership rights. Retrieved from *www.oercommons.org/about.*

[9] A technology that is ''fully developed'' is a completed, existing technology that is ready to be implemented. Any enhancements or additions to the existing technology should be minor and time-limited, and *must* be completed before the end of year two.

[10] For more information on the principles of universal design, see *www.udlcenter.org/aboutudl/whatisudl/3principles.*

[11] For more information on recruiting and selecting sites, refer to Assessing Sites for Model Demonstration: Lessons Learned from OSEP Grantees at *http://mdcc.sri.com/documents/MDCC_Site_Assessment_Brief_09-30-11.pdf.*

[12] For the purposes of this priority, ''iterative development'' refers to a process of testing, systematically securing feedback, and then revising the educational intervention to increase the likelihood that it will be implemented with fidelity (Diamond & Powell, 2011).

the project is extended for a fifth year. Dissemination sites will be used to (a) refine the products for use by teachers and (b) evaluate the performance of the tool. Dissemination sites will receive less technical assistance (TA) from the project than development or pilot sites. Also, at this stage (*i.e.,* the fifth year), dissemination sites will extend the benefits of the technology tool to additional students. To be selected as a dissemination site, eligible sites must commit to working with the project to implement the evidence-based technology tool.

**Note:** A site may not serve in more than one category (*i.e.,* development, pilot, dissemination).

**Note:** A minimum of two of the seven development and pilot sites must be in settings other than traditional public elementary and secondary schools. A minimum of three of the 10 dissemination sites must be in settings other than traditional public elementary and secondary schools. These non-traditional sites must otherwise meet the requirements of each category listed earlier.

(i) School site information (*e.g.,* elementary, middle, high school, or early childhood programs, high-quality early childhood programs, private schools, after school programs, juvenile justice facilities, and settings where students are supported under IDEA; schools identified for comprehensive or targeted support and improvement (in accordance with section 1111(c)(4)(C)(iii), (c)(4)(D), or (d)(2)(C)–(D) of the ESEA) about the development, pilot, and dissemination sites, including student demographics (*e.g.,* race or ethnicity, percentage of students eligible for free or reduced-price lunch) and other pertinent data; and

(j) A budget for attendance at the following:

(1) A one and one-half day kick-off meeting to be held in Washington, DC, after receipt of the award, and an annual planning meeting held in Washington, DC, with the Office of Special Education Programs (OSEP) project officer and other relevant staff during each subsequent year of the project period.

**Note:** Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative.

(2) A three-day project directors' conference in Washington, DC, during each year of the project period.

(3) Two annual two-day trips to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP.

*Project Activities:*

To meet the requirements of this priority, the project, at a minimum, must conduct the following activities:

(a) Recruit a minimum of three development sites and four pilot sites in accordance with the plan proposed under paragraphs (h) and (i) of the *Application Requirements* section of this notice.

**Note:** Final site selection will be determined in consultation with the OSEP project officer following the kick-off meeting.

(b) Identify and develop resources and products that, when used to support the implementation of the technology tool, create accessible learning opportunities for all children, including children with disabilities, and children or students with high needs and support the sustained implementation of the selected technology tool. Development of the products must be an iterative process beginning in a single development school and continuing through repeated cycles of development and refinement in the other development sites, followed by a formative evaluation and refinement in the pilot sites. To support implementation of the technology tool the products and resources must, at a minimum, include:

(1) An instrument or method for assessing—

(i) The school staff's current technology uses and needs, current technology investments, firewall issues, and the knowledge and availability of dedicated on-site technology personnel;

(ii) The readiness of development and pilot sites to implement the technology tool. Any instruments and methods for assessing readiness may include resource inventory checklists, school self-study guides, and surveys of teachers' interests; and

(iii) Whether the technology tool has achieved its intended outcomes.

(c) Provide ongoing professional development activities necessary for teachers to implement the technology tool with fidelity and to integrate it into the curriculum.

(d) Collect and analyze data on whether the technology tool has achieved its intended outcomes for early childhood development, K–12, or college- and career-readiness.

(e) Collect formative and summative data from the development and pilot sites to refine and evaluate the products.

(f) If the project is extended to a fifth year—

(1) Provide the products and the technology tool to no fewer than 10 dissemination sites that are not the same used as development or pilot sites; and

(2) Collect summative data about the success of the project's products and services in supporting implementation of the technology tool in the dissemination sites.

(g) By the end of the project period, provide—

(1) Information on the products and resources, as supported by the project evaluation, including any accessibility features, that will enable other sites to implement and sustain implementation of the technology tool;

(2) Information on the technology implementation report, including data on how teachers used the technology, data on how technology impacted student outcomes, how technology was implemented with fidelity, and features of universal design for learning;

(3) Information on how the technology tool contributed to changed practices and improved early childhood outcomes, academic achievement, or college- and career-readiness for children with disabilities, as well as children or students with high needs (*e.g.,* data to assess how well the project addressed the goals of the project as described in the logic model); and

(4) A plan for disseminating the technology tool and accompanying products beyond the sites directly involved in the project.

*Cohort Collaboration and Support*

OSEP project officer(s) will provide coordination support among the projects. Each project funded under this priority must:

(a) Participate in monthly conference-call discussions to share and collaborate on implementation and specific project issues; and

(b) Provide information annually using a template that captures descriptive data on project site selection, processes for installation of technology, and the use of technology and sustainability (*i.e.,* the process of technology implementation).

**Note:** The following website provides more information about implementation research: *http://nirn.fpg.unc.edu/learn-implementation.*

*Fifth Year of Project*

The Secretary may extend a project one year beyond 48 months to work with dissemination sites if the grantee is achieving the intended outcomes of the project (as demonstrated by data gathered as part of the project evaluation) and making a positive contribution to the implementation of an evidence-based technology tool with fidelity in the development and pilot sites. Each applicant must include in its application a plan for the full 60-month period. In deciding whether to continue

funding the project for the fifth year, the Secretary will consider the requirements of 34 CFR 75.253(a), and will consider:

(a) The recommendation of a review team consisting of the OSEP project officer and other experts selected by the Secretary. This review will be held during the last half of the third year of the project period;

(b) The success and timeliness with which the requirements of the negotiated cooperative agreement have been or are being met by the project; and

(c) The degree to which the project's activities have contributed to changed practices and improved early childhood outcomes, academic achievement, or college- and career-readiness for students with disabilities.

*Competitive Preference Priority:* Within this absolute priority, we give competitive preference to applications that address the following priority. The competitive preference priority is from allowable activities in sections 674(c)(1)(D) and 681(d) of IDEA. Under 34 CFR 75.105(c)(2)(i), we award an additional two points to an application that meets the competitive preference priority. Applicants should indicate in the abstract if the competitive preference priority is addressed and must address the priority in the narrative section.

This competitive preference priority is:

*Projects that Support English Learners in Reading (Two Points).*

To meet this competitive preference priority, projects must implement an evidence-based technology tool designed to help teachers use culturally responsive teaching practices [13] to meet the cultural and linguistic needs of English Learners (ELs) and improve their language acquisition, language development, and reading. To meet the competitive preference priority, a project must:

(a) Implement a culturally responsive reading curriculum that provides learning opportunities through a variety of media; and

(b) Develop and disseminate products and resources (*e.g.,* instruction manuals, lesson plans, demonstration videos, ancillary instructional materials) that will assist teachers in K–12 settings to implement the technology.

*References:*

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U.S. Department of Education, Office of Educational Technology. (2010). Transforming American education: Learning powered by technology. Washington, DC: Author. Retrieved from *www.ed.gov/sites/default/files/netp2010.pdf.*

[13] Culturally responsive teaching practices can be defined as ''using the cultural knowledge, prior experiences, frames of reference, and performance styles of ethnically diverse students to make learning encounters more relevant to and effective for them'' (Gay, 2010).

*Definitions:* The following definitions are from 34 CFR 77.1:

*Demonstrates a rationale* means a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

*Evidence-based* means the proposed project component is supported by one or more of strong evidence, moderate evidence, promising evidence, or evidence that demonstrates a rationale.

*Experimental study* means a study that is designed to compare outcomes between two groups of individuals (such as students) that are otherwise equivalent except for their assignment to either a treatment group receiving a project component or a control group that does not. Randomized controlled trials, regression discontinuity design studies, and single-case design studies are the specific types of experimental studies that, depending on their design and implementation (*e.g.,* sample attrition in randomized controlled trials and regression discontinuity design studies), can meet What Works Clearinghouse (WWC) standards without reservations as described in the WWC Handbook:

(i) A randomized controlled trial employs random assignment of, for example, students, teachers, classrooms, or schools to receive the project component being evaluated (the treatment group) or not to receive the project component (the control group).

(ii) A regression discontinuity design study assigns the project component being evaluated using a measured variable (*e.g.,* assigning students reading below a cutoff score to tutoring or developmental education classes) and controls for that variable in the analysis of outcomes.

(iii) A single-case design study uses observations of a single case (*e.g.,* a student eligible for a behavioral intervention) over time in the absence and presence of a controlled treatment manipulation to determine whether the outcome is systematically related to the treatment.

*Logic model* (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

*Moderate evidence* means that there is evidence of effectiveness of a key project component in improving a relevant outcome for a sample that

overlaps with the populations or settings proposed to receive that component, based on a relevant finding from one of the following:

(i) A practice guide prepared by the WWC using version 2.1 or 3.0 of the WWC Handbook reporting a ''strong evidence base'' or ''moderate evidence base'' for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC using version 2.1 or 3.0 of the WWC Handbook reporting a ''positive effect'' or ''potentially positive effect'' on a relevant outcome based on a ''medium to large'' extent of evidence, with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(iii) A single experimental study or quasi-experimental design study reviewed and reported by the WWC using version 2.1 or 3.0 of the WWC Handbook, or otherwise assessed by the Department using version 3.0 of the WWC Handbook, as appropriate, and that—

(A) Meets WWC standards with or without reservations;

(B) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome;

(C) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC intervention report prepared under version 2.1 or 3.0 of the WWC Handbook; and

(D) Is based on a sample from more than one site (*e.g.,* State, county, city, school district, or postsecondary campus) and includes at least 350 students or other individuals across sites. Multiple studies of the same project component that each meet requirements in paragraphs (iii)(A), (B), and (C) of this definition may together satisfy this requirement.

*Project component* means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

*Promising evidence* means that there is evidence of the effectiveness of a key project component in improving a relevant outcome, based on a relevant finding from one of the following:

(i) A practice guide prepared by WWC reporting a ''strong evidence base'' or ''moderate evidence base'' for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC reporting a ''positive effect'' or ''potentially positive effect'' on a relevant outcome with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(iii) A single study assessed by the Department, as appropriate, that—

(A) Is an experimental study, a quasi-experimental design study, or a well-designed and well-implemented correlational study with statistical controls for selection bias (*e.g.,* a study using regression methods to account for differences between a treatment group and a comparison group); and

(B) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome.

*Quasi-experimental design study* means a study using a design that attempts to approximate an experimental study by identifying a comparison group that is similar to the treatment group in important respects. This type of study, depending on design and implementation (*e.g.,* establishment of baseline equivalence of the groups being compared), can meet WWC standards with reservations, but cannot meet WWC standards without reservations, as described in the WWC Handbook.

*Relevant outcome* means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

*Strong evidence* means that there is evidence of the effectiveness of a key project component in improving a relevant outcome for a sample that overlaps with the populations and settings proposed to receive that component, based on a relevant finding from one of the following:

(i) A practice guide prepared by the WWC using version 2.1 or 3.0 of the WWC Handbook reporting a ''strong evidence base'' for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC using version 2.1 or 3.0 of the WWC Handbook reporting a ''positive effect'' on a relevant outcome based on a ''medium to large'' extent of evidence, with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(iii) A single experimental study reviewed and reported by the WWC using version 2.1 or 3.0 of the WWC Handbook, or otherwise assessed by the Department using version 3.0 of the WWC Handbook, as appropriate, and that—

(A) Meets WWC standards without reservations;

(B) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome;

(C) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC intervention report prepared under version 2.1 or 3.0 of the WWC Handbook; and

(D) Is based on a sample from more than one site (*e.g.,* State, county, city, school district, or postsecondary campus) and includes at least 350 students or other individuals across sites. Multiple studies of the same project component that each meet requirements in paragraphs (iii)(A), (B), and (C) of this definition may together satisfy this requirement.

*What Works Clearinghouse Handbook (WWC Handbook)* means the standards and procedures set forth in the WWC Procedures and Standards Handbook, Version 3.0 or Version 2.1 (incorporated by reference, see 34 CFR 77.2). Study findings eligible for review under WWC standards can meet WWC standards without reservations, meet WWC standards with reservations, or not meet WWC standards. WWC practice guides and intervention reports include findings from systematic reviews of evidence as described in the Handbook documentation.

*Waiver of Proposed Rulemaking:* Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priority in this notice.

*Program Authority:* 20 U.S.C. 1474 and 1481.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

**Note:** The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

**Note:** The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

## II. Award Information

*Type of Award:* Cooperative agreements.

*Estimated Available Funds:* $1,500,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2019 from the list of unfunded applications from this competition.

*Estimated Range of Awards:* $450,000 to $500,000 per year.

*Estimated Average Size of Awards:* $475,000 per year.

*Maximum Award:* We will not make an award exceeding $500,000 for a single budget period of 12 months.

*Estimated Number of Awards:* 3.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 48 months.

## III. Eligibility Information

1. *Eligible Applicants:* SEAs; LEAs, including public charter schools that operate as LEAs under State law; IHEs; other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian Tribes or Tribal organizations; and for-profit organizations.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Subgrantees:* Under 34 CFR 75.708(b) and (c) a grantee under this competition may award subgrants—to directly carry out project activities described in its application—to the following types of entities: IHEs and private nonprofit organizations suitable to carry out the activities proposed in the application. The grantee may award subgrants to entities it has identified in an approved application.

4. *Other:* (a) Recipients of funding under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Each applicant for, and recipient of, funding must, with respect to the aspects of their proposed project relating to the absolute priority, involve individuals with disabilities, or parents of individuals with disabilities ages birth through 26, in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

## IV. Application and Submission Information

1. *Application Submission Instructions:* For information on how to submit an application please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 12, 2018 (83 FR 6003) and available at *www.gpo.gov/fdsys/pkg/FR-2018-02-12/pdf/2018-02558.pdf.*

2. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. However, under 34 CFR 79.8(a), we waive intergovernmental review in order to make awards by the end of FY 2018.

3. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 50 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, reference citations, and captions, as well as all text in charts, tables, figures, graphs, and screen shots.
- Use a font that is 12 point or larger.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the abstract (follow the guidance provided in the application package for completing the abstract), the table of contents, the list of priority requirements, the resumes, the reference list, the letters of support, or the appendices. However, the recommended page limit does apply to all of the application narrative, including all text in charts, tables, figures, graphs, and screen shots.

## V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are as follows:

(a) *Significance (10 points).*

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The significance of the problem or issue to be addressed by the proposed project;

(ii) The magnitude or severity of the problem to be addressed by the proposed project;

(iii) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses;

(iv) The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies; and

(v) The potential replicability of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings.

(b) *Quality of project services (25 points).*

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age or disability.

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice;

(ii) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services;

(iii) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services;

(iv) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services; and

(v) The likely impact of the services to be provided by the proposed project

on the intended recipients of those services.

(c) *Quality of the project design (20 points).*

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable;

(ii) The extent to which the design of the proposed project includes a thorough, high-quality review of the relevant literature, a high-quality plan for project implementation, and the use of appropriate methodological tools to ensure successful achievement of project objectives;

(iii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs;

(iv) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies, including information about the effectiveness of the approach or strategies employed by the project; and

(v) The extent to which there is a conceptual framework underlying the proposed research or demonstration activities and the quality of that framework.

(d) *Quality of the management plan (20 points).*

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks;

(ii) The extent to which the time commitments of the project director and principal investigator, and other key project personnel are appropriate and adequate to meet the objectives of the proposed project;

(iii) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project;

(iv) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate; and

(v) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

(e) *Adequacy of resources (10 points).*

(1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization;

(ii) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project;

(iii) The extent to which the budget is adequate to support the proposed project;

(iv) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project; and

(v) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits.

(f) *Quality of the project evaluation (15 points).*

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project;

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible;

(iii) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies;

(iv) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes; and

(v) The extent to which the evaluation plan clearly articulates the key project components, mediators, and outcomes, as well as a measurable threshold for acceptable implementation.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Additional Review and Selection Process Factors:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The standing panel requirements under section 682(b) of IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications.

4. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2

CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

5. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $150,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

## VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:* Under the Government Performance and Results Act of 1993, the Department has established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Educational Technology, Media, and Materials for Individuals with Disabilities program. These measures are included in the application package and focus on the extent to which projects are of high quality, are relevant to improving outcomes of children with disabilities, as well as children with high-needs, and generate evidence of validity and availability to appropriate populations. Projects funded under this competition are required to submit data on these measures as directed by OSEP.

Grantees will be required to report information on their project's performance in annual performance reports and additional performance data to the Department (34 CFR 75.590 and 75.591).

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

## VII. Other Information

*Accessible Format:* Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the Management Support Services Team, U.S. Department of Education, 400 Maryland Avenue SW, Room 5113, Potomac Center Plaza, Washington, DC 20202–2500. Telephone: (202) 245–7363. If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit

your search to documents published by the Department.

Dated: June 28, 2018.

**Johnny W. Collett,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 2018–14338 Filed 7–2–18; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

**[Docket No.: ED–2018–ICCD–0052]**

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; National Household Education Survey 2019 (NHES: 2019)

**AGENCY:** National Center for Education Statistics (NCES), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

**DATES:** Interested persons are invited to submit comments on or before August 2, 2018.

**ADDRESSES:** To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2018–ICCD–0052. 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 206–06, Washington, DC 20202–4537.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Kashka Kubzdela, 202–245–7377 or email *NCES.Information.Collections@ed.gov.*

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* National Household Education Survey 2019 (NHES: 2019).

*OMB Control Number:* 1850–0768.

*Type of Review:* A revision of an existing information collection.

*Respondents/Affected Public:* Individuals or Households.

*Total Estimated Number of Annual Responses:* 123,177.

*Total Estimated Number of Annual Burden Hours:* 12,964.

*Abstract:* The National Household Education Survey (NHES) is a data collection program of the National Center for Education Statistics (NCES) designed to provide descriptive data on the education activities of the U.S. population, with an emphasis on topics that are appropriate for household surveys rather than institutional surveys. Such topics have covered a wide range of issues, including early childhood care and education, children's readiness for school, parents' perceptions of school safety and discipline, before- and after-school activities of school-age children, participation in adult and career education, parents' involvement in their children's education, school choice, homeschooling, and civic involvement. This request is to conduct the NHES:2019 full scale data collection, from December 2018 through September 2019, in conjunction with an In-Person Study of Nonresponding Households, designed to provide insight about nonresponse that can help plan future survey administrations. NHES:2019 will use mail and web data collection modes and will field two surveys: The Early Childhood Program Participation survey (ECPP) and the Parent and Family Involvement in Education survey (PFI).

Dated: June 28, 2018.

**Kate Mullan,**

*Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.*

[FR Doc. 2018–14273 Filed 7–2–18; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Northern New Mexico

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Wednesday, July 25, 2018, 1:00 p.m.–5:15 p.m.

**ADDRESSES:** Santa Fe Community College, Jemez Complex, 6401 Richards Avenue, Santa Fe, New Mexico 87508.

**FOR FURTHER INFORMATION CONTACT:** Menice Santistevan, Northern New Mexico Citizens' Advisory Board (NNMCAB), 94 Cities of Gold Road, Santa Fe, NM 87506. Phone (505) 995–0393; Fax (505) 989–1752 or Email: *Menice.Santistevan@em.doe.gov*.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

**Tentative Agenda**

- Call to Order
- Welcome and Introductions
- Approval of Agenda and Meeting Minutes of April 18, 2018, and May 23, 2018
- Old Business
  - Report from Nominating Committee
  - Other Items
- New Business
  - Election of NNMCAB Chair and Vice-Chair for Fiscal Year 2019
  - Other Items
- Background on Material Disposal Area C
- Break
- Overview of Aggregate Areas
- Public Comment Period

- Update from EM-Los Alamos Field Office
- Update from New Mexico Environment Department
- Update from NNMCAB Deputy Designated Federal Officer and Executive Director
- Wrap-Up Comments from NNMCAB Members
- Adjourn

*Public Participation:* The EM SSAB, Northern New Mexico, 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 Menice Santistevan at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Santistevan at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

*Minutes:* Minutes will be available by writing or calling Menice Santistevan at the address or phone number listed above. Minutes and other Board documents are on the internet at: *https://energy.gov/em/nnmcab/meeting-materials*.

Issued at Washington, DC, on June 28, 2018.

**Latanya Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2018–14327 Filed 7–2–18; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Savannah River Site

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Monday, July 23, 2018, 1:00 p.m.–5:00 p.m.; Tuesday, July 24, 2018, 9:00 a.m.–5:00 p.m.

**ADDRESSES:** Hilton Garden Inn, 1065 Stevens Creek Road, Augusta, GA 30907.

**FOR FURTHER INFORMATION CONTACT:** Amy Boyette, Office of External Affairs, Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; Phone: (803) 952–6120.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

**Tentative Agenda**

*Monday, July 23, 2018*

Opening, Chair Update, and Agenda Review
Agency Updates
Break
Administrative & Outreach Committee Update
Facilities Disposition & Site Remediation Committee Update
Nuclear Materials Committee Update
Strategic & Legacy Management Committee Update
Waste Management Committee Update

Discussion of Draft Recommendations

- Ship Low Activity Glass Logs to Waste Isolation Pilot Plant (WIPP)
- Transuranic (TRU) Shipments to WIPP
- Restart the Savannah River Site (SRS)/Idaho National Laboratory (INL) Spent Nuclear Fuel (SNF) Exchange

Public Comments
Recess

*Tuesday, July 24, 2018*

Reconvene
Agenda Review

Presentations

- D Area Ash Project
- Pollination Activities

Lunch Break

Presentations

- 235–F Deactivation
- Price Anderson Act and Nuclear Quality Assurance-1 (NQA 1) Standards

Break

Presentations

- Salt Waste Processing Facility Update
- Interim Salt Processing (Tank Closure Cesium Removal (TCCR) & Actinide Removal Process (ARP)/Modular Caustic Side Solvent Extraction Unit (MCU))

Public Comments

Voting

- Recommendations Proposed for Closure
  - #351: Savannah River National Laboratory Funding
  - #352: Glass Waste Storage
  - #353: Defense Waste Processing Facility Additional Failed Equipment Storage
- Draft Recommendations
  - Ship Low Activity Glass Logs to WIPP
  - TRU Shipments to WIPP
  - Restart the SRS/INL SNF Exchange

Adjourn

*Public Participation:* The EM SSAB, Savannah River Site, 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 Amy Boyette at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Amy Boyette's office at the address or telephone listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

*Minutes:* Minutes will be available by writing or calling Amy Boyette at the address or phone number listed above. Minutes will also be available at the following website: *http://cab.srs.gov/srs-cab.html*.

Issued at Washington, DC, on June 28, 2018.

**Latanya Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2018–14328 Filed 7–2–18; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Nevada

**AGENCY:** Department of Energy (DOE).

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Wednesday, July 18, 2018, 4:00 p.m.

**ADDRESSES:** Valley Electric Association, Valley Conference Center, 800 East Highway 372, Pahrump, Nevada 89041.

**FOR FURTHER INFORMATION CONTACT:** Barbara Ulmer, Board Administrator, 232 Energy Way, M/S 167, North Las Vegas, Nevada 89030. Phone: (702) 630–0522; Fax (702) 295–2025 or Email: *NSSAB@nnsa.doe.gov*.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

**Tentative Agenda**

1. DOE and Liaison Updates
2. Recommendation Development for Community Interest Analysis—Work Plan Item #7
3. Educational Briefing on Emergency Preparedness Working Group

*Public Participation:* The EM SSAB, Nevada, 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 Barbara Ulmer at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Barbara Ulmer at the telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments can do so during the 15 minutes allotted for public comments.

*Minutes:* Minutes will be available by writing to Barbara Ulmer at the address listed above or at the following website: *http://www.nnss.gov/NSSAB/pages/MM_FY18.html*.

Issued at Washington, DC, on June 27, 2018.

**Latanya Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2018–14256 Filed 7–2–18; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL18–180–000]**

### VA Solar 1, LLC v. PJM Interconnection, L.L.C.; Notice of Complaint

Take notice that on June 22, 2018, pursuant to sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824e and 825e, and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, VA Solar 1, LLC (Complainant) filed a formal complaint against PJM Interconnection, L.L.C (Respondent) alleging that the Respondent violated its Open Access Transmission Tariff by terminating an interconnection service request submitted on behalf of the Complainant, all as more fully explained in the complaint.

The Complainant certifies that copies of the complaint were served on the contacts listed for the Respondent in the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the eLibrary link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5:00 p.m. Eastern Time on July 12, 2018.

Dated: June 25, 2018.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2018–14224 Filed 7–2–18; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP16–121–000]**

### National Grid LNG, LLC; Notice of Availability of the Environmental Assessment for the Proposed Fields Point Liquefaction Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Fields Point Liquefaction Project, proposed by National Grid LNG, LLC (National Grid) in the above-referenced docket. National Grid requests authorization to construct natural gas liquefaction facilities at its existing Fields Point liquefied natural gas (LNG) storage facility in Providence, Rhode Island.

The EA assesses the potential environmental effects of the construction and operation of the Fields Point Liquefaction Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The U.S. Department of Transportation, Rhode Island Department of Environmental Management, and the Rhode Island Coastal Resources Management Council participated as cooperating agencies in the preparation of the EA. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis.

For its Fields Point Liquefaction Project, National Grid would construct a

natural gas liquefier, including the following facilities:

- Electric-powered booster compressor;
- pretreatment system;
- gas regeneration heater; and
- liquefaction train including heat exchangers cooled by a closed-loop nitrogen refrigeration cycle.

The FERC staff mailed copies of the EA to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the project area. In addition, the EA is available for public viewing on the FERC's website (*www.ferc.gov*) using the eLibrary link. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE, Room 2A, Washington, DC 20426 (202) 502–8371.

Any person wishing to comment on the EA may do so. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before 5:00 p.m. Eastern Time on July 25, 2018.

For your convenience, there are three methods you can use to file your comments to the Commission. In all instances please reference the applicable project docket number (CP16–121–000) with your submission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.*

(1) You can file your comments electronically using the eComment feature on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the eFiling feature on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on eRegister. You must select the type of filing you are making. A comment on a particular project is considered a Comment on a Filing; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on General Search, and enter the docket number in the Docket Number field excluding the last three digits (*i.e.,* CP16–121). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: June 25, 2018.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2018–14225 Filed 7–2–18; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. IC18–12–000]**

### Commission Information Collection Activity (FERC–566); Comment Request; Extension

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Comment request.

**SUMMARY:** In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is submitting its information collection [FERC–566 (Annual Report of a Utility's 20 Largest Purchasers)] to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission previously issued a Notice in the **Federal Register** requesting public comments. The Commission received no comments on the FERC–566 and is making this notation in its submittal to OMB.

**DATES:** Comments on the collection of information are due August 2, 2018.

**ADDRESSES:** Comments filed with OMB, identified by OMB Control No. 1902–0114, should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov.* Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may also be reached via telephone at 202–395–8528.

A copy of the comments should also be sent to the Commission, in Docket No. IC18–12–000 by either of the following methods:

- *eFiling at Commission's Website: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

*Instructions:* All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

*Docket:* Users interested in receiving automatic notification of activity in this

docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

**FOR FURTHER INFORMATION CONTACT:** Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

**SUPPLEMENTARY INFORMATION:**

*Title:* FERC–566 (Annual Report of a Utility's 20 Largest Purchasers).

*OMB Control No.:* 1902–0114.

*Type of Request:* Three-year extension of the FERC–566 information collection requirements with no changes to the current reporting requirements.

*Abstract:* The Federal Power Act (FPA), as amended by the Public Utility Regulatory Policies Act of 1978 (PURPA), mandates federal oversight and approval of certain electric corporate activities to ensure that neither public nor private interests are adversely affected. Accordingly, the FPA proscribes related information filing requirements to achieve this goal. Such filing requirements are found in the Code of Federal Regulations (CFR), specifically in 18 CFR Section 131.31, and serve as the basis for the FERC–566.

FERC–566 implements FPA requirements that each public utility annually publish a list of the 20 purchasers which purchased the largest annual amounts of electric energy sold by such public utility during any of the three previous calendar years. The public disclosure of this information provides the information necessary to determine whether an interlocked position is with any of the 20 largest purchasers of electric energy. Similar to the Form 561,[1] the FPA identifies who must file the FERC–566 report and sets the filing deadline.

*Type of Respondents:* Public utilities.

*Estimate of Annual Burden:*[2] The Commission estimates the annual public reporting burden for the information collection as:

FERC–566 (ANNUAL REPORT OF A UTILITY'S 20 LARGEST PURCHASERS)

| Number of respondents | Annual number of responses per respondent | Total number of responses | Average burden and cost per response[3] | Total annual burden hours and total annual cost | Cost per respondent ($) |
|---|---|---|---|---|---|
| (1) | (2) | (1) * (2) = (3) | (4) | (3) * (4) = (5) | (5) ÷ (1) |
| 300 | 1 | 300 | 4 hrs.; $306 | 1,200 hrs.; $91,800 | $306 |

*Comments:* Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: June 26, 2018.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2018–14226 Filed 7–2–18; 8:45 am]

**BILLING CODE 6717–01–P**

[1] FERC Form No. 561 (Annual Report of Interlocking Directorates), OMB Control No. 1902–0099.

[2] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

[3] The estimates for cost per response are derived using the following formula: Average Burden Hours per Response * $76.50 per Hour = Average Cost per Response. The figure comes from the 2017 FERC average hourly cost (for wages and benefits) of $76.50 (and an average annual salary of $158,754). Commission staff is using the FERC average hourly cost because we consider any reporting completed in response to the FERC–566 to be compensated at rates similar to the work of FERC employees.

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP18–118–000]**

## Rover Pipeline LLC; Notice of Schedule for Environmental Review of the UGS-Crawford Meter Station Project

On March 15, 2018, Rover Pipeline LLC filed an application in Docket No. CP18–118–000 requesting a Certificate of Public Convenience and Necessity pursuant to Section 7(c) of the Natural Gas Act to construct and operate certain natural gas pipeline facilities. The proposed project is known as the UGS-Crawford Meter Station Project (Project), and would receive up to 35 million standard cubic feet per day of pipeline quality natural gas from an interconnect with the gathering pipeline facilities of Utica Gas Services, LLC.

On March 28, 2018, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's Environmental Assessment (EA) for the Project. This instant notice identifies the FERC staff's planned schedule for the completion of the EA for the Project.

### Schedule for Environmental Review

*Issuance of EA:* July 13, 2018.

*90-day Federal Authorization Decision Deadline:* October 11, 2018.

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

### Project Description

The Project would consist of one new meter and regulating station on agricultural land west of Highway 221 in Salem Township, Jefferson County, Ohio. The station would consist of various components including a horizontal filter separator, ultrasonic meter skid, flow control skid, gas quality and measurement buildings, satellite communications, and a condensate storage tank. The facility would be constructed on 3.64 acres of land, of which 0.9 acre would be fenced and maintained for operation.

**Background**

On May 1, 2018, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed UGS-Crawford Meter Station Project and Request for Comments on Environmental Issues* (NOI). The NOI was sent to affected landowners; federal, state, and local government agencies; elected officials; Native American tribes; other interested parties; and local libraries. In response to the NOI, the Commission received comments from U.S. Fish and Wildlife Service regarding impacts on multiple federally listed sensitive species. All substantive comments will be addressed in the EA.

**Additional Information**

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website (*www.ferc.gov*). Using the eLibrary link, select General Search from the eLibrary menu, enter the selected date range and Docket Number excluding the last three digits (*i.e.,* CP18–118), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: June 26, 2018.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2018–14222 Filed 7–2–18; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL18–12–001]**

### ATX Southwest, LLC; Notice of Filing

Take notice that on June 22, 2018, Ameren Services Company, for and on behalf of ATX Southwest, LLC, submitted a compliance filing pursuant to the order issued on June 1, 2018 by the Federal Energy Regulatory Commission (Commission).[1]

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5:00 p.m. Eastern Time on July 13, 2018.

Dated: June 25, 2018.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2018–14223 Filed 7–2–18; 8:45 am]

**BILLING CODE 6717–01–P**

[1] *ATX Southwest, LLC,* 163 FERC 61,175 (2018).

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OLEM–2018–0392, FRL–9980–05–OLEM]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Requirements and Exemptions for Specific RCRA Wastes (Renewal)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) is planning to submit the information collection request (ICR) Requirements and Exemptions for Specific RCRA Wastes (Renewal) (EPA ICR No. 1597.12, OMB Control No. 2050–0145) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, the EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through October 31, 2018. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**DATES:** Comments must be submitted on or before September 4, 2018.

**ADDRESSES:** Submit your comments, referencing by Docket ID No. EPA–HQ–OLEM–2018–0392, online using *www.regulations.gov* (our preferred method), by email to *rcra-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

**FOR FURTHER INFORMATION CONTACT:** Peggy Vyas, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 703–308–5477; fax number: 703–308–8433; email address: *vyas.peggy@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Supporting documents which explain in detail the information that the EPA will be collecting are available in the public

docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, the EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, the EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

*Abstract:* In 1995, EPA promulgated regulations at 40 CFR part 273 that govern the collection and management of widely-generated hazardous wastes known as ''Universal Wastes''. Universal Wastes are generated in a variety of non-industrial settings, and are present in non-hazardous waste management systems. Examples of Universal Wastes include certain batteries, pesticides, mercury-containing lamps and thermostats. The part 273 regulations are designed to ensure facilities collect these wastes and properly manage them in an appropriate hazardous waste management system. EPA needs to collect notifications of Universal Waste management to obtain general information on these handlers and to facilitate enforcement of the part 273 regulations. EPA promulgated labeling and marking requirements and accumulation time limits to ensure that Universal Waste is being accumulated responsibly. EPA needs to collect information on illegal Universal Waste shipments to enforce compliance with applicable regulations. Finally, EPA requires tracking of Universal Waste shipments to help ensure that Universal Waste is being properly treated, recycled, or disposed.

In 2001, EPA promulgated regulations in 40 CFR part 266 that provide increased flexibility to facilities managing wastes commonly known as ''Mixed Waste.'' Mixed Wastes are low-level mixed waste (LLMW) and naturally occurring and/or accelerator-produced radioactive material (NARM) containing hazardous waste. These wastes are also regulated by the Atomic Energy Act. As long as specified eligibility criteria and conditions are met, LLMW and NARM are exempt from the definition of hazardous waste as defined in Part 261. Although these wastes are exempt from RCRA manifest, transportation, and disposal requirements, facilities must still comply with the manifest, transportation, and disposal requirements under the NRC (or NRC-Agreement State) regulations. Section 266.345(a) requires that generators or treaters notify EPA or the Authorized State that they are claiming the Transportation and Disposal Conditional Exemption prior to the initial shipment of a waste to a LLRW disposal facility. This exemption notice provides a tool for RCRA program regulatory agencies to become aware of the generator's exemption claims. The information contained in the notification package provides the RCRA program regulatory agencies with a general understanding of the claimant. This information also allows the agencies to document the generator's exemption status and to plan inspections and review exemption-related records.

And finally, in 1992, EPA finalized management standards for used oils destined for recycling. The Agency codified the used oil management standards at 40 CFR part 279. The regulations at 40 CFR part 279 establish, among other things, streamlined procedures for notification, testing, labeling, and recordkeeping. They also establish a flexible self-implementing approach for tracking off-site shipments that allow used oil handlers to use standard business practices (*e.g.,* invoices, bill of lading). In addition, part 279 sets standards for the prevention and cleanup of releases to the environment during storage and transit. EPA believes these requirements will minimize potential mismanagement of used oils, while not discouraging recycling. Used oil transporters must comply with all applicable packaging, labeling, and placarding requirements of 49 CFR parts 173, 178, and 179. In addition, used oil transporters must report discharges of used oil according to existing 49 CFR part 171 and 33 CFR part 153 requirements.

*Form numbers:* None.

*Respondents/affected entities:* Private Sector and State, Local, or Tribal Governments.

*Respondent's obligation to respond:* Mandatory (40 CFR part 273), required to obtain or retain a benefit (40 CFR parts 266 and 279).

*Estimated number of respondents:* 134,230.

*Frequency of response:* On occasion.

*Total estimated burden:* 679,354 hours per year. Burden is defined at 5 CFR 1320.03(b).

*Total estimated cost:* $10,015,823 (per year), includes $1,873 annualized capital/startup costs and $10,013,950 operation & maintenance costs.

*Changes in estimates:* The burden hours are likely to stay substantially the same.

Dated: June 19, 2018.

**Barnes Johnson,**

*Director, Office of Resource Conservation and Recovery.*

[FR Doc. 2018–14320 Filed 7–2–18; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OLEM–2018–0390, FRL–9980–04–OLEM]**

## Agency Information Collection Activities; Proposed Collection; Comment Request; Hazardous Waste Generator Standards (Renewal)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) is planning to submit the information collection request (ICR), Hazardous Waste Generator Standards (Renewal) (EPA ICR No. 0820.14, OMB Control No. 2050–0035) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, the EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through October 31, 2018. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**DATES:** Comments must be submitted on or before September 4, 2018.

**ADDRESSES:** Submit your comments, referencing by Docket ID No. EPA–HQ–OLEM–2018–0390, online using *www.regulations.gov* (our preferred method), by email to *rcra-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

**FOR FURTHER INFORMATION CONTACT:** Brian Knieser, Office of Resource Conservation and Recovery (mail code 5304P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 703–347–8769; fax number: 703–308–0514; email address: *knieser.brian@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, the EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, the EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

*Abstract:* Under the Resource Conservation and Recovery Act (RCRA), as amended, Congress directed EPA to implement a comprehensive program for the safe management of hazardous waste. The core of the national waste management program is the regulation of hazardous waste from generation to transport to treatment and eventual disposal, or from ''cradle to grave.'' Section 3001(d) of RCRA requires EPA to develop standards for small quantity generators. Section 3002 of RCRA states, among other things, that EPA shall establish requirements for hazardous waste generators regarding recordkeeping practices. Section 3002 also requires EPA to establish standards on appropriate use of containers by generators. Finally, Section 3017 of RCRA specifies requirements for individuals exporting hazardous waste from the United States, including a notification of the intent to export, and an annual report summarizing the types, quantities, frequency, and ultimate destination of all exported hazardous waste.

On November 28, 2016, EPA published the ''Hazardous Waste Generator Improvements Rule'' (81 FR 85732), which implemented several specific changes to the hazardous waste generator program. These improvements include: (1) Revising different components of the hazardous waste regulatory program; (2) addressing gaps in the current regulations; (3) providing greater flexibility for hazardous waste generators to manage their hazardous waste in a cost-effective manner; (4) reorganizing the hazardous waste generator regulations to improve their usability among regulated facilities; and (5) making technical corrections and conforming changes to address inadvertent errors, remove obsolete programs, and improve the readability of the regulations. This renewal incorporates these improvements.

*Form numbers:* None.

*Respondents/affected entities:* Private business or other for-profit.

*Respondent's obligation to respond:* Mandatory (40 CFR part 262 and 265).

*Estimated number of respondents:* 67,288.

*Frequency of response:* On occasion.

*Total estimated burden:* 253,519 hours per year. Burden is defined at 5 CFR 1320.03(b).

*Total estimated cost:* $14,674,934 (per year), includes $40,041 annualized capital or operation & maintenance costs.

*Changes in estimates:* The burden hours are likely to stay substantially the same.

Dated: June 19, 2018.

**Barnes Johnson,**

*Director, Office of Resource Conservation and Recovery.*

[FR Doc. 2018–14321 Filed 7–2–18; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OLEM–2018–0391, FRL–9980–03–OLEM]**

## Agency Information Collection Activities; Proposed Collection; Comment Request; Facility Ground-Water Monitoring Requirements (Renewal)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) is planning to submit the information collection request (ICR) Facility Ground-Water Monitoring Requirements (Renewal) (EPA ICR No. 0959.16, OMB Control No. 2050–0033) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, the EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through October 31, 2018. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**DATES:** Comments must be submitted on or before September 4, 2018.

**ADDRESSES:** Submit your comments, referencing by Docket ID No. EPA–HQ–OLEM–2018–0391, online using *www.regulations.gov* (our preferred method), by email to *rcra-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other

information whose disclosure is restricted by statute.

**FOR FURTHER INFORMATION CONTACT:** Peggy Vyas, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 703–308–5477; fax number: 703–308–8433; email address: *vyas.peggy@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, the EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, the EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

*Abstract:* Subtitle C of the Resource Conservation and Recovery Act (RCRA) creates a comprehensive program for the safe management of hazardous waste. Section 3004 of RCRA requires owners and operators of facilities that treat, store, or dispose of hazardous waste to comply with standards established by EPA that are to protect the environment. Section 3005 provides for implementation of these standards under permits issued to owners and operators by EPA or authorized States. Section 3005 also allows owners and operators of facilities in existence when the regulations came into effect to comply with applicable notice requirements to operate until a permit is issued or denied. This statutory authorization to operate prior to permit determination is commonly known as ''interim status.'' Owners and operators of interim status facilities also must comply with standards set under Section 3004.

This ICR examines the ground-water monitoring standards for permitted and interim status facilities at 40 CFR parts 264 and 265, as specified. The ground-water monitoring requirements for regulated units follow a tiered approach whereby releases of hazardous contaminants are first detected (detection monitoring), then confirmed (compliance monitoring), and if necessary, are required to be cleaned up (corrective action). Each of these tiers requires collection and analysis of ground-water samples. Owners or operators that conduct ground-water monitoring are required to report information to the oversight agencies on releases of contaminants and to maintain records of ground-water monitoring data at their facilities. The goal of the ground-water monitoring program is to prevent and quickly detect releases of hazardous contaminants to groundwater, and to establish a program whereby any contamination is expeditiously cleaned up as necessary to protect human health and environment.

*Form numbers:* None.

*Respondents/affected entities:* Business or other for-profit; and State, Local, or Tribal Governments.

*Respondent's obligation to respond:* Mandatory (RCRA Sections 3004 and 3005).

*Estimated number of respondents:* 881.

*Frequency of response:* Quarterly, semi-annually, and annually.

*Total estimated burden:* 117,027 hours per year. Burden is defined at 5 CFR 1320.03(b).

*Total estimated cost:* $22,424,224 (per year), includes $17,870,276 annualized capital or operation & maintenance costs.

*Changes in estimates:* The burden hours are likely to stay substantially the same.

Dated: June 19, 2018.

**Barnes Johnson,**

*Director, Office of Resource Conservation and Recovery.*

[FR Doc. 2018–14323 Filed 7–2–18; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OECA–2018–0130, FRL–9980–02–OLEM]**

## Agency Information Collection Activities; Proposed Collection; Comment Request; NESHAP for Hazardous Waste Combustors (Renewal)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) is planning to submit the information collection request (ICR), National Emission Standards for Hazardous Air Pollutants (NESHAP) for Hazardous Waste Combustors (Renewal) (EPA ICR No. 1773.12, OMB Control No. 2050–0171) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, the EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through October 31, 2018. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**DATES:** Comments must be submitted on or before September 4, 2018.

**ADDRESSES:** Submit your comments, referencing by Docket ID No. EPA–HQ–OECA–2018–0130, online using *www.regulations.gov* (our preferred method), by email to *rcra-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

**FOR FURTHER INFORMATION CONTACT:** Patrick Yellin, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–2970; fax number: (202) 564–0050; email address: *yellin.patrick@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, the EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, the EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

*Abstract:* The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart EEE. Hazardous waste combustors include: Hazardous waste incinerators, hazardous waste cement kilns, hazardous waste lightweight aggregate kilns, hazardous waste solid fuel boilers, hazardous waste liquid fuel boilers, and hazardous waste hydrochloric acid production furnaces. Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, notification of exceedances, notification of performance test and continuous monitoring system evaluation, notification of intent to comply, notification of compliance, notification if the owner or operator elects to comply with alternative requirements, initial performance tests, and periodic reports and results.

*Form numbers:* None.

*Respondents/affected entities:* Business or other for-profit as well as State, Local, or Tribal governments.

*Respondent's obligation to respond:* Mandatory (40 CFR part 63, subpart EEE).

*Estimated number of respondents:* 192.

*Frequency of response:* On occasion.

*Total estimated burden:* 142,381 hours per year. Burden is defined at 5 CFR 1320.03(b).

T*otal estimated cost:* $19,945,848 (per year), includes $15,893,404 annualized labor and $4,052,444 annualized capital or operation & maintenance costs.

*Changes in estimates:* The burden hours are likely to stay substantially the same.

Dated: June 19, 2018.

**Barnes Johnson,**

*Director, Office of Resource Conservation and Recovery.*

[FR Doc. 2018–14322 Filed 7–2–18; 8:45 am]

**BILLING CODE 6560–50–P**

## FARM CREDIT ADMINISTRATION

### Sunshine Act Meeting; Farm Credit Administration Board

**AGENCY:** Farm Credit Administration.

**ACTION:** Notice, regular meeting.

**SUMMARY:** Notice is hereby given, pursuant to the Government in the Sunshine Act, of the regular meeting of the Farm Credit Administration Board (Board).

**DATES:** The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on July 12, 2018, from 9:00 a.m. until such time as the Board concludes its business.

**ADDRESSES:** Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090. Submit attendance requests via email to *VisitorRequest@FCA.gov.* See **SUPPLEMENTARY INFORMATION** for further information about attendance requests.

**FOR FURTHER INFORMATION CONTACT:** Dale L. Aultman, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056, *aultmand@fca.gov.*

**SUPPLEMENTARY INFORMATION:** This meeting of the Board will be open to the public (limited space available). Please send an email to *VisitorRequest@FCA.gov* at least 24 hours before the meeting. In your email include: Name, postal address, entity you are representing (if applicable), and telephone number. You will receive an email confirmation from us. Please be prepared to show a photo identification when you arrive. If you need assistance for accessibility reasons, or if you have any questions, contact Dale L. Aultman, Secretary to the Farm Credit Administration Board, at (703) 883–4009. The matters to be considered at the meeting are:

**Open Session**

*A. Approval of Minutes*

- June 14, 2018

*B. New Business*

- Eligibility Criteria for Outside Directors—Proposed Rule

Dated: June 29, 2018.

**Dale L. Aultman,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 2018–14389 Filed 6–29–18; 11:15 am]

**BILLING CODE 6705–01–P**

## FEDERAL MARITIME COMMISSION

**[DOCKET NO. 18–04]**

### Falcone Global Solutions, LLC v. Maurice Ward Networks, Ltd. d/b/a Maurice Ward Group; Maurice Ward & Co., BV.; and Maurice Ward & Co. S.R.O.; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed with the Federal Maritime Commission (Commission) by Falcone Global Solutions, LLC, hereinafter ''Complainant,'' against Maurice Ward Networks, Ltd. d/b/a Maurice Ward Group; Maurice Ward & Co., BV.; and Maurice Ward & Co. S.R.O., hereinafter ''Respondents.'' Complainant states that it is a licensed non-vessel operating common carrier (NVOCC) operating in Atlanta, Georgia. Complainant states that Respondents are foreign limited liability companies that ''. . . [provide] global freight forwarding, warehousing, logistics, and custom clearance services for [their] customers''. Complainant asserts that Maurice Ward & Co. S.R.O. is an FMC registered foreign-based unlicensed NVOCC.

Complainant claims that the Respondents ''. . . [acted] as a common carrier as defined in 46 U.S.C. 40102(6).'' Complainant asserts this action arises from ''. . . Respondents' unlawful withholding of 87 containers of Complainant's cargo in an attempt to extort Complainant into paying invalid invoices with inaccurate fees and charges that were disputed by Complainant.''

Complainant specifically alleges that Respondents' actions violated the Shipping Act as they:

a. ''. . . failed to establish, observe and enforce just and reasonable regulations and practices related to or connected with receiving, handling, storing and delivering [Complainant's] consigned cargo, in violation of 46 U.S.C. 41102(c)'';

b. ''. . . imposed and attempted to collect improper fees and charges not contained in a service agreement between the parties or published tariff, in violation of 46 U.S.C. 41104(2)'';

c. ''. . . retaliated against [Complainant] by resorting to unfair and unjustly discriminatory methods by withholding release of 87 containers after Falcone disputed the inaccurate fees and charges on Respondents' invoices, in violation of 46 U.S.C. 41104(3)'';

d. ''. . . engaged in unfair practices with respect to rates or charges under its tariff by invoicing [Complainant] for inaccurate and double-charged fees, in violation of 46 U.S.C. 41104(4)''; and

e. ''. . . unreasonably refused to deal or negotiate in good faith with [Complainant] in resolving the disputed invoices, and instead unlawfully withheld the 87 containers, in violation of 46 U.S.C. 41104(10).''

Complainant seeks reparations in the amount of $798,300 and other relief. The full text of the complaint can be found in the Commission's Electronic Reading Room at *www.fmc.gov/18-04/.*

This proceeding has been assigned to the Office of Administrative Law Judges. The initial decision of the presiding officer in this proceeding shall be issued by June 27, 2019, and the final decision of the Commission shall be issued by December 10, 2019.

**Rachel E. Dickon,**

*Secretary.*

[FR Doc. 2018–14220 Filed 7–2–18; 8:45 am]

**BILLING CODE 6731–AA–P**

## FEDERAL RESERVE SYSTEM

### Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

**AGENCY:** Board of Governors of the Federal Reserve System.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, with revision, the mandatory Banking Organization Systemic Risk Report (FR Y–15; OMB No. 7100–0352). The revisions are effective as of the June 30, 2018, report date.

**FOR FURTHER INFORMATION CONTACT:**

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–6974.

**SUPPLEMENTARY INFORMATION:** On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Board may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

### Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Information Collection

*Report title:* Banking Organization Systemic Risk Report.

*Agency form number:* FR Y–15.

*OMB control number:* 7100–0352.

*Effective date:* June 30, 2018.

*Frequency:* Quarterly.

*Respondents:* U.S. bank holding companies (BHCs), covered savings and loan holding companies (SLHCs), and U.S. intermediate holding companies (IHCs) of foreign banking organizations with $50 billion or more of total consolidated assets, and any BHC designated as a global systemically important bank holding company (GSIB) that does not otherwise meet the consolidated assets threshold for BHCs.

*Estimated number of respondents:* 41.

*Estimated average hours per response:* 401 hours.

*Estimated annual burden hours:* 65,764 hours.

*General description of report:* The FR Y–15 quarterly report collects systemic risk data from U.S. bank holding companies (BHCs), covered savings and loan holding companies (SLHCs),[1] and U.S. intermediate holding companies (IHCs) with total consolidated assets of $50 billion or more, and any BHC identified as a global systemically important banking organization (GSIB) based on its method 1 score calculated as of December 31 of the previous calendar year.[2] The Board uses the FR Y–15 data to monitor, on an ongoing basis, the systemic risk profile of institutions that are subject to enhanced prudential standards under section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).[3] In addition, the FR Y–15 is used to (1) facilitate the implementation of the GSIB surcharge rule,[4] (2) identify other institutions that may present significant systemic risk, and (3) analyze the systemic risk implications of proposed mergers and acquisitions.

*Legal authorization and confidentiality:* The mandatory FR Y–15 is authorized by sections 163 and 165 of the Dodd-Frank Act (12 U.S.C. 5463 and 5365), the International Banking Act (12 U.S.C. 3106 and 3108), the Bank Holding Company Act (12 U.S.C. 1844), and the Home Owners' Loan Act (12 U.S.C. 1467a).

Most of the data collected on the FR Y–15 is made public unless a specific request for confidentiality is submitted by the reporting entity, either on the FR Y–15 or on the form from which the data item is obtained.[5] Such information will be accorded confidential treatment under Exemption 4 of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(4)) if the submitter substantiates its assertion that disclosure would likely cause substantial competitive harm. In addition, items 1 through 4 of Schedule G of the FR Y–15, which contain granular information regarding the

[1] Covered SLHCs are those which are not substantially engaged in insurance or commercial activities. See 12 CFR 217.2.

[2] See 12 CFR 217.402.

[3] 12 U.S.C. 5365.

[4] A firm that is identified as a GSIB is required to hold additional capital to increase its resiliency in light of the greater threat it poses to the financial stability of the United States. The Board's rule on the GSIB surcharge establishes the criteria for identifying a GSIB and the methods that those firms use to calculate a risk-based capital surcharge, which is calibrated to each firm's overall systemic risk. *See* 81 FR 90952 (December 16, 2016).

[5] A number of the items in the FR Y–15 are retrieved from the FR Y–9C, and certain items may be retrieved from the FFIEC 101 and FFIEC 009. Confidential treatment will also extend to any automatically-calculated items on the FR Y–15 that have been derived from confidential data items and that, if released, would reveal the underlying confidential data.

reporting entity's short-term funding, will be accorded confidential treatment under exemption 4 for observation dates that occur prior to the liquidity coverage ratio disclosure standard being implemented.[6] To the extent confidential data collected under the FR Y–15 will be used for supervisory purposes, it may be exempt from disclosure under Exemption 8 of FOIA (5 U.S.C. 552(b)(8)).

*Current actions:* On August 24, 2017, the Board published a notice in the **Federal Register** (82 FR 40154) requesting public comment for 60 days on the extension, with revision, of the FR Y–15. The Board proposed to amend the FR Y–15 to include Mexican pesos in total payments activity rather than as a memorandum item; add securities brokers to the definition of financial institutions; expressly include derivative transactions where a clearing member bank guarantees performance of a client to a central counterparty; and specify how certain cleared derivatives transactions are reported. The proposal was amended October 18, 2017, to extend the proposed implementation date from December 31, 2017, to March 31, 2018, and to extend the public comment period for the proposal for an additional 30 days (82 FR 49608). The comment period for the proposal expired on November 23, 2017.

The Board received seven comments on the proposal. One commenter expressed general support of the proposal. Six comments focused on the Board's proposal to include in Schedule D, item 1 the notional amount of over-the-counter (OTC) derivative transactions where a clearing member bank guarantees the performance of a client to a central counterparty (CCP). The comments are discussed below. The comments did not address the other proposed changes in detail and either supported or did not object to the other proposed changes.

**Detailed Discussion of Public Comments**

*Comments Related to the Complexity Indicator*

Commenters noted that derivatives are cleared using two models: The principal model, where the banking organization facilitates the clearing of derivatives by taking opposing positions with the client and the CCP; and the agency model, where a clearing member banking organization, acting as an agent, guarantees the performance of the client to a CCP. The current reporting instructions for derivative contracts cleared through a CCP in Schedule D, item 1 state that, when the reporting banking organization acts as a financial intermediary under the principal model, the notional amounts for each contract—that is, the transaction with the client and the transaction with the CCP—should be reported. In cases where a clearing member banking organization acts as an agent, the current instructions state that the bank should report the notional amount when the bank guarantees the performance of a CCP to a client. As clearing member banking organizations rarely guarantee the performance of a CCP to a client, the amount of derivatives reported under the agency model is low.

The proposal would have revised the instructions to require reporting of derivative transactions where a clearing member bank guarantees the performance of a client to a CCP under the agency model, thereby increasing parity between the two clearing models.

One commenter observed that shifts in global clearing activity since 2012 have led to widespread adoption of the agency model of clearing in lieu of the principal model, obviating the need to mitigate the differences in reporting between the models. Commenters also argued that the risk associated with client-cleared transactions would have been overstated under the proposal and that the risks associated with these transactions are already appropriately captured in total exposure (Schedule A, item 1(h)), intra-financial system assets (Schedule B, items 5(a) and 5(b)), and intra-financial system liabilities (Schedule B, items 11(a) and 11(b)). These commenters stated that banking organizations engaged in client clearing businesses focus only on the credit risk of their clients and the imposition of applicable credit limits. Commenters argued that this significantly reduces the complexity of the activity and, therefore, the client leg of these transactions should not be included in the complexity indicator.

After considering the comments, the Board has decided not to adopt the proposed reporting of derivative transactions where a clearing member bank guarantees the performance of a client to a CCP in Schedule D, item 1. Although derivatives are often complex, the Board does not believe it is appropriate at this time to treat the client leg of a cleared transaction in the agency model as more complex than a simple credit exposure, and therefore does not believe it is currently necessary to include these exposures in the complexity indicator. Further, part of the motivation for including the client leg of the agency model was to make sure that, for a regulatory framework that encompasses multiple models of clearing, no one model receives significantly more or less representation with respect to the GSIB indicators. The proposal was intended in part to ensure that the agency model would be adequately included in the GSIB indicators compared to the principal model. However, the expansion in the availability and overall use of the agency model somewhat mitigates concerns about the relative treatment of client-cleared transactions between respondents, and the Board is thus not currently concerned that excluding the client leg from the GSIB indicators will result in a significant disparity among reporters. Because the two clearing models remain, however, the Board may need to address inequitable treatment of client-cleared transactions in the future if the principal model again becomes more common.

*Comments Related to the Interconnectedness Indicators*

Consistent with the proposed change to Schedule D, item 1 discussed above, the Board also proposed to revise the instructions to Schedule B, items 5(a) and 11(a) for reporting derivative contracts cleared under the agency model. The current instructions state that the bank should report the net positive or net negative fair value when the bank guarantees the performance of a CCP to a client. As noted, this rarely occurs, resulting in almost no reporting of derivatives under the agency model in these two items on Schedule B.

Several commenters stated that requiring cleared derivative transactions to be reported where the bank guarantees the performance of a financial institution client could discourage derivative clearing activities, contrary to public policy goals, because client clearing of derivatives may reduce systemic risk. Additionally, these

[6] The liquidity coverage ratio (LCR) disclosure requirement for companies subject to the transition period under 12 CFR 249.50(a) (*i.e.,* institutions with $700 billion or more in total consolidated assets or $10 trillion or more in assets under custody) was implemented on April 1, 2017. Therefore, all Schedule G data for these firms is already available to the public. The LCR disclosure requirement for companies subject to the transition period under 12 CFR 249.50(b) (*i.e.,* institutions with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance sheet foreign exposure) was implemented on April 1, 2018. Therefore, all Schedule G data for these firms will be made available to the public starting with the June 30, 2018, as-of date. The LCR disclosure requirement for companies subject to 12 CFR 249, Subpart G will be implemented on October 1, 2018. As this will mark the full implementation of the LCR disclosure standard, items 1 through 4 of Schedule G for all other firms will be made available to the public starting with the December 31, 2018, as-of date.

commenters argued that the proposed changes could result in the GSIB surcharge of several firms increasing, which, in turn, could lead these firms to increase clearing costs for derivative end-users.

After considering the comments, the Board is not adopting its proposal with respect to reporting derivatives under the agency model on Schedule B in order to allow additional time to consider how to cover such activity in the context of interconnectedness. The Board will continue to consider whether agency clearing should be incorporated into the interconnectedness measures or elsewhere.

*Other Comments Received*

No comments were received regarding the inclusion of Mexican pesos in total payments activity or the addition of securities brokers to the definition of financial institution. Accordingly, the Board is adopting revisions to the FR Y–15 reporting form and instructions to include Mexican pesos in total payments activity on Schedule C and remove it from the Memorandum items, and to add securities brokers to the definition of financial institutions in the instructions for Schedule B. These changes are effective for the June 30, 2018, reporting date.

Several commenters stated that the proposed changes to the reporting of OTC derivatives in Schedule D would make the FR Y–15 inconsistent with the Basel Committee GSIB assessment reporting instructions.[7] In addition, certain commenters stated that the proposed revisions to Schedule B, items 5(a) and 11(a), and Schedule D, item 1, were inconsistent with the Administrative Procedure Act (APA). The Board is not adopting these proposed changes, making these arguments moot.[8]

One commenter noted that the definition of ''financial institution'' in the FR Y–15 is different from other regulatory reports and recommended aligning the varying definitions. In response, the Board acknowledges that its regulations and reporting sometimes use differing definitions for similar concepts and that this may require firms to track differences among the definitions. Firms should review the definition of ''financial institution'' in the instructions of the form on which they are reporting and should not look to similar definitions in other forms as dispositive for appropriate reporting on the FR Y–15.

A commenter also asked for clarification about whether securities financing transactions follow the regulatory capital rule definition of repo-style transactions. As described in the General Instructions of Schedule A, several items involve securities financing transactions (*i.e.,* repo-style transactions), which are transactions such as repurchase agreements, reverse repurchase agreements, and securities lending and borrowing, where the value of the transactions depends on the market valuations and the transactions are often subject to margin agreements. For purposes of reporting on the FR Y–15, the intent is that securities financing transactions are synonymous with repo-style transactions under the regulatory capital rule. In a future update of the FR Y–15, the Board will work to replace the term ''securities financing transactions'' with ''repo-style transactions'' to better align the FR Y–15 language with the regulatory capital rule.

In addition, a commenter asked for clarification regarding potential inconsistencies between similar items that are reported on different reporting forms. In particular, the commenter noted that the instructions for the FR Y–15, FFIEC 101 (Regulatory Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework), and FR Y–14Q (Capital Assessments and Stress Testing) do not consistently allow for a reduction in fair value of sold credit protection. The Board will conduct a coordinated effort with the other banking agencies on changes to the FFIEC 101 and the FR Y–14 to ensure that the instructions appropriately clarify how any adjustments for sold credit protection should be reported.[9]

Further, a commenter asked for clarification regarding the reporting of holdings of equity investments in unconsolidated investment funds sponsored or administered by the respondent. Specifically, the commenter wanted to know whether such investments would be reported as equity securities in Schedule B, item 3(e). Per the general instructions for Schedule B, item 3, firms must include ''securities issued by equity-accounted associates (*i.e.,* associated companies and affiliates accounted for under the equity method of accounting) and special purpose entities (SPEs) that are not part of the consolidated entity for regulatory purposes.'' Therefore, such equity investments would be included in item 3(e).

A commenter also requested clarification on how collateral may reduce the exposure reported in the FR Y–15, Schedule B, items 5(a) and 11(a). For item 5(a), in cases where a qualifying master netting agreement is in place, a reporting bank may reduce its value of derivative assets by subtracting the net collateral position from the underlying obligation. In circumstances where the net collateral exceeds the payment obligation, the bank should report a fair value of zero for the netting set. Similarly, for item 11(a), in cases where a qualifying master netting agreement is in place, a reporting bank may reduce its value of derivative liabilities exposure by subtracting the net collateral position from the underlying obligation. In circumstances where the net collateral exceeds the payment obligation owed to the counterparty, the bank should report a fair value of zero for the netting set.

Board of Governors of the Federal Reserve System, June 28, 2018.

**Michele Taylor Fennell,**

*Assistant Secretary of the Board.*

[FR Doc. 2018–14304 Filed 7–2–18; 8:45 am]

**BILLING CODE 6210–01–P**

[7] The international GSIB assessment reporting instructions for year-end 2017 are available at *www.bis.org/bcbs/gsib/reporting_instructions.htm.*

[8] Even if the argument regarding the APA were not moot, the Board would not have violated the APA if it decided to implement the proposed revisions to Schedule B, items 5(a) and 11(a), and Schedule D, item 1. The proposed revisions to the FR Y–15 constitute an interpretive rule or general statement of policy, and therefore may be adopted without the publication of a general notice of proposed rulemaking in the **Federal Register**. Even if such publication were necessary to adopt the proposed revisions, this requirement was satisfied because the proposal was published for comment in the **Federal Register** for a 60-day comment period. After receiving initial feedback on the proposal, the comment period was extended for 30 days to solicit additional feedback. Moreover, redlined forms, instructions, and an OMB supporting statement were made available on the Board's public website. The materials afforded commenters the opportunity to provide specific feedback regarding the exact changes being proposed. Indeed, commenters provided significant feedback based on the proposal.

[9] Any changes to these reporting forms would have to be proposed in a future **Federal Register** notice with a 60-day comment period, as required by the Paperwork Reduction Act (PRA).

## FEDERAL RESERVE SYSTEM

### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice, request for comment.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Interagency Guidance on Managing Compliance and Reputation Risks for

Reverse Mortgage Products (FR 4029; OMB No. 7100–0330).

**DATES:** Comments must be submitted on or before September 4, 2018.

**ADDRESSES:** You may submit comments, identified by FR 4029, by any of the following methods:

- *Agency Website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street (between 18th and 19th Streets NW) Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–6974.

**FOR FURTHER INFORMATION CONTACT:** A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public website at: *http://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:** On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

**Request for Comment on Information Collection Proposal**

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions, including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Federal Reserve should modify the proposal prior to giving final approval.

*Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following report:*

*Report title:* Interagency Guidance on Managing Compliance and Reputation Risks for Reverse Mortgage Products.

*Agency form number:* FR 4029.

*OMB control number:* 7100–0330.

*Frequency:* Annual.

*Respondents:* State member banks that originate proprietary reverse mortgages.

*Estimated number of respondents:* Implementation of policies and procedures, 1 respondent; and Review and maintenance of policies and procedures, 15 respondents.

*Estimated average hours per response:* Implementation of policies and procedures, 40 hours; and Review and maintenance of policies and procedures, 8 hours.

*Estimated annual burden hours:* Implementation of policies and procedures, 40 hours; and Review and maintenance of policies and procedures, 120 hours.

*General description of report:* Reverse mortgages are home-secured loans typically offered to elderly consumers. Financial institutions currently provide two types of reverse mortgage products: the lenders' own proprietary reverse mortgage products and reverse mortgages insured by the U.S. Department of Housing and Urban Development's Federal Housing Administration (FHA). Reverse mortgage loans insured by the FHA are made pursuant to the guidelines and rules established by HUD's Home Equity Conversion Mortgage (HECM) program.[1] HECM loans and proprietary reverse mortgages are also subject to consumer financial protection laws and regulations, *e.g.,* the regulations that implement laws such as the Real Estate Settlement Procedures Act (RESPA) and the Truth in Lending Act (TILA).

In August 2010, the Federal Financial Institutions Examination Council (FFIEC), on behalf of its member agencies,[2] published a **Federal Register** notice adopting supervisory guidance titled ''Reverse Mortgage Products: Guidance for Managing Compliance and Reputation Risks.'' [3] The guidance is designed to help financial institutions with risk management and assist financial institutions' efforts to ensure that their reverse mortgage lending practices adequately address consumer compliance and reputation risks.

The reverse mortgage guidance discusses the reporting, recordkeeping, and disclosures required by federal laws

[1] See 12 U.S.C. 1715z–20; 24 CFR part 206.

[2] The Federal Reserve, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision.

[3] 75 FR 50801.

and regulations and also discusses consumer disclosures that financial institutions typically provide as a standard business practice. Certain portions of the guidance are ''information collections'' subject to the PRA's requirements.

*Legal authorization and confidentiality:* The information collection is authorized pursuant to section 11 of the Federal Reserve Act, 12 U.S.C. 248 (state member banks); sections 25 and 25A of the Federal Reserve Act, 12 U.S.C. 625 (Edge and Agreement corporations); section 5 of the Bank Holding Company Act of 1956, 12 U.S.C. 1844 (bank holding companies and, in conjunction with section 8 of the International Banking Act, 12 U.S.C. 3106, foreign banking organizations); section 7(c) of the International Banking Act of 1978, 12 U.S.C. 3105(c) (branches and agencies of foreign banks); and section 10 of the Home Owners' Loan Act, 12 U.S.C. 1467a, (savings and loan holding companies). This guidance is voluntary.

Because the documentation required by the guidance is maintained by each institution, the Freedom of Information Act (FOIA) would only be implicated if the Federal Reserve's examiners retained a copy of this information as part of an examination or as part of its supervision of a financial institution. However, records obtained as a part of an examination or supervision of a financial institution are exempt from disclosure under FOIA exemption (b)(8) (5 U.S.C. 552(b)(8)). In addition, the information may also be kept confidential under exemption 4 of the FOIA which protects commercial or financial information obtained from a person that is privileged or confidential (5 U.S.C. 552(b)(4)).

Board of Governors of the Federal Reserve System, June 28, 2018.

**Michele Taylor Fennell,**

*Assistant Secretary of the Board.*

[FR Doc. 2018–14303 Filed 7–2–18; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RESERVE SYSTEM

**[Docket No. OP–1612]**

## Announcement of Financial Sector Liabilities

Section 622 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, implemented by the Board's Regulation XX, prohibits a merger or acquisition that would result in a financial company that controls more than 10 percent of the aggregate consolidated liabilities of all financial companies (''aggregate financial sector liabilities''). Specifically, an insured depository institution, a bank holding company, a savings and loan holding company, a foreign banking organization, any other company that controls an insured depository institution, and a nonbank financial company designated by the Financial Stability Oversight Council (each, a ''financial company'') is prohibited from merging or consolidating with, acquiring all or substantially all of the assets of, or acquiring control of, another company if the resulting company's consolidated liabilities would exceed 10 percent of the aggregate financial sector liabilities.[1]

Pursuant to Regulation XX, the Federal Reserve will publish the aggregate financial sector liabilities by July 1 of each year. Aggregate financial sector liabilities equals the average of the year-end financial sector liabilities figure (as of December 31) of each of the preceding two calendar years.

**FOR FURTHER INFORMATION CONTACT:** Sean Healey, Supervisory Financial Analyst, (202) 912–4611; Matthew Suntag, Counsel, (202) 452–3694; for the hearing impaired, TTY (202) 263–4869.

### Aggregate Financial Sector Liabilities

Aggregate financial sector liabilities is equal to $20,283,121,945,000.[2] This measure is in effect from July 1, 2018 through June 30, 2019.

### Calculation Methodology

Aggregate financial sector liabilities equals the average of the year-end financial sector liabilities figure (as of December 31) of each of the preceding two calendar years. The year-end financial sector liabilities figure equals the sum of the total consolidated liabilities of all top-tier U.S. financial companies and the U.S. liabilities of all top-tier foreign financial companies, calculated using the applicable methodology for each financial company, as set forth in Regulation XX and summarized below.

Consolidated liabilities of a U.S. financial company that was subject to consolidated risk-based capital rules as of December 31 of the year being measured, equal the difference between its risk-weighted assets (as adjusted upward to reflect amounts that are deducted from regulatory capital elements pursuant to the Federal banking agencies' risk-based capital rules) and total regulatory capital, as calculated under the applicable risk-based capital rules. Companies in this category include (with certain exceptions listed below) bank holding companies, savings and loan holding companies, and insured depository institutions. The Federal Reserve used information collected on the Consolidated Financial Statements for Holding Companies (FR Y–9C) and the Bank Consolidated Reports of Condition and Income (Call Report) to calculate liabilities of these institutions.

Consolidated liabilities of a U.S. financial company not subject to consolidated risk-based capital rules as of December 31 of the year being measured, equal liabilities calculated in accordance with applicable accounting standards. Companies in this category include nonbank financial companies supervised by the Board, bank holding companies and savings and loan holding companies subject to the Federal Reserve's Small Bank Holding Company Policy Statement, savings and loan holding companies substantially engaged in insurance underwriting or commercial activities, and U.S. companies that control insured depository institutions but are not bank holding companies or savings and loan holding companies. ''Applicable accounting standards'' is defined as GAAP, or such other accounting standard or method of estimation that the Board determines is appropriate.[3] The Federal Reserve used information collected on the FR Y–9C, the Parent Company Only Financial Statements for Small Holding Companies (FR Y–9SP), and the Financial Company Report of Consolidated Liabilities (FR XX–1) to calculate liabilities of these institutions.

Section 622 provides that the U.S. liabilities of a ''foreign financial company'' equal the risk-weighted

[1] 12 U.S.C. 1852(a)(2), (b).

[2] This number reflects the average of the financial sector liabilities figure for the year ending December 31, 2016 ($20,079,196,276,000) and the year ending December 31, 2017 ($20,487,047,614,000).

[3] A financial company may request to use an accounting standard or method of estimation other than GAAP if it does not calculate its total consolidated assets or liabilities under GAAP for any regulatory purpose (including compliance with applicable securities laws). 12 CFR 251.3(e). In previous years, the Board received and approved requests from eleven financial companies to use an accounting standard or method of estimation other than GAAP to calculate liabilities. Ten of the companies are insurance companies that report financial information under Statutory Accounting Principles (''SAP''), and one is a foreign company that controls a U.S. industrial loan company that reports financial information under International Financial Reporting Standards (''IFRS''). For the insurance companies, the Board approved a method of estimation that was based on line items from SAP-based reports, with adjustments to reflect certain differences in accounting treatment between GAAP and SAP. For the foreign company, the Board approved the use of IFRS. These companies continue to use the previously approved methods. The Board did not receive any new requests this year.

assets and regulatory capital attributable to the company's ''U.S. operations.'' Under Regulation XX, liabilities of a foreign banking organization's U.S. operations are calculated using the risk-weighted asset methodology for subsidiaries subject to risk-based capital rules, plus the assets of all branches, agencies, and nonbank subsidiaries, calculated in accordance with applicable accounting standards. Liabilities attributable to the U.S. operations of a foreign financial company that is not a foreign banking organization are calculated in a similar manner to the method described for foreign banking organizations, but liabilities of a U.S. subsidiary not subject to risk-based capital rules are calculated based on the U.S. subsidiary's liabilities under applicable accounting standards. The Federal Reserve used information collected on the Capital and Asset Report for Foreign Banking Organizations (FR Y–7Q), the FR Y–9C and the FR XX–1 to calculate liabilities of these institutions.

By order of the Board of Governors of the Federal Reserve System, acting through the Director of Supervision and Regulation under delegated authority, June 27, 2018.

**Ann Misback,**

*Secretary of the Board.*

[FR Doc. 2018–14241 Filed 7–2–18; 8:45 am]

**BILLING CODE P**

## FEDERAL RESERVE SYSTEM

### Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

**AGENCY:** Board of Governors of the Federal Reserve System.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, Recordkeeping and Disclosure Requirements Associated with Consumer Financial Protection Bureau's (CFPB) Regulation B (Equal Credit Opportunity Act) (FR B; OMB No. 7100–0201).

**FOR FURTHER INFORMATION CONTACT:** Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–6974.

**SUPPLEMENTARY INFORMATION:** On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Board may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

*Final approval under OMB delegated authority of the extension for three years, without revision, of the following report:*

*Report title:* Recordkeeping and Disclosure Requirements Associated with Consumer Financial Protection Bureau's (CFPB) Regulation B (Equal Credit Opportunity Act).

*Agency form number:* FR B.

*OMB control number:* 7100–0201.

*Frequency:* Monthly; annually.

*Respondents:* State member banks; subsidiaries of state member banks; subsidiaries of bank holding companies; U.S. branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks); commercial lending companies owned or controlled by foreign banks; and organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601–604a; 611–631).

*Estimated number of respondents:* Notifications, furnishing of credit information, record retention (applications, actions, and prescreened solicitations), information for monitoring purposes, and rules on providing appraisal reports (providing appraisal report), 958 respondents; Self-testing: Record retention—incentives, 92 respondents; Self-testing: Record retention—self-correction, 23 respondents; and Self-testing: Record retention—rules concerning requests for information (disclosure for optional self-test), 92 respondents.

*Estimated average hours per response:* Notifications, 6 hours; Furnishing of credit information, 2.5 hours; Record retention (applications, actions, and prescreened solicitations), 8 hours; Information for monitoring purposes, 0.25 hours; Rules on providing appraisal reports (providing appraisal report), 3 hours; Self-testing: Record retention—incentives, 2 hours; Self-testing: Record retention—self-correction, 8 hours; and Self-testing: Record retention—rules concerning requests for information (disclosure for optional self-test), 3.5 hours.

*Estimated annual burden hours:* Notifications, 68,976 hours; Furnishing of credit information, 28,740 hours; Record retention (applications, actions, and prescreened solicitations), 7,664 hours; Information for monitoring purposes, 2,874 hours; Rules on providing appraisal reports (providing appraisal report), 34,488 hours; Self-testing: Record retention—incentives, 184 hours; Self-testing: Record retention—self-correction, 184 hours; and Self-testing: Record retention—rules concerning requests for information (disclosure for optional self-test), 3,864 hours.

*General description of report:* The Equal Credit Opportunity Act (ECOA) was enacted in 1974 and is implemented by the CFPB's Regulation B for institutions the Board supervises.[1] The ECOA prohibits discrimination in any aspect of a credit transaction because of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to contract), or other specified bases (receipt of public assistance, or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act (15 U.S.C. 1600 *et seq.*)). To aid in implementation of this prohibition, the statute and regulation subject creditors to various mandatory disclosure requirements, notification provisions informing applicants of action taken on the credit application, provision of appraisal reports in connection with mortgages, credit history reporting, monitoring rules, and recordkeeping requirements. These requirements are triggered by specific events and disclosures must be provided within the time periods established by the statute and regulation.

*Legal authorization and confidentiality:* The CFPB is authorized to issue its Regulation B pursuant to its authority to prescribe regulations to carry out the purposes of ECOA (15 U.S.C. 1691b). The obligation to comply with the recordkeeping and disclosure

[1] 15 U.S.C. 1691. The CFPB's Regulation B is located at 12 CFR part 1002.

requirements of CFPB's Regulation B is mandatory. Because the recordkeeping and disclosure requirements of the CFPB's Regulation B require creditors to retain their own records and to make certain disclosures to customers, the Freedom of Information Act (FOIA) would only be implicated if the Board's examiners retained a copy of this information as part of an examination of a bank. Records obtained as a part of an examination or supervision of a bank are exempt from disclosure under FOIA exemption (b)(8), for examination material (5 U.S.C. 552(b)(8)). In addition, the records may also be exempt under FOIA exemption (b)(4) or (b)(6). Records would be exempt under (b)(4) if the records contained ''trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential'' and the disclosure of the information is likely to cause substantial harm to the competitive position of the respondents (5 U.S.C. 552(b)(4)). Records would be exempt under (b)(6) if the records contained personal information, the disclosure of which would ''constitute a clearly unwarranted invasion of personal privacy'' (5 U.S.C. 552(b)(6)).

*Current actions:* On April 13, 2018, the Board published a notice in the **Federal Register** (83 FR 16098) requesting public comment for 60 days on the extension, without revision, of the FR B. The comment period for this notice expired on June 12, 2018. The Board received one comment letter that addressed matter outside the scope of this proposal.

Board of Governors of the Federal Reserve System, June 28, 2018.

**Michele Taylor Fennell,**

*Assistant Secretary of the Board.*

[FR Doc. 2018–14305 Filed 7–2–18; 8:45 am]

**BILLING CODE 6210–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[CDC–2018–0006; Docket Number NIOSH–306]**

### Final National Occupational Research Agenda for Services

**AGENCY:** National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice of availability.

**SUMMARY:** NIOSH announces the availability of the final *National Occupational Research Agenda for Services.*

**DATES:** The final document was published on June 26, 2018.

**ADDRESSES:** The document may be obtained at the following link: *https://www.cdc.gov/niosh/nora/sectors/serv/agenda.html.*

**FOR FURTHER INFORMATION CONTACT:** Emily Novicki, M.A., M.P.H, (*NORACoordinator@cdc.gov*), National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, Mailstop E–20, 1600 Clifton Road NE, Atlanta, GA 30329, phone (404) 498–2581 (not a toll free number).

**SUPPLEMENTARY INFORMATION:** On January 29, 2018, NIOSH published a request for public review in the **Federal Register** [83 FR 4058] of the draft version of the *National Occupational Research Agenda for Services.* All comments received were reviewed and addressed where appropriate.

**John J. Howard,**

*Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.*

[FR Doc. 2018–14227 Filed 7–2–18; 8:45 am]

**BILLING CODE 4163–19–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifier: CMS–10673]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services.

**ACTION:** Notice.

**SUMMARY:** The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**DATES:** Comments must be received by September 4, 2018.

**ADDRESSES:** When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number ___, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at *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–10673 Medicare Advantage Qualifying Payment Arrangement Incentive (MAQI) Demonstration*

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:* New Collection (Request for a new OMB control number); *Title of Information Collection:* Medicare Advantage Qualifying Payment Arrangement Incentive (MAQI) Demonstration; *Use:* The Centers for Medicare & Medicaid Services (CMS) may test a demonstration, under Section 402 of the Social Security Amendments of 1968 (as amended), entitled the Medicare Advantage Qualifying Payment Arrangement Incentive (MAQI) Demonstration (''the Demonstration''). If it goes forward, the MAQI demonstration could test whether exempting, through the use of waiver authority, clinicians who participate to a sufficient degree in certain payment arrangements with Medicare Advantage Organizations (MAOs) (combined with participation, if any, in Advanced Alternative Payment Models (APMs) with Medicare Fee-for-Service (FFS)) from the Merit-based Incentive Payment System (MIPS) reporting requirements and payment adjustment will increase or maintain participation in payment arrangements with MAOs similar to Advanced APMs and change the manner in which clinicians deliver care.

Clinicians may currently participate in one of two paths of the Quality Payment Program (QPP): (1) MIPS, which adjusts Medicare payments based on combined performance on measures of quality, cost, improvement activities, and advancing care information, or (2) Advanced Alternative Payment Models with Medicare (Advanced APMs), under which eligible clinicians may earn an incentive payment for sufficient participation in certain payment arrangements with Medicare fee-for-service (FFS) and other payers, and starting in the 2019 performance period, with other payers such as Medicare Advantage, commercial payers, and Medicaid managed care. To participate in the Advanced APM path of QPP for a given year, eligible clinicians must meet the criteria of Qualifying APM Participants (QPs); in addition to earning an APM incentive payment, QPs are excluded from the MIPS reporting requirements and payment adjustment.

An eligible clinician that does not meet the criteria to be a QP for a given year will be subject to MIPS for that year unless the clinician meets certain other MIPS exclusion criteria, such as being newly enrolled in Medicare or meeting the low volume threshold for Medicare FFS patients. The MAQI Demonstration could allow participating clinicians to have the opportunity to be exempt from MIPS reporting and payment consequences for a given year if they participate to a sufficient degree in certain Qualifying Payment Arrangements with MAOs (and Advanced APMs with Medicare FFS) during the performance period for that year, without requiring them to be QPs or otherwise meet the MIPS exclusion criteria of QPP. Under a possible Demonstration, clinicians might not be required to have a minimum amount of participation in an Advanced APM with Medicare FFS in order to be exempt from MIPS reporting requirements and payment adjustments for a year, but if they did have participation in Advanced APMs with Medicare FFS, that participation could also be counted towards the thresholds that trigger the waiver from MIPS reporting and payment consequences. In addition, the Demonstration could permit consideration of participation in ''Qualifying Payment Arrangements'' with Medicare Advantage plans that meet the criteria to be Other Payer Advanced APMs a year before the All-Payer Combination Option is available.

In the Calendar Year 2018 Quality Payment Program Final Rule, CMS noted its intention ''to develop a demonstration project to test the effects of expanding incentives for eligible clinicians to participate in innovative alternative payment arrangements under Medicare Advantage that qualify as Advanced APMs, by allowing credit for participation in such Medicare Advantage arrangements prior to 2019 and incentivizing participation in such arrangements in 2018 through 2024.'' (92 FR 53865).

The first performance period for the Demonstration is tentatively planned for 2018 and the Demonstration would last up to five years. Clinicians who meet the definition of MIPS eligible clinician under QPP as defined under 42 CFR 414.1305 would be eligible to participate in the MAQI Demonstration. Currently, MIPS eligible clinicians include physicians (including doctors of medicine, doctors of osteopathy, osteopathic practitioners, doctors of dental surgery, doctors of dental medicine, doctors of podiatric medicine, doctors of optometry, and chiropractors), physician assistants, nurse practitioners, clinical nurse specialists, and certified registered nurse anesthetists. If the definition of MIPS eligible clinician changes under future rulemaking, the Demonstration would use the updated definition to define Demonstration eligibility.

Participation could last the duration of the Demonstration, unless participation is voluntarily or involuntarily terminated under the terms and conditions of the Demonstration. Participants would have the opportunity to submit the required documentation and be evaluated for MIPS waivers through the Demonstration each year.

Should this demonstration move forward, and in order to conduct an evaluation and effectively implement the MAQI Demonstration, CMS would need to collect information from Demonstration participants on (a) payment arrangements with MAOs and (b) Medicare Advantage (MA) payments and patient counts. CMS would require a new collection of this information as this information is not already available through other sources and/or has not been previously approved for use under the MAQI Demonstration. The information collected in these forms would allow CMS to evaluate whether the payment arrangement that clinicians have with MAOs meet the Qualifying Payment Arrangement criteria, and determine whether a clinician's MAO and FFS APM patient population or payments meet demonstration thresholds. Both of these areas are also requirements for review and data collection under QPP (*i.e.* the Eligible Clinician-Initiated Other Payer Advanced APM Determination form and All-Payer QP Submission form), and therefore similar to forms have been prepared and reviewed under the QPP.

Given these similarities in forms, burden estimates for the MAQI Demonstration PRA package were derived from burden analyses and formulation done in conjunction with the QPP forms; more specifically the estimated burden associated with the submission of payment arrangement information for Other Payer Advanced APM Determinations: Eligible Clinician-Initiated Process, and the estimated burden associated with the submission of data for All-Payer QP determinations. CMS estimates the total hour burden per

respondent for the MAQI demonstration to be 15 hours, to match the hours listed in the equivalent QPP forms. Full detail of how these estimates were derived can be found in the forthcoming Calendar Year 2019 Proposed QPP rule.

If Demonstration participants submitted information, but did not meet these conditions of the Demonstration, their participation in the Demonstration would not be terminated, but they would not receive the waivers from MIPS reporting requirements and payment adjustments. Therefore, unless they become QPs or are excluded from MIPS for other reasons, the participating clinicians would be subject to MIPS and would face the MIPS payment adjustments for the applicable year. We are requesting approval of 2 information collections associated with the MAQI Demonstration: (a) A Qualifying Payment Arrangement Submission Form and (b) a Threshold Data Submission Form. *Form Number:* CMS–10673 (OMB control number: 0938–NEW); *Frequency:* Annually; *Affected Public:* Private sector—Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 100,000; *Total Annual Responses*: 100,000; *Total Annual Hours:* 1,500,000. (For policy questions regarding this collection contact John Amoh at *john.amoh@cms.hhs.gov*.)

Dated: June 28, 2018.

**William N. Parham, III,**

*Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2018–14336 Filed 6–29–18; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA 2012–N–0129]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; General Licensing Provisions; Section 351(k) Biosimilar Applications

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection in an application for a proposed biosimilar product and an application for a supplement for a proposed interchangeable product.

**DATES:** Submit either electronic or written comments on the collection of information by September 4, 2018.

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before September 4, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of September 4, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

*Electronic Submissions*

Submit electronic comments in the following way:

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

*Written/Paper Submissions*

Submit written/paper submissions as follows:

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

*Instructions:* All submissions received must include the Docket No. FDA 2012–N–0129 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; General Licensing Provisions; Section 351(k) Biosimilar Applications.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

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

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management

Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** 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.

**General Licensing Provisions; Section 351(k) Biosimilar Applications**

*OMB Control Number 0910–0719—Extension*

The Biologics Price Competition and Innovation Act of 2009 (BPCI Act) amended the Public Health Service Act (PHS Act) and other statutes to create an abbreviated licensure pathway for biological products shown to be biosimilar to, or interchangeable with, an FDA-licensed reference product. Section 351(k) of the PHS Act (42 U.S.C. 262(k)), added by the BPCI Act, sets forth the requirements for an application for a proposed biosimilar product and an application or a supplement for a proposed interchangeable product. Section 351(k) defines biosimilarity to mean that the biological product is highly similar to the reference product notwithstanding minor differences in clinically inactive components and that ''there are no clinically meaningful differences between the biological product and the reference product in terms of the safety, purity, and potency of the product (see section 351(i)(2) of the PHS Act). A 351(k) application must contain, among other things, information demonstrating that the biological product is biosimilar to a reference product based upon data derived from analytical studies, animal studies, and clinical studies, unless FDA determines, in its discretion, that certain studies are unnecessary in a 351(k) application (see section 351(k)(2) of the PHS Act). To meet the standard for interchangeability, an applicant must provide sufficient information to demonstrate biosimilarity and also to demonstrate that the biological product can be expected to produce the same clinical result as the reference product in any given patient and, if the biological product is administered more than once to an individual, the risk in terms of safety or diminished efficacy of alternating or switching between the use of the biological product and the reference product is not greater than the risk of using the reference product without such alternation or switch (see section 351(k)(4) of the PHS Act).

Interchangeable products may be substituted for the reference product without the intervention of the prescribing healthcare provider (see section 351(i)(3) of the PHS Act) In estimating the information collection burden for 351(k) biosimilar product applications and interchangeable product applications or supplements, we reviewed the number of 351(k) applications FDA has received in fiscal years 2015, 2016, and 2017, considered responses to a survey of biosimilar sponsors and applicants regarding projected future 351(k) submission volumes, as well as the collection of information regarding the general licensing provisions for biologics license applications under section 351(a) of the PHS Act submitted to OMB (approved under OMB control number 0910–0338).

To submit an application seeking licensure of a proposed biosimilar product under sections 351(k)(2)(A)(i) and (iii) of the PHS Act, the estimated burden hours (FDA believes) would be approximately the same as noted under OMB control number 0910–0338 for a 351(a) application—860 hours. The burden estimates for seeking licensure of a proposed biosimilar product that meets the standards for interchangeability under sections 351(k)(2)(B) and (k)(4) would also be 860 hours per application. FDA believes these estimates are appropriate for 351(k) applications because the paperwork burden for a 351(k) application is expected to be comparable to the paperwork burden for a 351(a) application.

In addition to the collection of information regarding the submission of a 351(k) application for a proposed biosimilar or interchangeable biological product, section 351(*l*) of the BPCI Act establishes procedures for identifying and resolving patent disputes involving applications submitted under section 351(k) of the PHS Act. The burden estimate for the patent notification provisions under section 351(*l*)(6)(C) of the BPCI Act are included in table 1 and are based on the estimated number of 351(k) applicants. Based on similar reporting requirements, FDA estimates this notification will take 2 hours.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| 351(k) Applications (42 U.S.C. 262(k)) | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|
| 351(k)(2)(A)(i) and 351(k)(2)(A)(iii) Biosimilar Product Applications | 4 | 2.25 | 9 | 860 | 7,740 |
| 351(k)(2)(B) and (k)(4) Interchangeable Product Applications or Supplements | 2 | 1 | 2 | 860 | 1,720 |

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

| 351(k) Applications (42 U.S.C. 262(k)) | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|
| 351(l)(6)(C) Patent Infringement Notifications | 4 | 2.25 | 9 | 2 | 18 |
| Total | | | | | 9,478 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, the estimated burden for the information collection reflects an overall increase in total hours and responses. We attribute this adjustment to an increase in the number of submissions received over the last few years and additional interest in the biosimilars program.

Dated: June 28, 2018.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2018–14265 Filed 7–2–18; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2018–N–2490]**

### Antimicrobial Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; establishment of a public docket; request for comments.

**SUMMARY:** The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Antimicrobial Drugs Advisory Committee. The general function of the committee is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

**DATES:** The meeting will be held on August 7, 2018, from 8:30 a.m. to 4 p.m.

**ADDRESSES:** FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2018–N–1073. The docket will close on August 6, 2018. Submit either electronic or written comments on this public meeting by August 6, 2018. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before August 6, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of August 6, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Comments received on or before July 24, 2018, will be provided to the committee. Comments received after that date will be taken into consideration by FDA.

You may submit comments as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

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

*Written/Paper Submissions*

Submit written/paper submissions as follows:

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

*Instructions:* All submissions received must include the Docket No. FDA–2018–N–2490 for ''Antimicrobial Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see the **ADDRESSES** section), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

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

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Lauren D. Tesh, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, Fax: 301–847–8533, email: *AMDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

**SUPPLEMENTARY INFORMATION:**

*Agenda:* The committee will discuss new drug application (NDA) 207356, amikacin liposome inhalation suspension, sponsored by Insmed, Inc., for the proposed indication of treatment of nontuberculous mycobacterial lung disease caused by *Mycobacterium avium* complex in adults as part of a combination antibacterial drug regimen.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's website after the meeting. Background material is available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. All electronic and written submissions submitted to the Dockets Management Staff (see the **ADDRESSES** section) on or before July 24, 2018, will be provided to the committee. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 2:30 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before July 16, 2018. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by July 17, 2018.

Persons attending FDA's advisory committee meetings are advised that FDA is not responsible for providing access to electrical outlets.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Lauren Tesh (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 27, 2018.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2018–14240 Filed 7–2–18; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2012–N–0369]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Regulations Under the Federal Import Milk Act

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (PRA).

**DATES:** Fax written comments on the collection of information by August 2, 2018.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0212. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

### Regulations Under the Federal Import Milk Act (FIMA)—21 CFR Part 1210

*OMB Control Number 0910–0212—Extension*

Under FIMA (21 U.S.C. 141–149), milk or cream may be imported into the United States only by the holder of a valid import milk permit (21 U.S.C. 141). Before such permit is issued: (1) All cows from which import milk or cream is produced must be physically examined and found healthy; (2) if the milk or cream is imported raw, all such cows must pass a tuberculin test; (3) the

dairy farm and each plant in which the milk or cream is processed or handled must be inspected and found to meet certain sanitary requirements; (4) bacterial counts of the milk at the time of importation must not exceed specified limits; and (5) the temperature of the milk or cream at time of importation must not exceed 50 °F (21 U.S.C. 142).

Our regulations in part 1210 (21 CFR part 1210), implement the provisions of FIMA. Sections 1210.11 and 1210.14 require reports on the sanitary conditions of, respectively, dairy farms and plants producing milk and/or cream to be shipped to the United States. Section 1210.12 requires reports on the physical examination of herds, while § 1210.13 requires the reporting of tuberculin testing of the herds. In addition, the regulations in part 1210 require that dairy farmers and plants maintain pasteurization records (§ 1210.15) and that each container of milk or cream imported into the United States bear a tag with the product type, permit number, and shipper's name and address (§ 1210.22). Section 1210.20 requires that an application for a permit to ship or transport milk or cream into the United States be made by the actual shipper. Section 1210.23 allows permits to be granted based on certificates from accredited officials.

In the **Federal Register** of April 2, 2018 (83 FR 13992), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| 21 CFR Section | Form FDA No. | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|---|
| 1210.11 | 1996/Sanitary inspection of dairy farms | 2 | 200 | 400 | 1.5 | 600 |
| 1210.12 | 1995/Physical examination of cows | 1 | 1 | 1 | 0.5 (30 minutes) | 0.5 |
| 1210.13 | 1994/Tuberculin test | 1 | 1 | 1 | 0.5 (30 minutes) | 0.5 |
| 1210.14 | 1997/Sanitary inspections of plants | 2 | 1 | 2 | 2 | 4 |
| 1210.20 | 1993/Application for permit | 2 | 1 | 2 | 0.5 (30 minutes) | 1 |
| 1210.23 | 1815/Permits granted on certificates | 2 | 1 | 2 | 0.5 (30 minutes) | 1 |
| Total | | | | | | 607 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

| 21 CFR Section | Number of recordkeepers | Number of records per recordkeeper | Total annual records | Average burden per recordkeeping | Total hours |
|---|---|---|---|---|---|
| 1210.15 | 2 | 1 | 2 | 0.05 (3 minutes) | 0.10 (6 minutes). |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Upon review of the information collection, we have retained the currently approved estimated burden. The estimated number of respondents and hours per response are based on our experience with the import milk permit program and the average number of import milk permit holders over the past 3 years. Assuming two respondents will submit approximately 200 Form FDA 1996 reports annually for a total of 600 responses, and that each response requires 1.5 hours, we estimate the total burden is 600 hours.

The Secretary of Health and Human Services has the discretion to allow Form FDA 1815, a duly certified statement signed by an accredited official of a foreign government, to be submitted in lieu of Forms FDA 1994 and 1995. To date, Form FDA 1815 has been submitted in lieu of these forms. Because we have not received any Forms FDA 1994 or 1995 in the last 3 years, we assume no more than one will be submitted annually. We also assume each submission requires 0.5 hour for a total of 0.5 burden hour annually.

We estimate that two respondents will submit one Form FDA 1997 report annually, for a total of two responses. We estimate the reporting burden to be 2 hours per response, for a total burden of 4 hours.

We estimate that two respondents will submit one Form FDA 1993 report annually, for a total of two responses. We estimate the reporting burden to be 0.5 hour per response, for a total burden of 1 hour.

We estimate that two respondents will submit one Form FDA 1815 report annually, for a total of two responses. We estimate the reporting burden to be 0.5 hour per response, for a total burden of 1 hour.

With regard to records maintenance, we estimate that approximately two recordkeepers will spend 0.05 hour annually maintaining the additional pasteurization records required by § 1210.15, for a total of 0.10 hour annually.

No burden has been estimated for the tagging requirement in § 1210.22 because the information on the tag is either supplied by us (permit number) or is disclosed to third parties as a usual and customary part of the shipper's normal business activities (type of product, shipper's name and address). Under 5 CFR 1320.3(c)(2), the public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public is not subject to review by OMB under the PRA. Under 5 CFR 1320.3(b)(2), the time, effort, and financial resources necessary to comply with a collection of information are excluded from the burden estimate if the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary because they would occur in the normal course of business activities.

Dated: June 28, 2018.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2018–14266 Filed 7–2–18; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Special Emphasis Panel; Neural Control of Mobility in Aging.

*Date:* July 25, 2018.

*Time:* 10:00 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, Suite 2C223, 7201 Wisconsin Ave., Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Isis S. Mikhail, MD, MPH, DRPH, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7704, *MIKHAILI@MAIL.NIH.GOV*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: June 28, 2018.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2018–14315 Filed 7–2–18; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Eye Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Eye Institute Special Emphasis Panel; NEI Translational Research Program to Develop Novel Therapies and Devices for the Treatment of Visual System Disorders (R24).

*Date:* July 25, 2018.

*Time:* 8:00 a.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Garden Inn, Bethesda 7301, Waverly Street, Bethesda, MD 20814.

*Contact Person:* Jeanette M. Hosseini, Ph.D., Scientific Review Officer, 5635 Fishers Lane, Suite 1300, Bethesda, MD 20892, 301–451–2020, *jeanetteh@mail.nih.gov*.

*Name of Committee:* National Eye Institute, Special Emphasis Panel; NEI Cooperative Agreement Applications II.

*Date:* July 25, 2018.

*Time:* 3:30 p.m. to 5:30 p.m.

*Agenda:* To review and evaluate cooperative agreement applications.

*Place:* Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

*Contact Person:* Jeanette M. Hosseini, Ph.D., Scientific Review Officer, 5635 Fishers Lane, Suite 1300, Bethesda, MD 20892, 301–451–2020, *jeanetteh@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: June 27, 2018.

**Natasha M. Copeland,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2018–14216 Filed 7–2–18; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Special Emphasis Panel; Predictive Markers.

*Date:* July 10, 2018.

*Time:* 11:00 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Room 2C–212, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Alicja L. Markowska, DSC, Ph.D., Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–496–9666, *markowsa@nia.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: June 28, 2018.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2018–14313 Filed 7–2–18; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Office of the Director Notice of Charter Renewal

In accordance with Title 41 of the U.S. Code of Federal Regulations, Section 102–3.65(a), notice is hereby given that the Charter for the Office of AIDS Research Advisory Council was renewed for an additional two-year period on June 27, 2018.

It is determined that the Office of AIDS Research Advisory Council is in the public interest in connection with the performance of duties imposed on the National Institutes of Health by law, and that these duties can best be performed through the advice and counsel of this group.

Inquiries may be directed to Natasha M. Copeland, Program Analyst, 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 *copelana@mail.nih.gov*.

Dated: June 27, 2018.

**Natasha M. Copeland,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2018–14318 Filed 7–2–18; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, July 19, 2018, 08:00 a.m. to July 20, 2018, 06:00 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on June 26, 2018, 83 FR Pg 29803.

This meeting was changed from a 2-day meeting to a 1-day meeting. The meeting is now July 19, 2018 from 8:00 a.m. to 6:00 p.m. The meeting is closed to the public.

Dated: June 27, 2018.

**Natasha M. Copeland,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2018–14215 Filed 7–2–18; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; Medication Development for Alcohol Use Disorders (PAR 18–578 & RFA AA 18–009).

*Date:* July 10, 2018.

*Time:* 1:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 6700 B Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Ranga Srinivas, Ph.D., Chief, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5365 Fishers Lane, Room 2085, Rockville, MD 20852, (301) 451–2067, *srinivar@mail.nih.gov.*

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; SEP Review Member Conflict Applications.

*Date:* July 10, 2018.

*Time:* 2:30 p.m. to 5:00 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 6700 B Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Anna Ghambaryan, M.D., Ph.D., Scientific Review Officer, Office of Extramural Activities, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rockville, MD 20852, *anna.ghambaryan@nih.gov.*

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; SEP Review Member Conflict Applications.

*Date:* July 13, 2018.

*Time:* 2:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Anna Ghambaryan, M.D., Ph.D., Scientific Review Officer, Office of Extramural Activities, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rockville, MD 20852, *anna.ghambaryan@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: June 26, 2018.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2018–14217 Filed 7–2–18; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Fellowships: Risk, Prevention, and Health Behavior Overflow.

*Date:* July 17, 2018.

*Time:* 11:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* John H. Newman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3222, MSC 7808, Bethesda, MD 20892, (301) 435–0628, *newmanjh@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Vascular and Hematology AREA Application Review.

*Date:* July 31, 2018.

*Time:* 1:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Katherine M. Malinda, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7814, Bethesda, MD 20892, 301–435–0912, *Katherine_Malinda@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; AREA: Immunology.

*Date:* August 2, 2018.

*Time:* 1:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Liying Guo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4016F, Bethesda, MD 20892, 301–435–0908, *lguo@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 28, 2018.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2018–14310 Filed 7–2–18; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Vascular and Hematology: Molecular and Cellular Hematology.

*Date:* July 23, 2018.

*Time:* 2:00 p.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Luis Espinoza, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7814, Bethesda, MD 20892, 301–435–0952, *espinozala@mail.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Lymphangiogenesis SEP.

*Date:* July 31, 2018.

*Time:* 2:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Larry Pinkus, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214, *pinkusl@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 28, 2018.

**David D. Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2018–14309 Filed 7–2–18; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting of the Center for Inherited Disease Research Access Committee.

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:* Center for Inherited Disease Research Access Committee.

*Date:* July 20, 2018.

*Time:* 11:30 a.m. to 12:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 5635 Fishers Lane, Room 3049, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Barbara J. Thomas, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Ste. 4076, MSC 9306, Bethesda, MD 20892–9306, 301–402–0838, *barbara.thomas@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: June 27, 2018.

**Sylvia L. Neal,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2018–14311 Filed 7–2–18; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the National Advisory Neurological Disorders and Stroke Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Neurological Disorders and Stroke Council.

*Date:* September 12–13, 2018.

*Closed:* September 12, 2018, 1:00 p.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Building 31, 31/6C, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

*Closed:* September 13, 2018, 8:00 a.m. to 10:00 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Building 31, 31/6C, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

*Open:* September 13, 2018, 10:00 a.m. to 3:30 p.m.

*Agenda:* Report by the Director, NINDS; Report by the Director, Division of Extramural Activities; and Administrative and Program Developments.

*Place:* National Institutes of Health, Building 31, 31/6C, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

*Contact Person:* Robert Finkelstein, Ph.D., Director, Division of Extramural Activities, National Institute of Neurological Disorders and Stroke, NIH, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892, (301) 496–9248.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the

name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into Federal buildings. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.ninds.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS).

Dated: June 27, 2018.

**Sylvia L. Neal,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2018–14317 Filed 7–2–18; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Fellowships: Oncology.

*Date:* July 12–13, 2018.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Crowne Plaza Seattle-Downtown, 1113 6th Ave, Seattle, WA 98101.

*Contact Person:* Reigh-Yi Lin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–827–6009, *lin.reigh-yi@nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Fellowships: Cancer Immunology and Immunotherapy.

*Date:* July 12, 2018.

*Time:* 10:00 a.m. to 8:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Charles Selden, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Room 5187 MSC 7840, Bethesda, MD 20892, 301–451–3388, *seldens@mail.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Epilepsy and Ischemia.

*Date:* July 24, 2018.

*Time:* 1:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Seetha Bhagavan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 237–9838, *bhagavas@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review, Special Emphasis Panel; Member Conflicts: Biobehavioral Applications on Reward and Conditioning.

*Date:* July 25, 2018.

*Time:* 1:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Andrea B Kelly, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7770, Bethesda, MD 20892, (301) 455–1761, *kellya2@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review, Special Emphasis Panel, PAR–17–086/7: Tobacco Use and HIV in Low and Middle Income Countries.

*Date:* July 25, 2018.

*Time:* 12:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Mark P Rubert, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1775, *rubertm@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Translational Research in Pediatric and Obstetric Pharmacology and Therapeutics.

*Date:* July 26, 2018.

*Time:* 11:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Dianne Hardy, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6175, MSC 7892, Bethesda, MD 20892, 301–435–1154, *dianne.hardy@nih.gov.*

*Name of Committee:* Center for Scientific Review, Special Emphasis Panel, PAR Panel: AIDS and Related Research.

*Date:* July 27, 2018.

*Time:* 9:00 a.m. to 11:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Kenneth A Roebuck, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review, Special Emphasis Panel, Small Business: HIV/AIDS Innovative Research Applications.

*Date:* July 27, 2018.

*Time:* 12:00 p.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Mark P Rubert, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1775, *rubertm@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review, Special Emphasis Panel, Acute Neural Injury and Epilepsy.

*Date:* July 30, 2018.

*Time:* 1:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Seetha Bhagavan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 237–9838, *bhagavas@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 26, 2018.

**Sylvia L. Neal,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2018–14213 Filed 7–2–18; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center For Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* AIDS and Related Research Integrated Review Group; AIDS Clinical Studies and Epidemiology Study Section.

*Date:* July 31–August 1, 2018.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW, Washington, DC 20036.

*Contact Person:* Dimitrios Nikolaos Vatakis, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, Bethesda, MD 20892, 301–827–7480, *dimitrios.vatakis@nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; RFA–AG–18–026 From Association to Function in the Alzheimer's Disease Post-Genomics Era.

*Date:* July 31, 2018.

*Time:* 1:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

*Contact Person:* Brian H. Scott, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review,6701 Rockledge Drive, Bethesda, MD 20892, 301–827–7490, *brianscott@mail.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Vascular and Hematology AREA Application Review.

*Date:* July 31, 2018.

*Time:* 1:00 p.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Natalia Komissarova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, MSC 7846, Bethesda, MD 20892, 301–435–1206, *komissar@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 27, 2018.

**Natasha M. Copeland,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2018–14214 Filed 7–2–18; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01).

*Date:* July 18, 2018.

*Time:* 1:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications

*Place:* National Institutes of Health 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

*Contact Person:* Priti Mehrotra, Ph.D., Chief, Immunology Review Branch Scientific Review Program, Division of Extramural Activities, Room #3G40 National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–7616, 240–669–5066, *pmehrotra@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: June 27, 2018.

**Natasha M. Copeland,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2018–14218 Filed 7–2–18; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Special Emphasis Panel; Second Stage Review.

*Date:* July 20, 2018.

*Time:* 12:30 p.m. to 4:30 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* National Institute on Aging, Room 2W200, 7201 Wisconsin Avenue, Bethesda, MD 20892.

*Contact Person:* Ramesh Vemuri, Ph.D., Chief, Scientific Review Branch, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C–212, Bethesda, MD 20892, 301–402–7700, *rv23r@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: June 28, 2018.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2018–14314 Filed 7–2–18; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Alcohol Abuse And Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose

confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Initial Review Group Clinical, Treatment and Health Services Research Review Subcommittee.

*Date:* October 15, 2018.

*Time:* 8:30 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 6700 B Rockledge Drive, Bethesda, MD 20817.

*Contact Person:* Ranga Srinivas, Ph.D., Chief, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5365 Fishers Lane, Room 2085, Rockville, MD 20852, (301) 451–2067, *srinivar@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: June 28, 2018.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2018–14316 Filed 7–2–18; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[Docket No. USCG–2018–0190]**

### Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625–0097

**AGENCY:** Coast Guard, DHS.

**ACTION:** Thirty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval for reinstatement, without change; of the following collection of information: 1625–0097, Plan Approval and Records for Marine Engineering Systems—46 CFR Subchapter F. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

**DATES:** Comments must reach the Coast Guard and OIRA on or before August 2, 2018.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number [USCG–2018–0190] to the Coast Guard using the Federal eRulemaking Portal at *http://www.regulations.gov.* Alternatively, you may submit comments to OIRA using one of the following means:

(1) *Email: dhsdeskofficer@omb.eop.gov.*

(2) *Mail:* OIRA, 725 17th Street NW, Washington, DC 20503, attention Desk Officer for the Coast Guard.

A copy of the ICR is available through the docket on the internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–612), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, Stop 7710, Washington, DC 20593–7710.

**FOR FURTHER INFORMATION CONTACT:** Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

**SUPPLEMENTARY INFORMATION:**

#### Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2018–0190], and must be received by August 2, 2018.

#### Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0097.

#### Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (83 FR 14874, April 6, 2018) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments. Accordingly, no changes have been made to the Collections.

#### Information Collection Request

*Title:* Plan Approval and Records for Marine Engineering Systems—46 CFR Subchapter F.

*OMB Control Number:* 1625–0097.

*Summary:* This collection of information requires an owner or

builder of a commercial vessel to submit to the U.S. Coast Guard for review and approval, plans pertaining to marine engineering systems to ensure that the vessel will meet regulatory standards.

*Need:* Under 46 U.S.C. 3306, the Coast Guard is authorized to prescribe vessel safety regulations including those related to marine engineering systems. Title 46 CFR Subchapter F prescribes those requirements. The rules provide the specifications, standards, and requirements for strength and adequacy of design, construction, installation, inspection, and choice of materials for machinery, boilers, pressure vessels, safety valves, and piping systems upon which safety of life is dependent.

*Forms:* None.

*Respondents:* Owners and builders of commercial vessels.

*Frequency:* On occasion.

*Hour Burden Estimate:* The estimated burden has increased from 5,512 hours to 5,793 hours a year due to an increase in the estimated annual number of responses.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: June 26, 2018.

**James D. Roppel,**

*Acting Chief, U.S. Coast Guard, Office of Information Management.*

[FR Doc. 2018–14237 Filed 7–2–18; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[Docket No. USCG–2018–0191]**

### Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625–0034

**AGENCY:** Coast Guard, DHS.

**ACTION:** Thirty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval for reinstatement, without change; of the following collection of information: 1625–0034, Ships' Stores Certification for Hazardous Materials Aboard Ships. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

**DATES:** Comments must reach the Coast Guard and OIRA on or before August 2, 2018.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number [USCG–2018–0191] to the Coast Guard using the Federal eRulemaking Portal at *http://www.regulations.gov.* Alternatively, you may submit comments to OIRA using one of the following means:

(1) *Email: dhsdeskofficer@omb.eop.gov.*

(2) *Mail:* OIRA, 725 17th Street NW, Washington, DC 20503, attention Desk Officer for the Coast Guard.

A copy of the ICR is available through the docket on the internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–612), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, Stop 7710, Washington, DC 20593–7710.

**FOR FURTHER INFORMATION CONTACT:** Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

**SUPPLEMENTARY INFORMATION:**

#### Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2018–0191], and must be received by August 2, 2018.

#### Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0034.

#### Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (83 FR 14875, April 6, 2018) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments. Accordingly, no changes have been made to the Collections.

#### Information Collection Request

*Title:* Ships' Stores Certification for Hazardous Materials Aboard Ships.

*OMB Control Number:* 1625–0034.

*Summary:* The information is used by the Coast Guard to ensure that personnel aboard ships are made aware of the proper usage and stowage instructions for certain hazardous materials. Provisions are made for waivers of products in special

Department of Transportation (DOT) hazard classes.

*Need:* Title 46 U.S.C. 3306 authorizes the Coast Guard to prescribe regulations for the transportation, stowage, and use of ships' stores and supplies of a dangerous nature. Part 147 of 46 CFR prescribes the regulations for hazardous ships' stores.

*Forms:* None.

*Respondents:* Owners and operators of ships, and suppliers and manufacturers of hazardous materials used on ships.

*Frequency:* On occasion.

*Hour Burden Estimate:* The estimated burden has decreased from 8 hours to 4 hours a year due to a decrease in the estimated annual number of responses.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: June 26, 2018.

**James D. Roppel,**

*U.S. Coast Guard, Acting Chief, Office of Information Management.*

[FR Doc. 2018–14242 Filed 7–2–18; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[Docket No. USCG–2018–0189]**

### Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625–0101

**AGENCY:** Coast Guard, DHS.

**ACTION:** Thirty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval for reinstatement, without change, of the following collection of information: 1625–0101, Periodic Gauging and Engineering Analyses for Certain Tank Vessels Over 30 Years Old. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

**DATES:** Comments must reach the Coast Guard and OIRA on or before August 2, 2018.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number [USCG–2018–0189] to the Coast Guard using the Federal eRulemaking Portal at *http://www.regulations.gov.* Alternatively, you may submit comments to OIRA using one of the following means:

(1) *Email: dhsdeskofficer@omb.eop.gov.*

(2) *Mail:* OIRA, 725 17th Street NW, Washington, DC 20503, attention Desk Officer for the Coast Guard.

A copy of the ICR is available through the docket on the internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–612), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, Stop 7710, Washington, DC 20593–7710.

**FOR FURTHER INFORMATION CONTACT:** Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

**SUPPLEMENTARY INFORMATION:**

#### Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection. The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2018–0189], and must be received by August 2, 2018.

#### Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0101.

#### Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (83 FR 15168, April 9, 2018) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments. Accordingly, no changes have been made to the Collections.

#### Information Collection Request

*Title:* Periodic Gauging and Engineering Analyses for Certain Tank Vessels Over 30 Years Old.

*OMB Control Number:* 1625–0101.

*Summary:* The Oil Pollution Act of 1990 required the issuance of regulations related to the structural integrity of tank vessels, including periodic gauging of the plating thickness of tank vessels over 30 years old. This collection of information is used to verify the structural integrity of older tanks vessels.

*Need:* Title 46 U.S.C. 3703 authorizes the Coast Guard to prescribe regulations related to tank vessels, including design, construction, alteration, repair, and maintenance. Title 46 CFR 31.10–21a prescribes the regulations related to periodic gauging and engineering

analyses of certain tank vessels over 30 years old.

*Forms:* None.

*Respondents:* Owners and operators of certain tank vessels.

*Frequency:* Every 5 years.

*Hour Burden Estimate:* The estimated burden has decreased from 5,278 hours to 2,784 hours a year due to a decrease in the estimated annual number of respondents.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: June 26, 2018.

**James D. Roppel,**

*U.S. Coast Guard, Acting Chief, Office of Information Management.*

[FR Doc. 2018–14236 Filed 7–2–18; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[Docket No. USCG–2018–0187]**

### Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625–0032

**AGENCY:** Coast Guard, DHS.

**ACTION:** Thirty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0032, Vessel Inspection Related Forms and Reporting Requirements under Title 46 U.S. Code. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

**DATES:** Comments must reach the Coast Guard and OIRA on or before August 2, 2018.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number [USCG–2018–0187] to the Coast Guard using the Federal eRulemaking Portal at *http://www.regulations.gov*. Alternatively, you may submit comments to OIRA using one of the following means:

(1) *Email: dhsdeskofficer@omb.eop.gov*.

(2) *Mail:* OIRA, 725 17th Street NW, Washington, DC 20503, attention Desk Officer for the Coast Guard.

A copy of the ICR is available through the docket on the internet at *http://www.regulations.gov*. Additionally, copies are available from: Commandant (CG–612), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, STOP 7710, Washington, DC 20593–7710.

**FOR FURTHER INFORMATION CONTACT:** Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

**SUPPLEMENTARY INFORMATION:**

#### Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2018–0187], and must be received by August 2, 2018.

#### Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov*. If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0032.

#### Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (83 FR 14872, April 6, 2018) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments. Accordingly, no changes have been made to the Collections.

#### Information Collection Request

*Title:* Vessel Inspection Related Forms and Reporting Requirements Under Title 46 U.S. Code.

*OMB Control Number:* 1625–0032.

*Summary:* This collection of information requires owners, operators, agents or masters of certain inspected vessels to obtain and/or post various forms as part of the Coast Guard's Commercial Vessel Safety Program.

*Need:* The Coast Guard's Commercial Vessel Safety Program regulations are found in 46 CFR, including parts 2, 26, 31, 71, 91, 107, 115, 126, 169, 176, and 189, as authorized in Title 46 U.S. Code. A number of reporting and recordkeeping requirements are contained therein.

*Forms:* CG–841, Certificate of Inspection; CG–854, Temporary Certificate of Inspection; CG–948, Permit to Proceed to Another Port for Repairs; CG–949, Permit to Carry Excursion Party; CG–950, Application for Permit to Carry Excursion Party; CG–

950A, Application for Special Permit; and CG–2832, Vessel Inspection Record.

*Respondents:* Owners, operators, agents and masters of vessels.

*Frequency:* On occasion.

*Hour Burden Estimate:* The estimated burden has increased from 1,642 hours to 1,705 hours a year due to an increase in the estimated annual number of respondents.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: June 26, 2018.

**James D. Roppel,**

*U.S. Coast Guard, Acting Chief, Office of Information Management.*

[FR Doc. 2018–14234 Filed 7–2–18; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[Docket No. USCG–2018–0188]**

### Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625–0081

**AGENCY:** Coast Guard, DHS.

**ACTION:** Thirty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0081, Alternate Compliance Program; without change. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

**DATES:** Comments must reach the Coast Guard and OIRA on or before August 2, 2018.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number [USCG–2018–0188] to the Coast Guard using the Federal eRulemaking Portal at *http://www.regulations.gov*. Alternatively, you may submit comments to OIRA using one of the following means:

(1) *Email: dhsdeskofficer@omb.eop.gov*.

(2) *Mail:* OIRA, 725 17th Street NW, Washington, DC 20503, attention Desk Officer for the Coast Guard.

A copy of the ICR is available through the docket on the internet at *http://www.regulations.gov*. Additionally, copies are available from: Commandant (CG–612), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, Stop 7710, Washington, DC 20593–7710.

**FOR FURTHER INFORMATION CONTACT:** Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

**SUPPLEMENTARY INFORMATION:**

#### Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection. The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2018–0188], and must be received by August 2, 2018.

#### Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov*. If your material cannot be submitted using *http://www.regulations.gov*, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0081.

#### Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (83 FR 15167, April 9, 2018) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments. Accordingly, no changes have been made to the Collections.

#### Information Collection Request

*Title:* Alternate Compliance Program.

*OMB Control Number:* 1625–0081.

*Summary:* This information is used by the Coast Guard to assess vessels participating in the voluntary Alternate Compliance Program (ACP) before issuance of a Certificate of Inspection.

*Need:* Sections 3306 and 3316 of 46 U.S.C. authorize the Coast Guard to establish vessel inspection regulations and inspection alternatives. Part 8 of 46 CFR contains the Coast Guard regulations for recognizing classification societies and enrollment of U.S.-flag vessels in ACP.

*Forms:* None.

*Respondents:* Owners and operators of U.S.-flag inspected vessels.

*Frequency:* On occasion.

*Hour Burden Estimate:* The estimated burden has increased from 154 hours to 174 hours a year due to an increase in the estimated annual number of respondents.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: June 26, 2018.

**James D. Roppel,**

*U.S. Coast Guard, Acting Chief, Office of Information Management.*

[FR Doc. 2018–14235 Filed 7–2–18; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[Docket No. USCG–2018–0192]**

### Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625–0013

**AGENCY:** Coast Guard, DHS.

**ACTION:** Thirty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval for reinstatement, without change; of the following collection of information: 1625–0013, Plan Approval and Records for Load Lines. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

**DATES:** Comments must reach the Coast Guard and OIRA on or before August 2, 2018.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number [USCG–2018–0192] to the Coast Guard using the Federal eRulemaking Portal at *http://www.regulations.gov.* Alternatively, you may submit comments to OIRA using one of the following means:

(1) *Email: dhsdeskofficer@omb.eop.gov.*

(2) *Mail:* OIRA, 725 17th Street NW, Washington, DC 20503, attention Desk Officer for the Coast Guard.

A copy of the ICR is available through the docket on the internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–612), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, Stop 7710, Washington, DC 20593–7710.

**FOR FURTHER INFORMATION CONTACT:** Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

**SUPPLEMENTARY INFORMATION:**

#### Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection. The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2018–0192], and must be received by August 2, 2018.

#### Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0013.

#### Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (83 FR 14873, April 6, 2018) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments. Accordingly, no changes have been made to the Collections.

#### Information Collection Request

*Title:* Plan Approval and Records for Load Lines—Title 46 CFR Subchapter E.

*OMB Control Number:* 1625–0013.

*Summary:* This information collection is required to ensure that certain vessels are not overloaded—as evidenced by the submerging of their assigned load line. In general, vessels over 150 gross tons or 24 meters (79 feet) in length engaged in commerce on international or coastwise voyages by sea are required to obtain a Load Line Certificate.

*Need:* Title 46 U.S.C. 5101 to 5116 provides the Coast Guard with the authority to enforce provisions of the International Load Line Convention, 1966. Title 46 CFR chapter I, subchapter E—Load Lines, contains the relevant regulations.

*Forms:* None.

*Respondents:* Owners and operators of vessels.

*Frequency:* On occasion.

*Hour Burden Estimate:* The estimated burden has decreased from 907 hours to 757 hours a year due to a decrease in the estimated annual number of respondents.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: June 26, 2018.

**James D. Roppel,**

*U.S. Coast Guard, Acting Chief, Office of Information Management.*

[FR Doc. 2018–14249 Filed 7–2–18; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–6105–N–01]**

## Rental Assistance Demonstration: Implementation of Certain Fiscal Year (FY) 2018 Appropriations Act Provisions

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner and Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** This notice implements several changes to HUD's Rental Assistance Demonstration (RAD) program that were enacted in the Consolidated Appropriations Act, 2018 (2018 Appropriations Act). For participants under the First Component of RAD relating to Public Housing conversions, this notice increases the number of public housing units that may be awarded competitively and extends the application deadline. In order to implement the unit increase, the notice describes how HUD will set initial contract rents for awards made pursuant to the expansion of RAD, simplifies the process by which public housing agencies (PHAs) can withdraw and replace their existing awards, serves as notification to PHAs that have submitted Letters of Interest (LOI) that to reserve their position on the RAD waiting list they must take additional steps to secure their award, and modifies the latest possible date for PHAs to submit an application for the final phase of a project covered by a Multi-phase Award. For the Second Component of RAD, this notice implements two provisions of the 2018 Appropriations Act relating to initial rent setting for the conversion of Rent Supplement (Rent Supp) and Rental Assistance Payment (RAP) properties and to the prohibition against rescreening residents.

**DATES:** This notice is applicable on July 3, 2018.

**ADDRESSES:** Interested persons are invited to submit questions or comments electronically to *rad@hud.gov.*

**FOR FURTHER INFORMATION CONTACT:** William A. Lavy, Director, Program Administration Division, Office of Recapitalization, Office of Multifamily Programs, Department of Housing and Urban Development, 451 Seventh Street SW, Room 6230, Washington, DC 20410; telephone 202–708–0614. (This is not a toll-free number.) Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Relay Service at 1–800–877–8339. To assure a timely response, HUD recommends that requests for further information be submitted electronically to the email address *rad@hud.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

On March 23, 2018, section 237 of Title II, Division L—Transportation, Housing and Urban Development, and Related Agencies, of the Consolidated Appropriations Act, 2018 (Pub. L. 115–141) (2018 Appropriations Act), amended the RAD statute, as authorized in Title II, Division C, of the Consolidated and Further Continuing Appropriations Act, 2012, (Pub. L. 112–55) by, among other changes, (1) increasing the unit cap from 225,000 units to 455,000 units and extending the period for project applications until September 30, 2024, under the RAD First Component, which allows for the conversion of assistance under the public housing program to long-term, renewable assistance under Section 8; [1] (2) establishing that contracts provided through the conversion of properties currently assisted through the Rent Supp and RAP programs that are located in high-cost areas shall have initial contract rents set at comparable market rents for the market area; and (3) establishing that conversions of assistance under the Second Component may not be the basis for re-screening or termination of assistance or eviction of any tenant family in a property participating in the demonstration and such a family shall not be considered a new admission for any purpose, including compliance with income targeting.

The most recent version of the RAD program notice, Rental Assistance Demonstration—Final Implementation, Revision 3 notice (PIH 2012–32 (HA) H 2017–03, REV–3), was published on January 12, 2017 and can be found on RAD's website, *www.hud.gov/RAD.* Its publication was announced on January 19, 2017 at 82 FR 6615.

[1] The RAD statutory requirements were amended by the Consolidated Appropriations Act, 2014 (Pub. L. 113–76, signed January 17, 2014), the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235, signed December 16, 2014), the Consolidated Appropriations Act, 2016 (Pub. L. 114–113, signed December 18, 2015), the Consolidated Appropriations Act, 2017 (Pub. L. 115–31, signed May 4, 2017), and the Consolidated Appropriations Act, 2018 (Pub. L. 115–141, signed March 23, 2018). The statutory provisions of the 2012 Appropriations Act pertaining to RAD, as amended, are referred to as the RAD statute in this notice.

### II. First Component: RAD Unit Cap Increase and Rent Setting

This notice announces the following:

1. For Commitments to enter into a HAP contract (CHAPs), portfolio awards, and multi-phase awards issued on or after January 1, 2019, for which HUD has authority to make awards under the 455,000 unit statutory cap, HUD will use rent levels based on the FY 18 RAD rent base year, which will be published once the final public housing operating subsidy obligation is made for FY 18.

2. To permit the PHAs on the waiting list to commence their RAD conversions without delay, for CHAPs, portfolio awards, and multi-phase awards issued between the effective date of this notice and January 1, 2019, for which HUD has authority to make awards under the 455,000 unit statutory cap, HUD is modifying the FY 16 RAD rent base year methodology by replacing the PHA's FY 16 Capital Fund Formula Grant attributable to the project with the PHA's FY 18 Capital Fund Formula Grant attributable to the project once available for the Capital Fund component of the contract rent. All other components of the contract rent (*i.e.,* Operating Fund and tenant rents) will continue to be based on FY 16 levels. Rent levels continue to be subject to the rent setting limitations detailed in PIH 2012–32 (HA) H 2017–03, REV–3. Further, these rents will be adjusted each year by HUD's published Operating Cost Adjustment Factors (OCAF) starting in Calendar Year (CY) 19, rather than CY 17, and the adjusted rents will be established in the Housing Assistance Payment (HAP) contracts at the time of conversion.

3. HUD is now able to award RAD authority to certain projects where PHAs have submitted LOIs to reserve their position on the RAD waiting list if they submit a complete RAD Application, portfolio award request, or multi-phase award request for the number of units identified in their LOIs by September 4, 2018. By an email sent on or before the publication date of this notice, HUD will identify and notify each PHA that may submit an application or request for an award as a result of the expansion. Failure to make a complete submission for the reserved units (that is, submit a complete application or request) by September 4, 2018 will result in a forfeiture of the PHA's position on the waiting list.

4. For all multi-phase awards issued after March 22, 2018, PHAs will have until September 30, 2024, to submit an application for the final phase of the project covered by the multi-phase

award. For any multi-phase awards issued prior to March 22, 2018, HUD may approve extensions up to September 30, 2024 on a case-by-case basis.

5. When a PHA returns RAD authority to HUD by submitting a voluntary withdrawal of a project and subsequently requests new RAD authority for the same project within one month thereafter, provided that HUD has authority to make awards under the 455,000 unit statutory cap, HUD may approve issuance of a replacement CHAP without the requirement that the PHA submit the application materials that would otherwise be required. The replacement CHAP will include the original CHAP issuance date, but will have rents based on the applicable RAD rent base year as described above. For example, a withdrawal of a CHAP and subsequent request for new RAD authority that occurs in September of 2018 would have rents based on FY 16 rent levels as modified in Paragraph 2.

### III. Second Component: Initial Contract Rents for Rent Supplement and RAP Conversions

For Project Based Rental Assistance (PBRA) conversions, properties currently assisted through the Rent Supp and RAP programs that are located in High Cost Areas as identified in Housing Notice 2017–06 shall have initial rents set at comparable market rents, without regard to any Fair Market Rent (FMR) cap, but as otherwise described in PIH 2012–32 (HA) H 2017–03, REV–3. Over the 20-year term of the HAP contract, contract rents will be adjusted using the processes described in the HUD Section 8 Renewal Policy Guidebook under Option 1A: Mark-Up-To-Market.

For Project-Based Voucher (PBV) conversions, HUD is not prepared to implement this modification to initial contract rent setting at this time.

### IV. No Rescreening of Tenants Upon Conversion Under the Second Component

At conversion under the RAD Second Component, current households cannot be excluded from occupancy at the Covered Project (as defined in the RAD program notice) based on any rescreening, income eligibility, or income targeting. With respect to occupancy in the Covered Project, current households in the Converting Project will be grandfathered for application of any eligibility criteria to conditions that occurred prior to conversion but will be subject to any ongoing eligibility requirements for actions that occur after conversion. These protections also apply when a household is relocated to facilitate construction or rehabilitation work following conversion and subsequently returns to the Covered Project. Post-conversion, the tenure of all residents of the Covered Project is protected pursuant to PBV or PBRA requirements regarding continued occupancy. For example, a unit with a household that was over-income at time of conversion would continue to be treated as an assisted unit. Thus, 24 CFR 982.201, concerning eligibility and targeting of tenants for initial occupancy, and the first clause of section 8(c)(4) of the United States Housing Act of 1937 and 24 CFR 880.603(b), concerning determination of eligibility and selection of tenants for initial occupancy, will not apply for current households. Once the grandfathered household moves out, the unit must be leased to an eligible family.

### V. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50, which implemented section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection during regular business hours in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Due to security measures at HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339.

Dated: June 22, 2018.

**Dominique Blom,**

*General Deputy Assistant Secretary for Public and Indian Housing.*

**Brian Montgomery,**

*Assistant Secretary for Housing, Federal Housing Commissioner.*

[FR Doc. 2018–14248 Filed 7–2–18; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–6106–N–01]**

## Rental Assistance Demonstration: Supplemental Guidance on Final Notice

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner and Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** On July 26, 2012, HUD announced through notice in the **Federal Register** the implementation of the statutorily authorized Rental Assistance Demonstration (RAD), which provides the opportunity to test the conversion of public housing and other HUD-assisted properties to long-term, project-based Section 8 rental assistance. The July 26, 2012 notice provided for full implementation of RAD, and the posting of the Final Program Notice (Final Program Notice, PIH–2012–32) on HUD's RAD website. HUD subsequently issued a number of revised program notices, the most recent on January 12, 2017 (PIH 2012–32/Housing 2017–03 REV–3). This notice announces the posting of a supplement to the most current notice PIH 2012–32/Housing 2017–03 REV–3 (RAD Supplemental Notice, PIH 2018–11/H 2018–05). As provided by the RAD Statute, this notice addresses the requirement that the demonstration may proceed after HUD publishes the terms of the notice in the **Federal Register**. This notice summarizes the key changes made to the PIH 2012–32/Housing 2017–03 REV–3 through the RAD Supplemental Notice, PIH 2018–11/H 2018–05. This notice also meets the RAD statutory requirement to publish at least 10 days before they may take effect, waivers and alternative requirements authorized by the statute, which does not prevent the demonstration, as modified, from proceeding immediately.

**DATES:** The RAD Supplemental Notice, PIH 2018–11/H 2018–05, other than those items listed as new statutory or regulatory waivers or alternative requirements specified in this notice, is effective July 3, 2018.

The new statutory and regulatory waivers and alternative requirements are effective July 13, 2018.

**ADDRESSES:** Interested persons are invited to submit questions or comments electronically to *rad@hud.gov.*

**FOR FURTHER INFORMATION CONTACT:** William A. Lavy, Director, Program Administration Division, Office of Recapitalization, Office of Multifamily Programs, Department of Housing and Urban Development, 451 Seventh Street SW, Room 6230, Washington, DC 20410; telephone 202–708–0614. (This is not a toll-free number.) Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Relay Service at 1–800–877–8339. To assure a timely response, HUD recommends that requests for further information be submitted electronically to the email address *rad@hud.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

RAD, authorized by the Consolidated and Further Continuing Appropriations Act, 2012 (Pub. L. 122–55, signed November 18, 2011) (2012 Appropriations Act), allows for the conversion of assistance under the public housing, Rent Supplement (Rent Supp), Rental Assistance (RAP), Moderate Rehabilitation (Mod Rehab), and Mod Rehab Single Room Occupancy (SRO) programs (collectively, ''covered programs'') to long-term, renewable assistance under Section 8. The most recent version of the RAD program notice is PIH 2012–32/Housing 2017–03, REV–3, located at *https://www.hud.gov/sites/documents/RAD_Notice_Rev3_Final.docx.*

## II. Key Changes

The following highlights key changes to the RAD program that are included in the Supplemental Program Notice:

*First Component (Public Housing Conversions)*

1. Expands the rent setting flexibility referred to as Rent Bundling in the current RAD program notice PIH 2012–32/Housing 2017–03 to permit PHAs to rent bundle between RAD Project-Based Voucher (PBV) and non-RAD PBV projects. Under this provision, rents of non-RAD PBV contracts are reduced by the equivalent increase to the RAD PBV initial contract rents.

2. Permits PHAs to establish project-specific utility allowances for Covered Projects. When a RAD conversion results in the reduction of one or more utility components used to establish the utility allowance, HUD will permit the RAD contract rent to be increased by a portion of the utility savings.

3. Provides alternative developer fee limits when a PHA adopts a waiting list preference for households exiting homelessness.

4. Establishes that HUD will disapprove a proposed conversion where a PHA is using 24 CFR 970.17(b) or 970.17(c) to dispose of other units at a proposed project and HUD determines that the PHA's use of both RAD and disposition under those sections undermines the unit replacement requirements of the RAD program.

5. Creates a streamlined conversion option for PHAs that have a very small public housing portfolio of 50 units or less that will not involve any rehabilitation, new construction, or relocation.

## III. New Waivers and Alternative Requirements

The RAD Statute provides that waivers and alternative requirements authorized under the First Component must be published by notice in the **Federal Register** no later than 10 days before the effective date of such notice. Under the Second Component of RAD, HUD is authorized to waive or alter the provisions of subparagraphs (C) and (D) of section 8(o)(13) of the United States Housing Act of 1937 (42 U.S.C. 1437f) (the 1937 Act).

HUD has previously published its waivers and alternative requirements for RAD, on July 26, 2012 (77 FR 43850), July 2, 2013 (78 FR 39759), June 26, 2015 (80 FR 36830), and January 19, 2017 (82 FR 6615). This notice only includes waivers and alternative requirements not previously published or that have changed from previous publications. Although waivers or alternative requirements under the Second Component are not subject to a **Federal Register** publication requirement, the new Second Component waivers and alternative requirements are included in this notice as a matter of convenience.

The new waiver and alternative requirement is:

1. *PBV Site-Specific Utility Allowances. Provisions affected:* 24 CFR 983.301(f)(2)(ii), 24 CFR 983.2(c)(6)(iii) and 24 CFR 982.517; RAD Implementation Notice, Attachment 1C: Calculation of HAP Contract Rents for Conversions of Assistance from Public Housing to PBRA or PBV. *Waiver:* HUD has determined that the specified sections of its regulations will not apply to RAD conversions to Project Based Vouchers (PBV). *Alternative requirements:* The Utility Allowance shall be calculated in the manner specified in Housing Notice H–2015–04 (June 22, 2015) unless PIH promulgates utility allowance guidance specific to the PBV program. The Project Owner may carry out all activities of owners and management agents associated with Housing Notice 2015–04, but the PHA must ensure that the Utility Allowance is calculated correctly.

## IV. Revised Program Notice Availability

The RAD Supplemental Notice (PIH 2018–11/H 2018–05) can be found on RAD's website, *www.hud.gov/RAD.*

## V. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50, which implemented section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection during regular business hours in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at (800) 877–8339.

Dated: June 22, 2018.

**Dominique Blom,**

*General Deputy Assistant Secretary for Public and Indian Housing.*

**Brian Montgomery,**

*Assistant Secretary for Housing, Federal Housing Commissioner.*

[FR Doc. 2018–14210 Filed 7–2–18; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[Docket No. FWS–R2–ES–2017–0105; FXES11140200000–189–FF02ENEH00]**

### Environmental Impact Statement for the American Electric Power American Burying-Beetle Habitat Conservation Plan in Arkansas, Oklahoma, and Texas

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability: Notice of receipt of a permit application; and announcement of public meetings.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (FWS), announce the availability of the environmental impact statement (EIS) and habitat conservation

plan (HCP) for incidental take permit (ITP) application under the Endangered Species Act of 1973, as amended. American Electric Power (AEP) requested a 30-year American burying beetle (ABB) ITP in Oklahoma, Arkansas, and Texas. If granted, the ITP would authorize ABB take resulting from AEP's electrical lines and support facilities repair, maintenance, and construction, as well as activities carried out as part of the HCP's conservation strategy.

**DATES:** *Comments:* We will accept comments received or postmarked on or before August 17, 2018. Comments submitted electronically at *http://www.regulations.gov* (see Public Participation under **SUPPLEMENTARY INFORMATION**) must be received by 11:59 p.m. Eastern time on the closing date. Any comments we receive after the closing date may not be considered in the final decision on these actions.

**ADDRESSES:** See Public Participation under **SUPPLEMENTARY INFORMATION** for how to obtain documents for review and submit comments.

**FOR FURTHER INFORMATION CONTACT:** Jonna Polk, Field Supervisor, via U.S. mail at Oklahoma Ecological Services Field Office, U.S. Fish and Wildlife Service, 9014 E 21st St., Tulsa, OK 74129; or via phone at 918–581–7458.

**SUPPLEMENTARY INFORMATION:** We, the U.S. Fish and Wildlife Service (FWS), announce the availability of several documents related to an incidental take permit (ITP) application under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). American Electric Power (AEP) requested a 30-year American burying beetle (*Nicrophorus americanus;* ABB) ITP in Oklahoma, Arkansas, and Texas. If granted, the ITP would authorize ABB incidental take resulting from AEP's electrical lines and support facilities repair, maintenance, and construction, as well as activities carried out as part of the HCP's conservation strategy. In addition to this notice of the environmental impact statement (EIS), the Environmental Protection Agency (EPA) is publishing a notice announcing the EIS, as required under the Clean Air Act, section 309 (42 U.S.C. 7401 *et seq.;* see EPA's Role in the EIS Process below).

## Background

Section 9 of the ESA and its implementing regulations prohibit ''take'' of fish and wildlife species listed as threatened or endangered. However, section 10(a) authorizes us to issue permits to take listed wildlife species where take is incidental to, and not the purpose of, otherwise lawful activities and where the applicant meets certain statutory requirements.

We prepared a notice of intent (NOI) to prepare a EIS for American Electric Power's (AEP) habitat conservation plan (HCP), which was published in the **Federal Register** on January 19, 2017 (82 FR 6625). We held four public scoping meetings throughout the Plan Area in Arkansas, Oklahoma, and Texas in February 2017. We incorporated issues identified during the initial scoping meetings into the EIS, dated March 2018. You can find a summary of the comments we received during the scoping period in the EIS, Appendix D.

## Proposed Action

Our proposed Federal action evaluated in the EIS is approving AEP's HCP and issuing an incidental take permit (ITP) under section 10(a)(1)(B) of the ESA. The ITP would authorize ABB incidental take that may result from covered activities in the plan area over the 30-year ITP term.

## EPA's Role in the EIS Process

In addition to our publication of this notice, EPA is publishing a notice in the **Federal Register** announcing the EIS for American Electric Power's American-burying Beetle Habitat Conservation Plan in Oklahoma, Arkansas, and Texas, as required under the Clean Air Act, section 309. The EPA's publication date of the notice of availability is the official beginning of the public comment period. The EPA is charged with reviewing all Federal agencies' EISs and commenting on the adequacy and acceptability of the environmental impacts of proposed actions in EISs.

The EPA also serves as the repository (EIS database) for EISs which Federal agencies prepare. All EISs must be filed with EPA, which publishes a notice of availability on Fridays in the **Federal Register**. For more information, see *https://www.epa.gov/nepa.* You may search for EPA comments on EISs, along with EISs themselves, at *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

## Public Participation

*Public Meetings*

We will hold four public meetings, one each in McAlester, OK; Texarkana, TX; Little Rock, AR; and Tulsa, OK, during the public comment period. The dates, times, and specific locations of the meetings will be announced in local newspapers at least two weeks before the meetings and will also be posted on our Oklahoma website, at *https://www.fws.gov/southwest/es/Oklahoma/.* The public meetings will be physically accessible to people with disabilities. Please direct requests for reasonable accommodations (*e.g.,* auxiliary aids or sign language interpretation) to Larry Levesque, by phone at 918–382–4509 or via email at *laurence_levesque@fws.gov,* at least 5 working days prior to the date of the meeting you wish to attend.

*Obtaining Documents for Review*

- *Environmental Impact Statement (EIS) and Habitat Conservation Plan (HCP):* You may obtain copies of the EIS and HCP by any of the following methods.

*Internet:*

- *http://www.regulations.gov* (search for Docket No. FWS–R2–ES–2017–0105).
- *http://www.fws.gov/southwest/es/Oklahoma* (search for permit number TE81211C–0).

*U.S. Mail:* Field Supervisor (at the address in **FOR FURTHER INFORMATION CONTACT**; reference ''OKES HCP EIS; TE81211C–0'').

*In-Person:* Copies of the EIS and HCP are also available for public inspection and review at the following locations, by appointment and written request only, 8 a.m. to 4:30 p.m.:

- Oklahoma Ecological Services Field Office (at the address in **FOR FURTHER INFORMATION CONTACT**).
- U.S. Fish and Wildlife Service; 500 Gold Avenue SW, Room 6034, Albuquerque, NM 87102 (telephone: 505–248–6920).
- Department of the Interior, Natural Resources Library, 1849 C St. NW, Washington, DC 20240.
- *Incidental Take Permit Application:* You may obtain copies of the incidental take permit application by any of the following methods.

*U.S. Mail:* Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 6034, Albuquerque, NM 87103 (attention: Environmental Review Branch).

*Email: fw2_HCP_Permits@fws.gov.*

- *Public Comments:* View submitted comments on *http://www.regulations.gov* in Docket No. FWS–R2–ES–2017–0105.
- *Comments on the EIS from the Environmental Protection Agency:* For how to view comments on the EIS from the Environmental Protection Agency (EPA), or for information on EPA's role in the EIS process, see EPA's Role in the EIS Process under **SUPPLEMENTARY INFORMATION.**

*Submitting Comments*

You may submit written comments by one of the following methods:

- *Internet: http://www.regulations.gov.* Follow the

instructions for submitting comments on Docket No. FWS–R2–ES–2017–0105.

• *Hard Copy:* Submit by U.S. mail or hand-delivery to Public Comments Processing, Attn: FWS–R2–ES–2017–0105; U.S. Fish and Wildlife Service Headquarters, MS: BPHC; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

• *Public Meetings:* We will also accept written and oral comments at four public meetings, to be announced.

We request that you submit comments by only the methods described above. We will post all information received on *http://www.regulations.gov.* This generally means we will post any personal information you provide us (see *Public Availability of Comments*).

*Public Availability of Comments*

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

**Authority:** We provide this notice under section 10(c) of the ESA and its implementing regulations (50 CFR 17.22 and 17.32) and NEPA and its implementing regulations (40 CFR 1506.6).

**Amy L. Lueders,**

*Regional Director, Southwest Region, U.S. Fish and Wildlife Service.*

[FR Doc. 2018–14254 Filed 7–2–18; 8:45 am]

**BILLING CODE 4333–15–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–HQ–FAC–2018–N074; FF09F42300–FVWF97920900000–XXX]**

### Sport Fishing and Boating Partnership Council; Call for Nominations

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Call for nominations.

**SUMMARY:** The Secretary of the Interior (Secretary) seeks nominations for individuals to be considered for membership on the Sport Fishing and Boating Partnership Council (Council).

**DATES:** Written nominations must be postmarked by July 24, 2018.

**ADDRESSES:** Please address your nomination letters to Mr. Greg Sheehan, Principal Deputy Director, U.S. Fish and Wildlife Service. Submit your nomination letters via U.S. mail or hand-delivery to Linda Friar, Designated Federal Officer; Sport Fishing and Boating Partnership Council; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, Mailstop 3C016A–FAC; Falls Church, VA 22041–3803.

**FOR FURTHER INFORMATION CONTACT:** Linda Friar, at the above address, via email at *linda_friar@fws.gov,* or by telephone at (703) 358–2056.

**SUPPLEMENTARY INFORMATION:** The Secretary seeks nominations for individuals to be considered for membership on the Council. The Council advises the Secretary, through the Director, on aquatic conservation endeavors that benefit recreational fishery resources and recreational boating and that encourage partnerships among industry, the public, and government. The Council conducts its operations in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App.). The Council functions solely as an advisory body. Current members' terms expire August 29, 2018.

#### Council Duties

The Council's duties and responsibilities, where applicable, are as follows:

a. Providing advice that will assist the Secretary in carrying out the authorities of the Fish and Wildlife Act of 1956.

b. Fulfilling responsibilities established by Executive Order 12962:

(1) Monitoring specific Federal activities affecting aquatic systems and the recreational fisheries they support.

(2) Reviewing and evaluating the relation of Federal policies and activities to the status and conditions of recreational fishery resources.

c. Recommending policies or programs to increase public awareness and support for the Sport Fish Restoration and Boating Trust Fund.

d. Recommending policies or programs that foster conservation and ethics in recreational fishing and boating.

e. Recommending policies or programs to stimulate angler and boater participation in the conservation and restoration of aquatic resources through outreach and education.

f. Advising how the Secretary can foster communication and coordination among government, industry, anglers, boaters, and the public.

g. Providing recommendations for implementation of Secretary's Order 3347—Conservation Stewardship and Outdoor Recreation, and Secretary's Order 3356—Hunting, Fishing, Recreational Shooting, and Wildlife Conservation Opportunities and Coordination with States, Tribes, and Territories.

h. Providing recommendations for implementation of regulatory reform initiatives and policies specified in section 2 of Executive Order 13777—Reducing Regulation and Controlling Regulatory Costs; Executive Order 12866—Regulatory Planning and Review, as amended; and section 6 of Executive Order 13563—Improving Regulation and Regulatory Review.

#### Council Makeup

The Director of the U.S. Fish and Wildlife Service, and the President of the Association of Fish and Wildlife Agencies are ex officio members. The Council may consist of no more than 18 members and up to 16 alternates appointed by the Secretary for a term not to exceed 3 years. Appointees will be selected from among, but not limited to, the following national interest groups:

a. State fish and wildlife resource management agencies (two members—one a Director of a coastal State, and one a Director of an inland State);

b. Saltwater and freshwater recreational fishing organizations;

c. Recreational boating organizations;

d. Recreational fishing and boating industries;

e. Recreational fishery resources conservation organizations;

f. Tribal resource management organizations;

g. Aquatic resource outreach and education organizations; and

h. The tourism industry.

#### Nomination Method and Eligibility

Members will be senior-level representatives of recreational fishing, boating, and aquatic resources conservation organizations, and must have the ability to represent their designated constituencies. Nominations should include a resume that provides contact information and a description of the nominee's qualifications that would enable the Department of the Interior to make an informed decision regarding the candidate's suitability to serve on the Council. Current members are eligible to be renominated and reappointed to the Council. Individuals who are federally registered lobbyists are ineligible to serve on all FACA and

non-FACA boards, committees, or councils in an individual capacity. The term ''individual capacity'' refers to individuals who are appointed to exercise their own individual best judgment on behalf of the government, such as when they are designated special Government employees, rather than being appointed to represent a particular interest.

*Public Disclosure:* Before including your address, phone number, email address, or other personal identifying information in your nomination, you should be aware that your entire nomination—including your personal identifying information—may be made publicly available at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority:** 5 U.S.C. Appendix 2.

Dated: June 20, 2018.

**Ryan K. Zinke,**

*Secretary of the Interior.*

[FR Doc. 2018–14253 Filed 7–2–18; 8:45 am]

**BILLING CODE 4333–15–P**

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

**[FWS–HQ–FAC–2018–N073; FF09F42300–FVWF97920900000–XXX]**

### Sport Fishing and Boating Partnership Council; Charter Renewal

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Notice of renewal.

**SUMMARY:** This notice is published in accordance with the Federal Advisory Committee Act. Following consultation with the General Services Administration, the Secretary of the Interior (Secretary) has renewed the Sport Fishing and Boating Partnership Council (Council) charter for 2 years.

**FOR FURTHER INFORMATION CONTACT:** Linda Friar, Designated Federal Officer, U.S. Fish and Wildlife Service, 703–358–2056, *linda_friar@fws.gov.*

**SUPPLEMENTARY INFORMATION:** The Secretary has renewed the Council charter for 2 years. The Council advises the Secretary, through the Director, on aquatic conservation endeavors that benefit recreational fishery resources and recreational boating and that encourage partnerships among industry, the public, and government. The Council will conduct its operations in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. Appendix 2.). The Council will function solely as an advisory body.

*Certification:* I hereby certify that the Sport Fishing and Boating Partnership Council is necessary and is in the public interest in connection with the performance of duties imposed on the Department of the Interior.

**Authority:** 5 U.S.C. Appendix 2.

Dated: June 20, 2018.

**Ryan Zinke,**

*Secretary of the Interior.*

[FR Doc. 2018–14252 Filed 7–2–18; 8:45 am]

**BILLING CODE 4333–15–P**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

**[S1D1S SS08011000 SX064A000 189S180110; S2D2S SS08011000 SX064A000 18XS501520; OMB Control Number 1029–0119]**

### Agency Information Collection Activities: Contractor Eligibility and the Abandoned Mine Land Contractor Information Form

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Notice of Information Collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing our intention to request renewed approval for the collection of information that provides a tool for OSMRE and the States/Indian tribes to help them prevent persons with outstanding violations from conducting further mining or AML reclamation activities in the State. This information collection activity was previously approved by the Office of Management and Budget (OMB), and assigned control number 1029–0119.

**DATES:** Interested persons are invited to submit comments on or before September 4, 2018.

**ADDRESSES:** Send your comments on this information collection request (ICR) by mail to: The Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, Attn: John Trelease, 1849 C Street NW; Mail Stop 4559, Washington, DC 20240. Comments may also be submitted electronically to *jtrelease@osmre.gov.*

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact John Trelease by email at *jtrelease@osmre.gov,* or by telephone at (202) 208–2783.

**SUPPLEMENTARY INFORMATION:** In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the OSMRE; (2) is the estimate of burden accurate; (3) how might the OSMRE enhance the quality, utility, and clarity of the information to be collected; and (4) how might the OSMRE minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

This notice provides the public with 60 days in which to comment on the following information collection activity:

*Title of Collection:* 30 CFR 874.16—Contractor Eligibility and the Abandoned Mine Land Contractor Information Form.

*OMB Control Number:* 1029–0119.

*Abstract:* 30 CFR 874.16 requires that every successful bidder for an AML contract must be eligible under 30 CFR 773.15(b)(1) at the time of contract award to receive a permit or conditional permit to conduct surface coal mining operations. Further, the regulation requires the eligibility to be confirmed by OSMRE's automated Applicant/Violator System (AVS) and the contractor must be eligible under the regulations implementing Section 510(c) of the Surface Mining Control and Reclamation Act to receive permits to conduct mining operations. This form

provides a tool for OSMRE and the States/Indian tribes to help them prevent persons with outstanding violations from conducting further mining or AML reclamation activities in the State.

*Form Number:* AML Contractor Information Form (No form number).

*Type of Review:* Extension of a currently approved collection.

*Respondents/Affected Public:* AML contract applicants and State and Tribal regulatory authorities.

*Total Estimated Number of Annual Respondents:* 247 applicants and 28 State and Tribal regulatory authorities.

*Total Estimated Number of Annual Responses:* 247 applicants and 93 State and Tribal regulatory authority responses.

*Estimated Completion Time per Response:* 45 minutes per applicant, 1 hour per regulatory authority.

*Total Estimated Number of Annual Burden Hours:* 205 hours.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* Once.

*Total Estimated Annual Nonhour Burden Cost:* $0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**Authority:** The authorities for this action are the Surface Mining Control and Reclamation Act of 1977, as amended (30 U.S.C. 1201 *et seq.*), and the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**John A. Trelease,**

*Acting Chief, Division of Regulatory Support.*

[FR Doc. 2018–14239 Filed 7–2–18; 8:45 am]

**BILLING CODE 4310–05–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–1418 (Preliminary)]**

### Steel Propane Cylinders From Taiwan; Termination of Investigation

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** On June 20, 2018, the Department of Commerce terminated its antidumping duty investigation of imports of steel propane cylinders from Taiwan, following petitioners' withdrawal of the petition and request that the investigation be terminated. Accordingly, the Commission is terminating its antidumping duty investigation concerning steel propane cylinders from Taiwan (Investigation No. 731–TA–1418 (Preliminary)).

**DATES:** June 26, 2018.

**FOR FURTHER INFORMATION CONTACT:** Lawrence Jones (202–205–3358), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

**Authority:** This investigation is being terminated under authority of title VII of the Tariff Act of 1930 and pursuant to section 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)). This notice is published pursuant to section 201.10 of the Commission's rules (19 CFR 201.10).

By order of the Commission.

Dated: June 27, 2018.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2018–14232 Filed 7–2–18; 8:45 am]

**BILLING CODE 7020–02–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2018–0104]**

### State of Wyoming: NRC Staff Assessment of a Proposed Agreement Between the Nuclear Regulatory Commission and the State of Wyoming

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed state agreement; request for comment.

**SUMMARY:** By letter dated November 14, 2017, Governor Matthew H. Mead of the State of Wyoming requested that the U.S. Nuclear Regulatory Commission (NRC or Commission) enter into an Agreement with the State of Wyoming as authorized by Section 274b. of the Atomic Energy Act of 1954, as amended (AEA).

Under the proposed Agreement, the Commission would discontinue, and the State of Wyoming would assume, regulatory authority over the management and disposal of byproduct materials as defined in Section 11e.(2) of the AEA and a subcategory of source material associated with uranium or thorium milling within the State. Pursuit to Commission direction, the proposed Agreement would state that the NRC will retain regulatory authority over the American Nuclear Corporation (ANC) license.

As required by Section 274e. of the AEA, the NRC is publishing the proposed Agreement for public comment. The NRC is also publishing the summary of a draft assessment by the NRC staff of the State of Wyoming's regulatory program. Comments are requested on the proposed Agreement, especially its effect on public health and safety. Comments are also requested on the draft staff assessment, the adequacy of the State of Wyoming's program, and the State's program staff, as discussed in this notice.

The proposed Agreement would exempt persons who possess or use byproduct materials as defined in Section 11e.(2) of the AEA and a subcategory of source material involved in the extraction or concentration of uranium or thorium in source material or ores at uranium or thorium milling facilities in the State of Wyoming from portions of the Commission's regulatory authority. Radioactive materials not covered by the proposed Agreement will continue to be subject to the Commission's regulatory authority. Section 274e. of the AEA requires that the NRC publish these exemptions. Notice is hereby given that the pertinent exemptions have been previously published in the **Federal Register** and are codified in the NRC's regulations.

The NRC is giving notice once each week for four consecutive weeks of the proposed Agreement. This is the second notice that has been published.

**DATES:** Submit comments by July 26, 2018. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

**ADDRESSES:** You may submit comments by the following method:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0104. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

For additional direction on obtaining information and submitting comments,

see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Stephen Poy, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–7135, email: *Stephen.Poy@nrc.gov;* or Paul Michalak, telephone: 301–415–5804, email: *Paul.Michalak@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

**SUPPLEMENTARY INFORMATION:**

## I. Obtaining Information and Submitting Comments

### *A. Obtaining Information*

Please refer to Docket ID NRC–2018–0104 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0104.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *pdr.resource@nrc.gov.* The draft application for a Section 274 Atomic Energy Act Agreement from the State of Wyoming, the final Wyoming Agreement State application, and the Draft Assessment of the Proposed Wyoming Program for the Regulation of Agreement Materials documents are available in ADAMS under Accession Nos. ML16300A294, ML17319A921, and ML18094B074.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

### *B. Submitting Comments*

Please include Docket ID NRC–2018–0104 in your comment submission. The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

## II. Additional Information on Agreements Entered Under Section 274 of the AEA

Since Section 274 of the AEA was added in 1959, the Commission has entered into Agreements with 37 States (Agreement States). The 37 Agreement States currently regulate approximately 16,500 Agreement material licenses, while the NRC regulates approximately 2,800 licenses. Under the proposed Agreement, 14 NRC uranium mill licenses will transfer to the State of Wyoming. The NRC periodically reviews the performance of the Agreement States to assure compliance with the provisions of Section 274.

Section 274e. of the AEA requires that the terms of the proposed Agreement be published in the **Federal Register** for public comment once each week for four consecutive weeks. This notice is being published in fulfillment of that requirement.

## III. Proposed Agreement With the State of Wyoming

### *Background*

(a) Section 274b. of the AEA provides the mechanism for a State to assume regulatory authority from the NRC over certain radioactive materials and activities that involve use of these materials. The radioactive materials, sometimes referred to as ''Agreement materials,'' are byproduct materials as defined in Sections 11e.(1), 11e.(2), 11e.(3), and 11e.(4) of the AEA; source material as defined in Section 11z. of the AEA; and special nuclear material as defined in Section 11aa. of the AEA, restricted to quantities not sufficient to form a critical mass.

The radioactive materials and activities (which together are usually referred to as the ''categories of materials'') that the State of Wyoming requests authority over are the possession and use of byproduct materials as defined in Section 11e.(2) of the AEA and a subcategory of source material involved in the extraction or concentration of uranium or thorium in source material or ores at uranium or thorium milling facilities (source material associated with milling activities).

(b) The proposed Agreement contains articles that

(i) Specify the materials and activities over which authority is transferred;

(ii) Specify the materials and activities over which the Commission will retain regulatory authority;

(iii) Continue the authority of the Commission to safeguard special nuclear material, and restricted data and protect common defense and security;

(iv) Commit the State of Wyoming and the NRC to exchange information as necessary to maintain coordinated and compatible programs;

(v) Provide for the reciprocal recognition of licenses;

(vi) Provide for the suspension or termination of the Agreement; and

(vii) Specify the effective date of the proposed Agreement.

The Commission reserves the option to modify the terms of the proposed Agreement in response to comments, to correct errors, and to make editorial changes. The final text of the proposed Agreement, with the effective date, will be published after the Agreement is approved by the Commission and signed by the NRC Chairman and the Governor of Wyoming.

(c) The regulatory program is authorized by law under the State of Wyoming Statute Section 35–11–2001, which provides the Governor with the authority to enter into an Agreement with the Commission. The State of Wyoming law contains provisions for the orderly transfer of regulatory authority over affected licensees from the NRC to the State. In a letter dated November 14, 2017, Governor Mead certified that the State of Wyoming has a program for the control of radiation hazards that is adequate to protect public health and safety within the State of Wyoming for the materials and activities specified in the proposed Agreement, and that the State desires to assume regulatory responsibility for these materials and activities. After the effective date of the Agreement, licenses issued by NRC would continue in effect as State of Wyoming licenses until the licenses expire or are replaced by State-issued licenses.

(d) The NRC draft staff assessment finds that the Wyoming Department of Environmental Quality, Land Quality Division, Uranium Recovery Program, is adequate to protect public health and safety and is compatible with the NRC program for the regulation of Agreement

materials. Pursuant to Commission direction, the proposed Agreement includes a provision that the State of Wyoming has until the end of the 2019 legislative session to amend Wyoming Statute Section 35–11–2004(c) to be compatible with AEA Section 83b.(1)(A), or the Agreement will terminate without further NRC action. The proposed Agreement also explicitly states that, prior to the requisite amendment of Wyoming Statute Section 35–11–2004(c), the NRC will reject any State of Wyoming request to terminate a license that proposes to bifurcate the ownership of byproduct material and its disposal site between the State and the Federal government. Pursuant to Commission direction, the Agreement contains a provision that requires the State of Wyoming to revise Statute Section 35–11–2004(c) during the next legislative session to be compatible with AEA Section 83b.(1)(A). If the Wyoming Statute Section 35–11–2004(c) is not amended by the end of the 2019 legislative session, the Agreement will terminate.

*Summary of the Draft NRC Staff Assessment of the State of Wyoming's Program for the Regulation of Agreement Materials*

The NRC staff has examined the State of Wyoming's request for an Agreement with respect to the ability of the State's radiation control program to regulate Agreement materials. The examination was based on the Commission's Policy Statement, ''Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement,'' (46 FR 7540; January 23, 1981, as amended by Policy Statements published at 46 FR 36969; July 16, 1981, and at 48 FR 33376; July 21, 1983) (Policy Statement), and the Office of Nuclear Material Safety and Safeguards Procedure SA–700, ''Processing an Agreement'' (available at *https://scp.nrc.gov/procedures/sa700.pdf* and *https://scp.nrc.gov/procedures/sa700_hb.pdf*). The Policy Statement has 36 criteria that serve as the basis for the NRC staff's assessment of the State of Wyoming's request for an Agreement. The following section will reference the appropriate criteria numbers from the Policy Statement that apply to each section.

(a) Organization and Personnel. These areas were reviewed under Criteria 1, 2, 20, 24, 33, and 34 in the draft staff assessment. The State of Wyoming's proposed Agreement materials program for the regulation of radioactive materials is the Uranium Recovery Program. The Uranium Recovery Program will be located within the existing Land Quality Division of the Wyoming Department of Environmental Quality.

The educational requirements for the Uranium Recovery Program staff members are specified in the State of Wyoming's personnel position descriptions and meet the NRC criteria with respect to formal education or combined education and experience requirements. All current staff members hold a Bachelor of Science Degree or Master's Degree in one of the following subject areas: Environmental science, health physics, nuclear engineering, geology, or ecology. All have training and work experience in radiation protection. Supervisory level staff have at least 5 years of working experience in radiation protection, with most having more than 10 years of experience.

The State of Wyoming performed an analysis of the expected workload under the proposed Agreement. Based on the NRC staff review of the State of Wyoming's analysis, the State has an adequate number of staff to regulate radioactive materials under the terms of the proposed Agreement. The State of Wyoming will employ the equivalent of 7.2 full-time professional and technical staff to support the Uranium Recovery Program.

The State of Wyoming has indicated that the Uranium Recovery Program has an adequate number of trained and qualified staff in place. The State of Wyoming has developed qualification procedures for license reviewers and inspectors that are similar to the NRC's procedures. The Uranium Recovery Program staff is accompanying the NRC staff on inspections of NRC licensees in Wyoming. The Uranium Recovery Program staff is also actively supplementing their experience through direct meetings, discussions, and facility visits with the NRC licensees in the State of Wyoming and through self-study, in-house training, and formal training.

Overall, the NRC staff concluded that the Uranium Recovery Program staff identified by the State of Wyoming to participate in the Agreement materials program has sufficient knowledge and experience in radiation protection, the use of radioactive materials, the standards for the evaluation of applications for licensing, and the techniques of inspecting licensed users of Agreement materials.

(b) Legislation and Regulations. These areas were reviewed under Criteria 1–14, 17, 19, 21, and 23–33 in the draft staff assessment. The Wyoming Statutes Sections 35–11–2001(a) through (c) provide the authority to enter into the Agreement and establish the Wyoming Department of Environmental Quality as the lead agency for the State's Uranium Recovery Program. The Department has the requisite authority to promulgate regulations under Wyoming Statute Section 35–11–2002(b) for protection against radiation. The Wyoming Statutes Sections 35–11–2001 through –2005 also provide the Uranium Recovery Program the authority to issue licenses and orders; conduct inspections; and enforce compliance with regulations, license conditions, and orders. The Wyoming Statute Section 35–11–2003(d) requires licensees to provide access to inspectors.

The Wyoming Statute Section 35–11–2001(e) does not provide the State of Wyoming with authority over independent or commercial laboratories. Under the proposed Agreement, the NRC would retain regulatory authority over laboratory facilities that are not located at facilities licensed under the State of Wyoming's regulatory authority. The State of Wyoming would only regulate laboratory facilities located at uranium or thorium mills. The NRC staff verified that the State of Wyoming adopted the relevant NRC regulations in parts 19, 20, 40, 71, and 150 of title 10 of the *Code of Federal Regulations* (10 CFR), into the Wyoming Uranium Recovery Program Rules Chapters 1 through 9. Therefore, on the proposed effective date of the Agreement, the State of Wyoming will have adopted an adequate and compatible set of radiation protection regulations that apply to byproduct materials as defined in Section 11e.(2) of the AEA and source material associated with milling activities. The NRC staff also verified that the State of Wyoming will not attempt to enforce regulatory matters reserved to the Commission.

(c) Storage and Disposal. These areas were reviewed under Criteria 8, 9a, 11, 29, 30, 31, and 32 in the draft staff assessment. The State of Wyoming has adopted NRC compatible requirements for the handling and storage of radioactive material. The State of Wyoming has adopted an adequate and compatible set of radiation protection regulations that apply to byproduct material as defined in Section 11e.(2) of the AEA and source material associated with milling activities.

As a result of the class of byproduct material it will be regulating (Section 11e.(2) of the AEA), the State of Wyoming is not required to have regulations compatible to 10 CFR part 61 for waste disposal. Rather, the State of Wyoming is required to have regulations that are compatible with 10 CFR part 40 for the disposal of

byproduct material as defined in Section 11e.(2) of the AEA and source material associated with milling activities. The NRC staff confirmed that the State of Wyoming has adopted regulations that are compatible with the NRC regulations in 10 CFR part 40 for the disposal of byproduct material and source material associated with milling activities, which are equivalent to the applicable standards contained in 10 CFR part 61.

These regulations address the general requirements for waste disposal and are applicable to all licensees covered under this proposed Agreement.

The NRC staff identified one portion of the Wyoming Statute that is potentially not compatible with NRC requirements. Section 83b.(1)(A) of the AEA ensures that ownership of the byproduct material itself is inseparable from the site on which it is disposed. Consequently, the State of Wyoming has the option of taking title to the material and its disposal site, but the Uranium Mill Tailings Radiation Control Act (UMTRCA) does not permit a State to bifurcate ownership of the disposed byproduct material and the property rights necessary to ensure its safe disposal. The Wyoming Statute Section 35–11–2004(c), enacted in anticipation of the State of Wyoming's assumption of the NRC's regulatory authority for uranium and thorium milling, could permit the bifurcation of the disposed byproduct material and its disposal site by the State. As discussed in Criterion 30c. of the draft staff assessment, this bifurcation of the land and the disposed byproduct material could conflict with the AEA (as amended by UMTRCA), and Article II.B.2.b. in the proposed Agreement.

Based on Commission direction, the NRC staff concluded that Criterion 30c. is satisfied in the following manner: The Commission could complete the process for the final application package for the Agreement, including publishing the proposed Agreement for comment, by noting that the Commission's finding of compatibility is contingent on the State of Wyoming revising this provision, during the next legislative session, to be compatible with AEA Section 83b.(1)(A). Thus, an Agreement could be executed, but it would include a provision that the State of Wyoming has until the end of the 2019 legislative session to amend Wyoming Statute Section 35–11–2004(c) to be compatible with AEA Section 83b.(1)(A), or the Agreement will terminate without further NRC action. The Agreement would also explicitly state that the NRC will reject any State of Wyoming request to terminate a license that proposes to bifurcate the ownership of byproduct material and its disposal site between the State and the federal government. The NRC staff determined that there is little practical risk that the State of Wyoming's current statutory provisions would result in the bifurcation of the 11e.(2) byproduct material from the land since the NRC is required to review and approve any State-proposed termination of a uranium mill license.

(d) Transportation of Radioactive Material. This area was reviewed under Criteria 10 and 35 in the draft staff assessment. The State of Wyoming has adopted compatible regulations to the NRC regulations in 10 CFR part 71. Part 71 contains the requirements licensees must follow when preparing packages containing radioactive material for transport.

Part 71 also contains requirements related to the licensing of packaging for use in transporting radioactive materials.

(e) Recordkeeping and Incident Reporting. These areas were reviewed under Criteria 1, 11, and 35 in the draft staff assessment. The State of Wyoming has adopted compatible regulations to the sections of the NRC regulations that specify requirements for licensees to keep records and to report incidents or accidents involving the State's regulated Agreement materials.

(f) Evaluation of License Applications. This area was reviewed under Criteria 1, 7, 8, 9a, 13, 14, 20, 23, 25, and 29–35 in the draft staff assessment. The State of Wyoming has adopted compatible regulations to the NRC regulations that specify the requirements a person must meet to get a license to possess or use radioactive materials. The State of Wyoming has also developed a licensing procedure manual, along with accompanying regulatory guides, which are adapted from similar NRC documents and contain guidance for the program staff when evaluating license applications.

(g) Inspections and Enforcement. These areas were reviewed under Criteria 1, 16, 18, 19, 23, 35, and 36 in the draft staff assessment. The State of Wyoming has adopted a schedule providing for the inspection of licensees as frequently as, or more frequently than, the inspection schedule used by the NRC. The State of Wyoming's Uranium Recovery Program has adopted procedures for the conduct of inspections, reporting of inspection findings, and reporting inspection results to the licensees. Additionally, the State of Wyoming has also adopted procedures for the enforcement of regulatory requirements.

(h) Regulatory Administration. This area was reviewed under Criterion 23 in the draft staff assessment. The State of Wyoming is bound by requirements specified in its State law for rulemaking, issuing licenses, and taking enforcement actions. The State of Wyoming has also adopted administrative procedures to assure fair and impartial treatment of license applicants. The State of Wyoming law prescribes standards of ethical conduct for State employees.

(i) Cooperation with Other Agencies. This area was reviewed under Criteria 25, 26, and 27 in the draft staff assessment. The State of Wyoming law provides for the recognition of existing NRC and Agreement State licenses and the State has a process in place for the transition of active NRC licenses. Upon the effective date of the Agreement, all active uranium recovery NRC licenses issued to facilities in the State of Wyoming, with the exception of the ANC license, will be recognized as Wyoming Department of Environmental Quality licenses.

The State of Wyoming also provides for ''timely renewal.'' This provision affords the continuance of licenses for which an application for renewal has been filed more than 30 days prior to the date of expiration of the license. NRC licenses transferred while in timely renewal are included under the continuation provision.

The State of Wyoming regulations, in Chapter 4, Section 6(d), provide exemptions from the State's requirements for the NRC and the U.S. Department of Energy contractors or subcontractors; the exemptions must be authorized by law and determined not to endanger life or property and to otherwise be in the public interest. The proposed Agreement commits the State of Wyoming to use its best efforts to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation, and to assure that the State's program will continue to be compatible with the Commission's program for the regulation of Agreement materials. The proposed Agreement specifies the desirability of reciprocal recognition of licenses, and commits the Commission and the State of Wyoming to use their best efforts to accord such reciprocity. The State of Wyoming would be able to recognize the licenses of other jurisdictions by order or specific license.

There are six UMTRCA Title II sites in the State of Wyoming (ADAMS Accession No. ML16300A294) undergoing decommissioning. These sites are: (1) Anadarko Bear Creek,

Powder River Basin; (2) Pathfinder, Lucky Mc, Gas Hills; (3) Umetco Minerals Corporation, Gas Hills; (4) Western Nuclear Inc., Split Rock, Jeffrey City; (5) Exxon Mobile, Highlands, Converse County; and (6) ANC, Gas Hills.

The State of Wyoming indicated it was opposed to assuming regulatory authority over the ANC site because the licensee is insolvent. To address the State of Wyoming's proposed exclusion of the ANC site from the proposed Agreement, the NRC staff provided SECY–17–0081 ''Status and Resolution of Issues Associated with the Transfer of Six Decommissioning Uranium Mill Sites to the State of Wyoming'' (ADAMS Accession No. ML17087A355) to the Commission. In SRM–SECY–17–0081 (ADAMS Accession No. ML17277A783), the Commission approved the NRC staff's recommendation for the NRC to retain regulatory authority over the ANC site and stated that the Commission's retention of the ANC site ''is not a change to the Commission's current Agreement State policy, but is instead an exception to that policy based on case-specific facts.'' Article II.A.14. of the proposed Agreement specifies that the Commission retains regulatory authority over the ANC license.

With regard to the five other decommissioning UMTRCA sites, the NRC staff has developed a draft Memorandum of Understanding (MOU) between the NRC and the State of Wyoming as a separate document from the proposed Agreement. The objective of the MOU is to delineate specific actions that the NRC and the State of Wyoming would take to verify completion of the decommissioning of these sites. The MOU has been drafted and the NRC staff is currently working with the State of Wyoming to delineate how license termination will be addressed for each of the five sites. An assessment of the decommissioning status of the five UMTRCA sites and the activities that need to be completed prior to license termination (ADAMS Accession No. ML17040A501) has been completed. Once the MOU is completed and signed by both the NRC and the State of Wyoming, it will be published in the **Federal Register**.

**Staff Conclusion**

Section 274d. of the AEA provides that the Commission shall enter into an Agreement under Section 274b. with any State if:

(a) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect public health and safety with respect to the Agreement materials within the State and that the State desires to assume regulatory responsibility for the Agreement materials; and

(b) The Commission finds that the State program is in accordance with the requirements of Subsection 274o. and in all other respects compatible with the Commission's program for the regulation of materials, and that the State program is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

The NRC staff has reviewed the proposed Agreement, the certification of Wyoming Governor Mead, and the supporting information provided by the Uranium Recovery Program of the Wyoming Department of Environmental Quality and Wyoming's Office of the Attorney General. Based upon this review, the NRC staff concludes that the State of Wyoming Uranium Recovery Program satisfies the Section 274d. criteria as well as the criteria in the Commission's Policy Statement ''Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement.'' As noted above, the proposed Agreement includes a provision that the State of Wyoming has until the end of the 2019 legislative session to amend Wyoming Statute Section 35–11–2004(c) to be compatible with AEA Section 83b.(1)(A) or the Agreement will terminate without further NRC action. The proposed Agreement also explicitly states that the NRC will reject any State of Wyoming request to terminate a license that proposes to bifurcate the ownership of byproduct material and its disposal site between the State and the Federal government. Pursuant to Commission direction, the NRC staff finding of compatibility is contingent on the State of Wyoming revising Wyoming Statute Section 35–11–2004(c) during the next legislative session to be compatible with AEA Section 83b.(1)(A). The proposed State of Wyoming program to regulate Agreement materials, as comprised of statutes, regulations, procedures, and staffing is compatible with the Commission's program and is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement. Therefore, the proposed Agreement meets the requirements of Section 274 of the AEA.

Dated at Rockville, Maryland, this 27th day of June, 2018.

For the Nuclear Regulatory Commission.

**Andrea L. Kock,**

*Acting Director, Division of Materials Safety, Security, State, and Tribal Programs, Office of Nuclear Material Safety and Safeguards.*

## Appendix A

**An Agreement Between the United States Nuclear Regulatory Commission and the State of Wyoming for the Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, As Amended**

WHEREAS, The United States Nuclear Regulatory Commission (hereinafter referred to as ''the Commission'') is authorized under Section 274 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. Section 2011 *et seq.* (hereinafter referred to as ''the Act''), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct material as defined in Section 11e.(2) of the Act and source material involved in the extraction or concentration of uranium or thorium in source material or ores at milling facilities; and,

WHEREAS, The Governor of the State of Wyoming is authorized under Wyoming Statute Section 35–11–2001 to enter into this Agreement with the Commission; and,

WHEREAS, The Governor of the State of Wyoming certified on November 14, 2017, that the State of Wyoming (hereinafter referred to as ''the State'') has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the State covered by this Agreement and that the State desires to assume regulatory responsibility for such materials; and,

WHEREAS, The Commission found on [date] that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and,

WHEREAS, The State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

WHEREAS, the Commission and the State recognize the desirability of the reciprocal recognition of licenses, and of the granting of limited exemptions from licensing of those materials subject to this Agreement; and,

WHEREAS, This Agreement is entered into pursuant to the Act;

NOW, THEREFORE, It is hereby agreed between the Commission and the Governor of the State of Wyoming acting on behalf of the State as follows:

*ARTICLE I*

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this

Agreement, the regulatory authority of the Commission in the State under Chapters, 7, and 8, and Section 161 of the Act with respect to the following materials:

A. Byproduct material as defined in Section 11e.(2) of the Act; and,

B. Source material involved in the extraction or concentration of uranium or thorium in source material or ores at uranium or thorium milling facilities (hereinafter referred to as ''source material associated with milling activities'').

*ARTICLE II*

A. This Agreement does not provide for the discontinuance of any authority, and the Commission shall retain authority and responsibility, with respect to:

1. Byproduct material as defined in Section 11e.(1) of the Act;

2. Byproduct material as defined in Section 11e.(3) of the Act;

3. Byproduct material as defined in Section 11e.(4) of the Act;

4. Source material except for source material as defined in Article I.B. of this Agreement;

5. Special nuclear material;

6. The regulation of the land disposal of byproduct, source, or special nuclear material received from other persons, excluding 11e.(2) byproduct material or source material described in Article I.A. and B. of this Agreement;

7. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear material and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission;

8. The regulation of the construction and operation of any production or utilization facility or any uranium enrichment facility;

9. The regulation of the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

10. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear material waste as defined in the regulations or orders of the Commission;

11. The regulation of the disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not to be so disposed without a license from the Commission;

12. The regulation of activities not exempt from Commission regulation as stated in 10 CFR part 150;

13. The regulation of laboratory facilities that are not located at facilities licensed under the authority relinquished under Article I.A. and B. of this Agreement; and,

14. Notwithstanding this Agreement, the Commission shall retain regulatory authority over the American Nuclear Corporation license.

B. Notwithstanding this Agreement, the Commission retains the following authorities pertaining to byproduct material as defined in Section 11e.(2) of the Act:

1. Prior to the termination of a State license for such byproduct material, or for any activity that results in the production of such material, the Commission shall have made a determination that all applicable standards and requirements pertaining to such material have been met.

2. The Commission reserves the authority to establish minimum standards governing reclamation, long-term surveillance or maintenance, and ownership of such byproduct material and of land used as its disposal site for such material. Such reserved authority includes:

a. The authority to establish terms and conditions as the Commission determines necessary to assure that, prior to termination of any license for such byproduct material, or for any activity that results in the production of such material, the licensee shall comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission and with ownership requirements for such material and its disposal site;

b. The authority to require that prior to termination of any license for such byproduct material or for any activity that results in the production of such material, title to such byproduct material and its disposal site be transferred to the United States or the State at the option of the State (provided such option is exercised prior to termination of the license);

c. The authority to permit use of the surface or subsurface estates, or both, of the land transferred to the United States or a State pursuant to paragraph 2.b. in this section in a manner consistent with the provisions of the Uranium Mill Tailings Radiation Control Act of 1978, provided that the Commission determines that such use would not endanger public health, safety, welfare, or the environment;

d. The authority to require, in the case of a license for any activity that produces such byproduct material (which license was in effect on November 8, 1981), transfer of land and material pursuant to paragraph 2.b. in this section taking into consideration the status of such material and land and interests therein and the ability of the licensee to transfer title and custody thereof to the United States or a State;

e. The authority to require the Secretary of the United States Department of Energy, other Federal agency, or State, whichever has custody of such byproduct material and its disposal site, to undertake such monitoring, maintenance, and emergency measures as are necessary to protect public health and safety and other actions as the Commission deems necessary; and,

f. The authority to enter into arrangements as may be appropriate to assure Federal long-term surveillance or maintenance of such byproduct material and its disposal site on land held in trust by the United States for any Indian Tribe or land owned by an Indian Tribe and subject to a restriction against alienation imposed by the United States.

3. The Commission retains the authority to reject any State request to terminate a license that proposes to bifurcate the ownership of 11e.(2) byproduct material and its disposal site between the State and the Federal government. Upon passage of a revised Wyoming Statute Section 35–11–2004(c) that the NRC finds compatible with Section 83b.(1)(A) of the Act, this paragraph expires and is no longer part of this Agreement.

*ARTICLE III*

With the exception of those activities identified in Article II, A.8 through A.11, this Agreement may be amended, upon application by the State and approval by the Commission to include one or more of the additional activities specified in Article II, A.1 through A.7, whereby the State may then exert regulatory authority and responsibility with respect to those activities.

*ARTICLE IV*

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption for licensing issued by the Commission.

*ARTICLE V*

This Agreement shall not affect the authority of the Commission under Subsection 161b. or 161i. of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data, or to guard against the loss or diversion of special nuclear material.

*ARTICLE VI*

The Commission will cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that Commission and State programs for protection against hazards of radiation will be coordinated and compatible. The State agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of materials covered by this Agreement.

The State and the Commission agree to keep each other informed of proposed changes in their respective rules and regulations and to provide each other the opportunity for early and substantive contribution to the proposed changes.

The State and the Commission agree to keep each other informed of events, accidents, and licensee performance that may have generic implication or otherwise be of regulatory interest.

*ARTICLE VII*

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other Agreement State.

Accordingly, the Commission and the State agree to develop appropriate rules, regulations, and procedures by which reciprocity will be accorded.

*ARTICLE VIII*

A. The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State or upon request of the Governor of the State, may terminate or suspend all or part of this agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect public health and safety, or (2) the State has not complied with one or more of the requirements of Section 274 of the Act.

1. This Agreement will terminate without further NRC action if the State does not amend Wyoming Statute Section 35–11–2004(c) to be compatible with Section 83b.(1)(A) of the Act by the end of the 2019 Wyoming legislative session. Upon passage of a revised Wyoming Statute Section 35–11–2004(c) that the NRC finds compatible with Section 83b.(1)(A) of the Act, this paragraph expires and is no longer part of the Agreement.

B. The Commission may also, pursuant to Section 274j. of the Act, temporarily suspend all or part of this agreement if, in the judgment of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review actions taken by the State under this Agreement to ensure compliance with Section 274 of the Act, which requires a State program to be adequate to protect public health and safety with respect to the materials covered by this Agreement and to be compatible with the Commission's program.

*ARTICLE IX*

In the licensing and regulation of byproduct material as defined in Section 11e.(2) of the Act, or of any activity that results in production of such material, the State shall comply with the provisions of Section 274o. of the Act, if in such licensing and regulation, the State requires financial surety arrangements for reclamation or long-term surveillance and maintenance of such material.

A. The total amount of funds the State collects for such purposes shall be transferred to the United States if custody of such material and its disposal site is transferred to the United States upon termination of the State license for such material or any activity that results in the production of such material. Such funds include, but are not limited to, sums collected for long-term surveillance or maintenance.

Such funds do not, however, include monies held as surety where no default has occurred and the reclamation or other bonded activity has been performed; and,

B. Such surety or other financial requirements must be sufficient to ensure compliance with those standards established by the Commission pertaining to bonds, sureties, and financial arrangements to ensure adequate reclamation and long-term management of such byproduct material and its disposal site.

*ARTICLE X*

This Agreement shall become effective on [date], and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at [location] this [date] day of [month], 2018.

For the Nuclear Regulatory Commission.

Kristine L. Svinicki, *Chairman.*

Done at [location] this [date] day of [month], 2018.

For the State of Wyoming.

Matthew H. Mead, *Governor.*

[FR Doc. 2018–14174 Filed 7–2–18; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2018–0124]**

## Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Biweekly notice.

**SUMMARY:** Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued, from June 5, 2018, to June 18, 2018. The last biweekly notice was published on June 19, 2018.

**DATES:** Comments must be filed by August 2, 2018. A request for a hearing must be filed by September 3, 2018.

**ADDRESSES:** You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

• *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0124. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Mail comments to:* May Ma, Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Paula Blechman, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2242, email: *Paula.Blechman@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Obtaining Information and Submitting Comments

*A. Obtaining Information*

Please refer to Docket ID NRC–2018–0124, facility name, unit number(s), plant docket number, application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

• *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0124.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

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

*B. Submitting Comments*

Please include Docket ID NRC–2018–0124, facility name, unit number(s), plant docket number, application date, and subject in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

## II. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in § 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

### *A. Opportunity To Request a Hearing and Petition for Leave To Intervene*

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue

an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

*B. Electronic Submissions (E-Filing)*

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular

hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to these license amendment applications, see the application for amendment which is available for public inspection in ADAMS and at the NRC's PDR. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

*Duke Energy Progress, LLC, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Unit Nos. 1 and 2, Brunswick County, North Carolina*

*Date of amendment request:* April 25, 2018. A publicly-available version is in ADAMS under Accession No. ML18121A366.

*Description of amendment request:* The amendments would revise an existing Note for Technical Specification (TS) 3.8.3, ''Diesel Fuel Oil,'' to allow, on a one-time basis, the main fuel oil storage tank to be inoperable for up to 14 days for the purpose of performing required inspection, cleaning, and any necessary repair activities.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed change does not alter the assumption of the accident analyses or the Technical Specification Bases. The Diesel Fuel Oil system supplies each Emergency Diesel Generator (EDG) with fuel oil capacity sufficient to operate that EDG for a period of approximately seven days while the EDG is operating at rated load. The one-time allowance to permit internal inspection of the main fuel oil storage tank during plant operation does not impact the availability of the EDGs to perform their intended safety function. Furthermore, while the main fuel oil storage tank is out of service, the availability of onsite and offsite fuel oil sources ensures that an adequate supply of fuel oil remains available.

In addition to supplying the four EDGs, the main fuel oil storage tank also supplies the Standby Diesel Fire Pump fuel oil tank. With the main fuel oil storage tank out of service, operator actions necessary to refill this tank are similar in nature to existing operator actions. As such, this change does not adversely impact fire protection capabilities.

Therefore, the proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

Creation of the possibility of a new or different kind of accident requires creating one or more new accident precursors. New accident precursors may be created by modifications of plant configuration, including changes in allowable modes of operation. The proposed change does not involve a physical change to the design of the Diesel Fuel Oil system, nor does it alter the assumptions of the accident analyses. The one-time allowance to permit internal inspection of the main fuel oil storage tank during plant operation does not introduce any new failure modes.

Therefore, the proposed amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The proposed change alters the method of operation of the Diesel Fuel Oil system. However the availability of the EDGs to perform their intended safety function is not impacted and the assumptions of the accident analyses are not altered. Additionally, this change does not adversely impact fire protection capabilities.

Therefore, the proposed amendments do not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Kathryn B. Nolan, Deputy General Counsel, 550 South Tryon Street, M/C DEC45A, Charlotte, NC 28202.

*NRC Acting Branch Chief:* Brian W. Tindell.

*Exelon Generation Company, LLC, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2 (CCNPP), Calvert County, Maryland*

*Date of amendment request:* April 20, 2018. A publicly-available version is in ADAMS under Accession No. ML18113A090.

*Description of amendment request:* The amendments would change (TS) 5.2.2, ''Unit Staff,'' by deleting TS 5.2.2.g.3 related to specific requirements for shift technical advisor (STA) personnel education and training. This change is needed to remove a previously accepted means of filling the STA role that no longer applies to CCNPP.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of any accident previously evaluated?

*Response:* No.

The proposed amendment removes one of three permissible means for filling the STA position. TS 5.2.2.g defines the education and experience requirements for personnel filling the STA position during operation of either Unit in Modes 1, 2, 3, or 4. It provides three permissible means to fill the STA position. One of those means (TS 5.2.2.g.3) is unique to CCNPP and is no longer needed. The remaining requirements (TS 5.2.2.g.1 and TS 5.2.2.g.2) for filling the STA position meet the guidance provided in Generic Letter 86–04, Policy Statement on Engineering Expertise on Shift. This is an administrative change.

This change does not involve any change to the design basis of the plant or of any structure, system or component. As a result, there is no change to the probability or consequences of any previously evaluated accident.

Therefore, the operation of the facility in accordance with the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident form any previously evaluated?

*Response:* No.

The proposed amendment removes one of three permissible means for filling the STA position. TS 5.2.2.g defines the education and experience requirements for personnel filling the STA position during operation of either Unit in Modes 1, 2, 3, or 4. It provides three permissible means to fill the STA position. One of those means (TS 5.2.2.g.3) is unique to CCNPP and is no longer needed. The remaining requirements (TS 5.2.2.g.1 and TS 5.2.2.g.2) for filling the STA position meet the guidance provided in Generic Letter 86–04, Policy Statement on Engineering

Expertise on Shift. This is an administrative change.

This change does not involve any change to the design basis of the plant or of any structure, system or component. The proposed amendment does not impose any new or different requirements. The change does not alter assumptions made in the safety analyses. The proposed change is consistent with the safety analyses assumptions and current plant operating practice.

Therefore, the operation of the facility in accordance with the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

*Response:* No.

The proposed amendment removes one of three permissible means for filling the STA position. TS 5.2.2.g defines the education and experience requirements for personnel filling the STA position during operation of either Unit in Modes 1, 2, 3, or 4. It provides three permissible means to fill the STA position. One of those means (TS 5.2.2.g.3) is unique to CCNPP and is no longer needed. The remaining requirements (TS 5.2.2.g.1 and TS 5.2.2.g.2) for filling the STA position meet the guidance provided in Generic Letter 86–04, Policy Statement on Engineering Expertise on Shift. This is an administrative change.

This change does not involve any change to the design basis of the plant or of any structure, system or component. As a result, there is no decrease in any margin of safety due to this proposed change.

Therefore, operation of the facility in accordance with the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

*NRC Branch Chief:* James G. Danna.

*Exelon Generation Company, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1 (NMP1), Oswego County, New York*

*Date of amendment request:* March 13, 2018. A publicly-available version is in ADAMS under Accession No. ML18072A182.

*Description of amendment request:* The amendment would modify NMP1, Technical Specifications Surveillance Requirement (SR) 4.2.7.d for reactor coolant system isolation valves and SR 4.2.7.1.a for reactor coolant system pressure isolation valve leakage to relocate the specific surveillance frequency to the NMP1 Inservice Testing Program.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

Performance of lnservice Testing is not an initiator to any accident previously evaluated. As a result, the probability of occurrence of an accident is not significantly affected by the proposed change. The availability of the affected components, as well as their ability to mitigate the consequences of accidents previously evaluated, is not affected.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed change does not alter the design or configuration of the plant. The proposed change does not involve a physical alteration of the plant; no new or different kind of equipment will be installed. The proposed change does not alter the types of lnservice Testing performed. The frequency of lnservice Testing is unchanged.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The proposed change eliminates [surveillance] requirements from the TS in lieu of requirements in the ASME [American Society of Mechanical Engineers] Code. Compliance with the ASME Code is required by 10 CFR 50.55a. Should the component be inoperable, the Technical Specifications provide actions to ensure that the margin of safety is protected.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

*NRC Branch Chief:* James G. Danna.

*Exelon Generation Company, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York*

*Date of amendment request:* February 9, 2018. A publicly-available version is in ADAMS under Accession No. ML18040A636.

*Description of amendment request:* The amendment would remove the Boraflex credit from the two remaining Boraflex storage racks located in the spent fuel pool. The licensee plans to install permanent cell blockers in pre-determined spent fuel pool rack cells thus eliminating reliance on Boraflex for spent fuel pool reactivity control.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed change does not make any change to the systems, structures or components in the Nine Mile Point Unit 1 (NMP1) Spent Fuel Pool (SFP) except for the installation of cell blockers in pre-determined Boraflex rack cells. The change is necessary to ensure that, with continued Boraflex degradation over time, the effective neutron multiplication factor, $k_{eff}$, is less than 0.95, if the SFP is fully flooded with unborated water. The proposed change does not change the manner in which spent fuel is handled, moved or stored in the storage rack cells. The installation of the cell blockers does not impact the fuel source terms, therefore, there is no adverse radiological impact. The installation of the cell blockers does not change the decay heat and the cell blockers meet the criterion to allow for continued water flow through the storage cell; thus, there is no adverse thermal-hydraulic impact. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

Onsite storage of spent fuel assemblies in the NMP1 SFP is a normal activity for which NMP1 has been designed and licensed. As part of assuring that this normal activity can be performed without endangering public health and safety, the ability to safely accommodate different possible accidents in the SFP, such as dropping a fuel bundle or misleading a fuel bundle, have been analyzed. The proposed SFP storage configuration using cell blockers does not change the methods of fuel movement or spent fuel storage. The proposed change of

using cell blockers in pre-determined Boraflex rack cells allows for continued use of SFP storage rack cells with degraded Boraflex while assuring the effective neutron multiplication factor, $k_{eff}$, is less than 0.95.

The proposed use of cell blockers in the pre-determined Boraflex rack cells does not create a possible new or different kind of accident from any accident previously evaluated. The displacement of the SFP water by the cell blockers is small and hence has an insignificant impact on the heat transfer from fuel assemblies to the SFP water, the time-to-boil and boil-off rate in the SFP. The stresses in the storage rack under the loaded weight of fuel assemblies and the cell blockers will remain within the allowable limits and will be bounded by the rack seismic analysis. The accident condition, where a fuel assembly is dropped onto the cell blocker, will not cause loss of the cell blocker function. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The proposed change will maintain, per Attachment 3, the $k_{eff}$ to be less than 0.95 and thus preserve the required safety margin of 5%. The installation of the cell blockers does not impact the fuel source terms and decay heat and hence has no adverse radiological impact. In addition, the radiological consequences of a dropped fuel bundle are unchanged because the event involving a dropped fuel bundle onto a spent fuel storage rack cell containing a cell blocker is bounded by the radiological consequences of a dropped fuel bundle onto a spent fuel storage rack cell containing a stored fuel bundle. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

*NRC Branch Chief:* James G. Danna.

*Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Nuclear Generating Unit Nos. 3 and 4 (Turkey Point), Miami-Dade County, Florida*

*Date of amendment request:* May 14, 2018. A publicly-available version is in ADAMS under Accession No. ML18134A264.

*Description of amendment request:* The amendments would revise the technical specifications to increase the minimum load required for the Emergency Diesel Generator (EDG) partial-load rejection surveillance requirement (SR). Additionally, the amendments would modify the EDG voltage and frequency limits for the SR and establish a recovery period for the EDG(s) to return to steady-state conditions.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed changes modify an EDG surveillance test by aligning the voltage and frequency limits with the current licensing basis and the Westinghouse STS [Standard Technical Specification]. As such, the proposed changes cannot be an initiator of any previously evaluated accident, increase its likelihood or increase the likelihood of an EDG malfunction or supported equipment. The proposed changes to the voltage and frequency limits for the immediate aftermath of a partial-load rejection and the proposed recovery period will not affect the manner in which EDGs are designed or operated. The EDGs have no time-dependent failure modes as a result of the proposed changes and will continue to operate within the parameters assumed in applicable accident analyses. Hence no impact on the consequences of any previously evaluated accident will result from the proposed changes.

Therefore, facility operation in accordance with the proposed changes would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed changes modify an EDG surveillance test by aligning the voltage and frequency limits with the current licensing basis and the Westinghouse STS. The proposed changes do not modify the manner in which the EDGs are designed or operated and thereby cannot introduce new failure modes, impact existing plant equipment in a manner not previously evaluated or initiate a new type of malfunction or accident. The proposed changes serve to enhance EDG reliability and availability and as such, cannot adversely affect the EDGs' ability to perform as originally designed, including their capability to withstand a worst case single failure.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

*Response:* No.

The proposed changes modify an EDG surveillance test by aligning the voltage and frequency limits with the current licensing basis and the Westinghouse STS. The proposed changes do not modify any setpoints for which protective actions associated with accident detection or mitigation are initiated. The proposed change neither affects the design of plant equipment nor the manner in which the plant is operated. The proposed changes increase the reliability and the availability of the EDGs and as such, cannot adversely impact any Turkey Point safety limits or limiting safety settings.

Therefore, operation of the facility in accordance with the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Debbie Hendell, Managing Attorney—Nuclear, Florida Power & Light Company, 700 Universe Blvd. MS LAW/JB, Juno Beach, Florida 33408–0420.

*NRC Acting Branch Chief:* Booma Venkataraman.

*Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Nuclear Generating Unit Nos. 3 and 4, Miami-Dade County, Florida*

*Date of amendment request:* May 3, 2018. A publicly-available version is in ADAMS under Accession No. ML18127B714.

*Description of amendment request:* The amendments would revise the Technical Specifications by revising Safety Limit 2.1.1.b, to reflect the peak fuel centerline temperature specified in WCAP–17642–P–A, Revision 1, ''Westinghouse Performance Analysis and Design Model (PAD5).'' A non-proprietary version (WCAP–17642–NP–A, Revision (1) can be found in ADAMS under Accession No. ML17338A396.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed amendments involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

There are no design changes associated with the proposed amendments. All design, material, and construction standards that were applicable prior to this amendment request will continue to be applicable. The

proposed amendments will not affect accident initiators or precursors or alter the design, conditions, and configuration of the facility, or the manner in which the plant is operated and maintained, with respect to such initiators or precursors. Compliance with Safety Limit 2.1.1.b is required to confirm that fuel cladding failure does not occur as a result of fuel centerline melting. The fuel centerline melt temperature limit is established to preclude centerline melting. The proposed change to the fuel centerline melt temperature limit has been reviewed by the NRC and found to be appropriately conservative with respect to the fuel material properties in the Final Safety Evaluation for WCAP–17642–P–A, Revision 1 Accident analysis acceptance criteria will continue to be met with the proposed amendments. Hence, the proposed amendments will not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of any accident previously evaluated. The proposed amendments will not alter any assumptions or change any mitigation actions in the radiological consequence evaluations in the Turkey Point Updated Final Safety Analysis Report (UFSAR). Consequently, the applicable radiological dose acceptance criteria will continue to be met.

Therefore, the proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed amendments create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

There are no proposed design changes nor are there any changes in the method by which any safety-related plant structures, systems, and components perform their specified safety functions. The proposed amendments will not affect the normal method of plant operation or change any operating parameters. No equipment performance requirements will be affected. The proposed amendments will not alter any assumptions made in the safety analyses. The proposed amendments revise Reactor Core Safety Limit 2.1.1.b; however, the change does not involve a physical modification of the plant. No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures will result from this amendment. Hence, there will be no adverse effect or challenges imposed on any safety-related system as a result of these amendments.

Therefore, the proposed amendments do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed amendments involve a significant reduction in a margin of safety?

*Response:* No.

The revised Safety Limit 2.1.1.b has been calculated based on the NRC-approved methods which ensure that the plant operates in compliance with all regulatory criteria. There will be no effect on those plant systems necessary to effect the accomplishment of protection functions. No instrument setpoints or system response times are affected and none of the acceptance criteria for any accident analysis will be changed. Consequently, the proposed amendments will have no impact on the radiological consequences of a design basis accident.

Therefore, the proposed amendments do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Debbie Hendell, Managing Attorney—Nuclear, Florida Power & Light Company, 700 Universe Blvd. MS LAW/JB, Juno Beach, Florida 33408–0420.

*NRC Acting Branch Chief:* Booma Venkataraman.

*NextEra Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire*

*Date of amendment request:* March 16, 2018. A publicly-available version is in ADAMS under Accession No. ML18079A058.

*Description of amendment request:* The amendment would revise the frequencies for performing the relative pressure measurement and the assessment of the control room envelope boundary required by (TS) 6.7.6.l, Control Room Envelope Habitability Program, from 18 months to 36 months.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The TS administrative controls associated with the proposed change to the TS are not initiators of any accidents previously evaluated, so the probability of accidents previously evaluated is unaffected by the proposed changes. The proposed change does not alter the design, function, or operation of any plant structure, system, or component (SSC). The capability of any operable TS-required SSC to perform its specified safety function is not impacted by the proposed change. As a result, the outcomes of accidents previously evaluated are unaffected. Therefore, the proposed changes do not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

*Response:* No.

The proposed change does not challenge the integrity or performance of any safety-related systems. No plant equipment is installed or removed, and the changes do not alter the design, physical configuration, or method of operation of any plant SSC. No physical changes are made to the plant, so no new causal mechanisms are introduced. Therefore, the proposed changes to the TS do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

*Response:* No.

The ability of any operable SSC to perform its designated safety function is unaffected by the proposed changes. The proposed changes do not alter any safety analyses assumptions, safety limits, limiting safety system settings, or method of operating the plant. The changes do not adversely affect plant operating margins or the reliability of equipment credited in the safety analyses. With the proposed change, the control room envelope remains capable of performing its safety function. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Debbie Hendell, Managing Attorney, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420.

*NRC Branch Chief:* James G. Danna.

*PSEG Nuclear LLC and Exelon Generation Company, LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey*

*Date of amendment request:* May 16, 2018. A publicly-available versions is in ADAMS under Accession No. ML18136A866.

*Description of amendment request:* The amendments would revise (TS) 3.8.2.1, ''A.C. [Alternating Current] Distribution—Operating,'' to increase the Vital Instrument Bus Inverters allowed outage time (AOT) from 24 hours for the A, B and C inverters to 7 days and from 72 hours for the D inverter to 7 days. The proposed extended AOT is based on application of the Salem Generating Station Probabilistic Risk Assessment (PRA) in support of a risk-informed extension, and on additional considerations and compensatory actions.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the

licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed TS amendment does not affect the design of the vital A.C. inverters, the operational characteristics or function of the inverters, the interfaces between the inverters and other plant systems, or the reliability of the inverters. An inoperable vital A.C. inverter is not considered an initiator of an analyzed event. In addition, TS Actions and the associated Allowed Outage Times are not initiators of previously evaluated accidents. Extending the Allowed Outage Time for an inoperable vital A.C. inverter would not have a significant impact on the frequency of occurrence of an accident previously evaluated. The proposed amendment will not result in modifications to plant activities associated with inverter maintenance, but rather, provides operational flexibility by allowing additional time to perform inverter troubleshooting, corrective maintenance, and post-maintenance testing on-line.

The proposed extension of the Allowed Outage Time for an inoperable vital A.C. inverter will not significantly affect the capability of the inverters to perform their safety function, which is to ensure an uninterruptible supply of 115-volt A.C. electrical power to the associated power distribution subsystems. An evaluation, using PRA methods, confirmed that the increase in plant risk associated with implementation of the proposed Allowed Outage Time extension is consistent with the NRC's Safety Goal Policy Statement, as further described in RG [Regulatory Guide] 1.174 and RG 1.177. In addition, a deterministic evaluation concluded that plant defense-in-depth philosophy will be maintained with the proposed Allowed Outage Time extension.

There will be no impact on the source term or pathways assumed in accidents previously evaluated. No analysis assumptions will be changed and there will be no adverse effects on onsite or offsite doses as the result of an accident.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed amendment does not involve physical alteration of the Salem Generating Station. No new equipment is being introduced, and installed equipment is not being operated in a new or different manner. There is no change being made to the parameters within which Salem is operated. There are no setpoints at which protective or mitigating actions are initiated that are affected by this proposed action. The use of the alternate Class 1E power source for the vital A.C. instrument bus is consistent with the Salem plant design. The change does not alter assumptions made in the safety analysis. This proposed action will not alter the manner in which equipment operation is initiated, nor will the functional demands on credited equipment be changed. No alteration is proposed to the procedures that ensure Salem remains within analyzed limits, and no change is being made to procedures relied upon to respond to an off-normal event. As such, no new failure modes are being introduced.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

*Response:* No.

Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The proposed change, which would increase the AOT from 24/72 hours to 7 days for one inoperable inverter, does not exceed or alter a setpoint, design basis or safety limit.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Jeffrie J. Keenan, PSEG Nuclear LLC—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

*NRC Branch Chief:* James G. Danna.

*Wolf Creek Nuclear Operating Corporation (WCNOC), Docket No. 50–482, Wolf Creek Generating Station (WCGS), Unit No. 1, Coffey County, Kansas*

*Date of amendment request:* May 9, 2018. A publicly-available version is in ADAMS under Accession No. ML18135A172.

*Description of amendment request:* The amendment would revise the Emergency Plan for WCGS to (1) reduce the number of required Emergency Response Organization positions; (2) standardize Technical Support Center activation time to 75 minutes; (3) replace the current normal full-time work hours licensed medical practitioner position with First Aid Responders; and (4) remove reference to performing dose assessment using containment pressure indication.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed change to the WCNOC Emergency Plan is administrative in nature. This proposed change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the structures, systems, and components (SSCs) relied upon to mitigate the consequences of postulated accidents, and has no impact on the probability or consequences of an accident previously evaluated.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed change to the WCNOC Emergency Plan is administrative in nature. This proposed change does not alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. The proposed change does not require any plant modifications which affect the performance capability of the SSCs relied upon to mitigate the consequences of postulated accidents, and does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

Plant safety margins are established through limiting conditions for operation, limiting safety systems settings, and safety limits specified in the technical specifications. The proposed change to the WCNOC Emergency Plan is administrative in nature. Since the proposed change is administrative in nature, there are no changes to these established safety margins.

Therefore the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the

amendment request involves no significant hazards consideration.

*Attorney for licensee:* Jay E. Silberg, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street NW, Washington, DC 20037.

*NRC Branch Chief:* Robert J. Pascarelli.

**III. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses**

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

*Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3 (PVNGS), Maricopa County, Arizona*

*Date of amendment request:* June 22, 2017.

*Brief description of amendments:* The amendments revised the technical specifications to eliminate TS 5.5.8, ''Inservice Testing Program.'' A new defined term, ''INSERVICE TESTING PROGRAM,'' was added to the TS definitions section. This is consistent with Technical Specifications Task Force (TSTF) Traveler TSTF–545, Revision 3, ''TS Inservice Testing Program Removal & Clarify SR [Surveillance Requirement] Usage Rule Application to Section 5.5 Testing.'' The amendments eliminated the PVNGS TS 5.5.8 to remove requirements duplicated in American Society of Mechanical Engineers Code for Operations and Maintenance of Nuclear Power Plants, Code Case OMN–20, ''Inservice Test Frequency.''

*Date of issuance:* June 7, 2018.

*Effective date:* As of the date of issuance and shall be implemented within 120 days from the date of issuance.

*Amendment Nos.:* 206 (Unit 1), 206 (Unit 2), and 206 (Unit 3). A publicly-available version is in ADAMS under Accession No. ML18120A283; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

*Renewed Facility Operating License Nos. NPF–41, NPF–51, and NPF–74:* The amendments revised the Renewed Facility Operating Licenses and TSs.

*Date of initial notice in* ***Federal Register***: August 15, 2017 (82 FR 38716).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 7, 2018.

*No significant hazards consideration comments received:* No.

*Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Nuclear Plant, Van Buren County, Michigan*

*Date of amendment request:* July 27, 2017, as supplemented by letter dated December 19, 2017.

*Brief description of amendment:* The amendment revised certain staffing and training requirements, reports, programs, and editorial changes in the Technical Specifications Table of Contents; Section 1.0, ''Use and Application''; and Section 5.0, ''Administrative Controls,'' that will no longer be applicable once Palisades Nuclear Plant is permanently defueled.

*Date of issuance:* June 4, 2018.

*Effective date:* Upon the licensee's submittal of the certifications required by 10 CFR 50.82(a)(1) and shall be implemented within 60 days from the amendment effective date.

*Amendment No.:* 266. A publicly-available version is in ADAMS under Accession No. ML18114A410; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

*Renewed Facility Operating License No. DPR–20:* The amendment revised the Renewed Facility Operating License and Technical Specifications.

*Date of initial notice in* ***Federal Register***: September 12, 2017 (82 FR 42847). The supplemental letter dated December 19, 2017, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 4, 2018.

*No significant hazards consideration comments received:* No.

*Exelon Generation Company, LLC, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit No. 2 (Nine Mile Point 2), Oswego County, New York*

*Date of amendment request:* August 22, 2017.

*Brief description of amendment:* The amendment revised the Nine Mile Point 2 Technical Specifications by removing a note associated with Surveillance Requirement 3.5.1.2 that allowed low pressure coolant injection subsystems to be considered operable in MODE 3 under certain conditions.

*Date of issuance:* June 8, 2018.

*Effective date:* As of the date of issuance and shall be implemented within 60 days of issuance.

*Amendment No.:* 170. A publicly-available version is in ADAMS under Accession No. ML18131A291; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

*Renewed Facility Operating License No. NPF–69:* The amendment revised the Renewed Facility Operating License and Technical Specifications.

*Date of initial notice in* ***Federal Register***: December 19, 2017 (82 FR 60227).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 8, 2018.

*No significant hazards consideration comments received:* No.

*Florida Power & Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Nuclear Generating Unit Nos. 3 and 4, Miami-Dade County, Florida*

*Date of amendment request:* June 28, 2017, as supplemented by letter dated February 28, 2018.

*Brief description of amendments:* The amendments revised the technical specifications to relocate to licensee-controlled documents; select acceptance criteria specified in TS surveillance requirements credited for satisfying the Inservice Testing (IST) Program and Inservice Inspection Program requirements; to delete the SRs for the ASME Code Class 1, 2, and 3 components; to replace references to the Surveillance Frequency Control Program with reference to the Turkey Point IST Program where appropriate; to establish a Reactor Coolant Pump Flywheel Inspection Program; and to make related editorial changes. Additionally, the amendments deleted a redundant SR for Accumulator check valve testing and added a footnote to the SR for Pressure Isolation Valve testing.

*Date of issuance:* June 12, 2018.

*Effective date:* As of the date of issuance and shall be implemented within 120 days of issuance.

*Amendment Nos.:* 281 and 275. A publicly-available version is in ADAMS under Accession No. ML18130A466; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

*Renewed Facility Operating License Nos. DPR–31 and DPR–41:* The amendments revised the Renewed Facility Operating Licenses and Technical Specifications.

*Date of initial notice in* ***Federal Register***: August 29, 2017 (82 FR 41069). The supplemental letter dated February 28, 2018, expanded the scope of its request as originally noticed; therefore, the NRC published another notice in the **Federal Register** on April 10, 2018 (83 FR 15417), which replaced the original notice in its entirety.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 12, 2018.

*No significant hazards consideration comments received:* No.

*NextEra Energy Duane Arnold, LLC, Docket No. 50–331, Duane Arnold Energy Center (DAEC), Linn County, Iowa*

*Date of amendment request:* June 9, 2017, as supplemented by letters dated November 1, 2017, February 8, 2018, and March 28, 2018.

*Brief description of amendment:* The amendment revised existing DAEC technical specification requirements related to ''operations with a potential for draining the reactor vessel'' with new requirements on reactor pressure vessel water inventory control to protect TS 2.1.1.3 Safety Limit.

*Date of issuance:* June 18, 2018.

*Effective date:* As of the date of issuance and shall be implemented within 90 days of the date of issuance.

*Amendment No.:* 305. A publicly-available version is in ADAMS under Accession No. ML18089A160; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

*Renewed Facility Operating License No. DPR–49:* The amendment revised the Renewed Facility Operating License and Technical Specifications.

*Date of initial notice in* ***Federal Register***: January 16, 2018 (83 FR 2230). The supplemental letters dated February 8, 2018, and March 28, 2018, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and they did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 18, 2018.

*No significant hazards consideration comments received:* No.

*NextEra Energy, Point Beach, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin*

*Date of amendment request:* June 23, 2017, as supplemented by letters dated August 21, 2017, and December 21, 2017.

*Brief description of amendments:* The amendments revised the current emergency action level (EAL) scheme to one based on the Nuclear Energy Institute (NEI) guidance in NEI 99–01, Revision 6, ''Development of Emergency Action Levels for Non-Passive Reactors,'' dated November 2012. Revision 6 to NEI 99–01 was endorsed by the NRC by letter dated March 28, 2013.

*Date of issuance:* June 13, 2018.

*Effective date:* As of the date of issuance and shall be implemented within 365 days of issuance to allow consideration of outage schedules and required training cycles.

*Amendment Nos.:* 261 and 264. A publicly-available version is in ADAMS under Accession No. ML18079A045; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

*Renewed Facility Operating License Nos. DPR–24 and DPR–27:* The amendments revised the Facility Operating License.

*Date of initial notice in* ***Federal Register***: November 21, 2017 (82 FR 55408). The supplemental letter dated December 21, 2017, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 13, 2018.

*No significant hazards consideration comments received:* No.

*Southern Nuclear Operating Company, Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant (VEGP), Unit Nos. 3 and 4, Burke County, Georgia*

*Date of amendment request:* October 6, 2017, as supplemented by letter dated February 28, 2018.

*Description of amendments:* The amendments consisted of changes to the Updated Final Safety Analysis Report (UFSAR) in the form of departures from the incorporated plant-specific Design Control Document Tier 2 information. Further, the amendments revised a Combined License (COL) License Condition which references an UFSAR Section impacted by the proposed changes. Specifically, the amendments consisted of changes to revise the methodology and acceptance criteria for the in-containment refueling water storage tank heatup preoperational test described in UFSAR Subsection 14.2.9.1.3, item h and the passive residual heat removal heat exchanger preoperational test described in UFSAR Subsection 14.2.9.1.3, item g. These changes involves material which is specifically referenced in Section 2.D.(2) of the COLs for VEGP Units 3 and 4. The amendments also revised the reference to the In-containment Refueling Water Storage Tank Heatup Test in the COL license condition, consistent with the changes to the UFSAR.

*Date of issuance:* April 11, 2018.

*Effective date:* As of the date of issuance and shall be implemented within 30 days of issuance.

*Amendment Nos.:* 120 (Unit 3) and 119 (Unit 4). A publicly-available version is in ADAMS under Accession No. ML18085A045; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

*Facility Combined Licenses Nos. NPF–91 and NPF–92:* The amendments revised the Facility Combined Licenses.

*Date of initial notice in* ***Federal Register***: February 2, 2018 (83 FR 8509). The supplemental letter dated February 28, 2018, provided additional information that clarified the

application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in the Safety Evaluation dated April 11, 2018.

*No significant hazards consideration comments received:* No.

*Southern Nuclear Operating Company, Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant (VEGP), Unit Nos. 3 and 4, Burke County, Georgia*

*Date of amendment request:* February 2, 2018.

*Description of amendments:* The amendments authorized the Southern Nuclear Operating Company to depart from the VEGP Units 3 and 4 plant-specific Appendix A, technical specifications as incorporated into the VEGP Unit Nos. 3 and 4 COLs, and changed to the approved AP1000 Design Control Document Tier 2 information as incorporated into the Updated Final Safety Analysis Report (UFSAR). Specifically, the changes to the COLs Appendix A, included TS 5.6.3 for the core operating limits report documentation to remove certain reactor trip instrumentation from the list of core operating limits and include analytical methods mentioned elsewhere in the TS and UFSAR and to TS 5.7.2 to correct a typographical error in a description of a radiation monitoring device that may be used in a high radiation area. The changes to the UFSAR Tier 2 Table 1.6–1, ''Material Referenced,'' and Section 4.3.5, ''References,'' updated the list of references as described in the application.

*Date of issuance:* May 31, 2018.

*Effective date:* As of the date of issuance and shall be implemented within 30 days of issuance.

*Amendment Nos.:* 124 (Unit 3) and 123 (Unit 4). A publicly-available version is in ADAMS under Accession No. ML18123A511; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

*Facility Combined Licenses Nos. NPF–91 and NPF–92:* The amendments revised the Facility Combined Licenses.

*Date of initial notice in* ***Federal Register***: March 13, 2018 (83 FR 10911).

The Commission's related evaluation of the amendments is contained in the Safety Evaluation dated May 31, 2018.

*No significant hazards consideration comments received:* No.

*STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project (STP), Units 1 and 2, Matagorda County, Texas*

*Date of amendment request:* September 18, 2017.

*Brief description of amendments:* The amendments relocated the defined core plane regions where the radial peaking factor limits are not applicable, called radial peaking factor exclusion zones, from TS 4.2.2.2.f to the Core Operating Limits Reports (COLRs) for STP, Unit Nos. 1 and 2. The amendment also revised the COLR Administrative Controls TS to add exclusion zones to the list of limits found in the COLRs, and revised the description of the methodology used to determine the values for the radial peaking factor exclusion zones. In addition, the amendment corrected two administrative errors.

*Date of issuance:* June 7, 2018.

*Effective date:* As of the date of issuance and shall be implemented within 90 days from the date of issuance.

*Amendment Nos.:* 213 (Unit 1) and 199 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML18128A342; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

*Renewed Facility Operating License Nos. NPF–76 and NPF–80:* The amendments revised the Renewed Facility Operating Licenses and Technical Specifications.

*Date of initial notice in* ***Federal Register***: December 5, 2017 (82 FR 57475).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 7, 2018.

*No significant hazards consideration comments received:* No.

*United States Maritime Administration (MARAD), Docket No. 50–238, Nuclear Ship SAVANNAH (NSS), Baltimore, Maryland*

*Date of amendment request:* March 30, 2018.

*Brief description of amendment:* The amendment revised the Technical Specifications to establish controls for all accesses to the Containment Vessel in support of two structural modifications.

*Date of issuance:* June 12, 2018.

*Effective date:* As of the date of issuance and shall be implemented within 60 days.

*Amendment No.:* 16. A publically-available version is in ADAMS under Accession No. ML18109A578.

*Facility Operating License No. NS–1:* The amendment revised the License.

*Date of initial notice in* ***Federal Register***: May 8, 2018 (83 FR 20863).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 12, 2017.

*No significant hazards consideration comments received:* No.

Dated at Rockville, Maryland, this 21st day of June 2018.

For the Nuclear Regulatory Commission.

**Tara Inverso,**

*Acting Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2018–13758 Filed 7–2–18; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2018–0116]**

## Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** License amendment request; notice of opportunity to comment, request a hearing, and petition for leave to intervene; order imposing procedures.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) received and is considering approval of three amendment requests. The amendment requests are for Oconee Nuclear Station, Unit Nos. 1, 2, and 3; Duane Arnold Energy Center; and Callaway Plant, Unit No. 1. For each amendment request, the NRC proposes to determine that they involve no significant hazards consideration. Because each amendment request contains sensitive unclassified non-safeguards information (SUNSI), an order imposes procedures to obtain access to SUNSI for contention preparation.

**DATES:** Comments must be filed by August 2, 2018. A request for a hearing must be filed by September 3, 2018. Any potential party as defined in § 2.4 of title 10 of the Code of Federal Regulations (10 CFR) who believes access to SUNSI is necessary to respond to this notice must request document access by July 13, 2018.

**ADDRESSES:** You may submit comments by any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0116. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* May Ma, Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Shirley Rohrer, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5411; email: *Shirley.Rohrer@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Obtaining Information and Submitting Comments

### *A. Obtaining Information*

Please refer to Docket ID NRC–2018–0116, facility name, unit number(s), plant docket number, application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0116.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

### *B. Submitting Comments*

Please include Docket ID NRC–2018–0116, facility name, unit number(s), plant docket number, application date, and subject in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

## II. Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the NRC is publishing this notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes notices of amendments containing SUNSI.

## III. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish a notice of issuance in the **Federal Register**. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

### *A. Opportunity To Request a Hearing and Petition for Leave To Intervene*

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (First floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if

appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

*B. Electronic Submissions (E-Filing)*

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the

participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *http://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click cancel when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

*Duke Energy Carolinas, LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Unit Nos. 1, 2, and 3, Oconee County, South Carolina*

*Date of amendment request:* October 20, 2017. A publicly-available version is in ADAMS under Accession No. ML17299A125.

*Description of amendment request:* This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendments would revise the Updated Final Safety Analysis Report (UFSAR) to provide off-nominal success criteria for maintaining the reactor in a safe shutdown condition when using the Standby Shutdown Facility (SSF) to mitigate a Turbine Building (TB) flood occurring when an Oconee Nuclear Station unit is not at nominal full power conditions. The amendments would also revise the UFSAR to allow the use of the Main Steam (MS) Atmospheric Dump Valves (ADVs), when available, to enhance SSF mitigation capabilities.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed change provides off-nominal success criteria for SSF mitigated TB flood events occurring during off-nominal initial conditions. The proposed change does not impact the current success criteria for SSF events occurring during nominal full power initial conditions. The LAR [license amendment request] also requests NRC approval to use the MS ADVs, when available, to enhance SSF mitigation capabilities. The proposed change does not adversely impact containment integrity, radiological release pathways, fuel design, filtration systems, main steam relief valve set points, or radwaste systems. No new radiological release pathways are created. During licensing of the SSF design, SSF performance was evaluated assuming the events that were to be mitigated by the SSF were initiated from nominal full power conditions. Duke Energy analyses demonstrate that SSF mitigated Turbine Building flood events occurring during off-nominal full power conditions can be mitigated acceptably when the proposed off-nominal success criteria are met. As such, the proposed change does not have a significant impact on the dose consequences of an accident previously evaluated. The SSF is not an event initiator; therefore, it does not affect the frequency of occurrence of accidents previously evaluated in the UFSAR. The use of off-nominal success criteria is not a precursor to a TB flood event; therefore, the proposed change does not involve a significant increase in the probability of any event requiring operation of the SSF. The proposed off-nominal success criteria will continue to ensure the SSF can maintain the unit(s) in a safe shutdown condition. As such, the proposed change does not involve a significant increase in the consequences of any event requiring operation of the SSF.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed UFSAR change requests approval to modify the SSF licensing basis for off-nominal conditions by using off-nominal success criteria for SSF mitigated TB flood events occurring during off-nominal conditions. Duke Energy analyses demonstrate that meeting the off-nominal success criteria is an acceptable method of mitigating the TB flood event and does not create the possibility of a new or different

kind of accident. The LAR also requests NRC approval to use the main steam atmospheric dump valves, when available, to enhance the mitigation of SSF events. The proposed change does not change the design function or operation of the SSF. The SSF is designed with the capability to mitigate a TB flood and meet specific success criteria for the entire 72 hour mission time. These changes do not adversely affect this mission time.

The proposed change does not create the possibility of a new or different kind of accident since the proposed change does not introduce credible new failure mechanisms, malfunctions, or accident initiators not considered in the design and licensing bases.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

*Response:* No.

The proposed change requests approval of an off-nominal set of success criteria for SSF mitigated TB flood events occurring during off-nominal power conditions. Duke Energy analyses demonstrate there is adequate margin to prevent lift of pressurizer safety valves while water-solid. The proposed change does not involve operating installed equipment (ADVs) in a new or different manner. The ADVs are periodically tested and have been used successfully for a plant cooldown. Use of the ADVs to enhance the mitigation of SSF events serves to improve plant safety by preventing the pressurizer from reaching water-solid conditions and by reducing the pressure at which the MS system is controlled. ADV use also allows plant stabilization to occur more quickly and at lower temperatures, and eliminates repeated cycling of the MS relief valves. The proposed change does not involve a change to any set points for parameters which initiate protective or mitigation action and does not have any impact on the fission product barriers or safety limits. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Kate Nolan, Deputy General Counsel, Duke Energy Carolinas, 550 South Tryon Street, Charlotte, North Carolina 28202.

*NRC Branch Chief:* Michael T. Markley.

*NextEra Energy Duane Arnold, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa*

*Date of amendment request:* December 15, 2017. A publicly-available version is in ADAMS under Accession No. ML17352A335.

*Description of amendment request:* This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendment would modify Technical Specification (TS) 3.6.1.7, ''Suppression Chamber-to-Drywell Vacuum Breakers,'' by revising the required number of operable vacuum breakers for opening from six to five.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

Operable suppression chamber-to-drywell vacuum breakers are required for accident mitigation. Failure of the vacuum breakers is not assumed as an accident initiator for any accident previously evaluated. Therefore, any potential failure of a vacuum breaker to perform when necessary will not affect the probability of an accident previously evaluated.

The proposed change maintains a sufficient number of operable vacuum breakers to meet the limiting design basis accident conditions. The consequences of an accident previously evaluated while utilizing the proposed change are no different than the consequences of an accident prior to the proposed change. As a result, the consequences of an accident previously evaluated are not significantly increased [sic].

Therefore, the proposed TS change does not involve an increase in the probability or consequences of a previously evaluated accident.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed change does not alter the protection system design, create new failure modes, or change any modes of operation. The proposed change does not involve a physical alteration of the plant; and no new or different kind of equipment will be installed. Consequently, there are no new initiators that could result in a new or different kind of accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The proposed change to the minimum number of operable suppression chamber-to-drywell vacuum breakers for opening ensures that an excessive negative differential pressure between the suppression chamber and the drywell will be prevented during the most limiting postulated design-basis event. The minimum number of operable suppression chamber-to-drywell vacuum breakers for opening is set appropriately to ensure adequate margin based on the number of available vacuum breakers not having an effect on the containment system analysis report. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* William Blair, P.O. Box 14000, Juno Beach, Florida 33408–0420.

*NRC Branch Chief:* David J. Wrona.

**Union Electric Company, Docket No. 50–483, Callaway Plant, Unit No. 1, Callaway County, Missouri**

*Date of amendment request:* March 9, 2018. A publicly-available version is in ADAMS under Package Accession No. ML18068A685.

*Description of amendment request:* This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendment would revise the Technical Specifications (TSs) to add TS 3.7.20, ''Class 1E Electrical Equipment Air Conditioning (A/C) System,'' to the Callaway Plant TSs. This proposed change would enhance the capability of one Class 1E electrical equipment A/C train to provide adequate area cooling for both trains of Class 1E electrical equipment during normal and accident conditions.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The safety-related Class 1E Electrical Equipment A/C system is designed to perform its area cooling function for the Class 1E electrical equipment during normal and accident conditions. Since the supported Class 1E electrical equipment is utilized and required to be available for accident mitigation, the Class 1E Electrical Equipment A/C system performs an accident mitigation function. The system itself, however, is not involved in the initiation of accidents previously evaluated in the FSAR [Final Safety Analysis Report]. That is, failure of the Class 1E Electrical Equipment A/C system itself is not an initiator of such accidents, and consequently, the proposed addition of TS 3.7.20 does not involve an increase in the probability of an accident previously evaluated.

The proposed addition of TS 3.7.20 creates an LCO [Limiting Condition for Operation] requirement for Operability of both Class 1E electrical equipment A/C trains during applicable plant conditions. The LCO requirement for both trains to be Operable provides redundancy and single-failure protection, thus maximizing the availability of the Class 1E Electrical Equipment A/C system function(s). This serves to preserve assumptions regarding the Operability and/or availability of the Class 1E electrical equipment supported by the Class 1E Electrical Equipment A/C system.

In addition to the proposed LCO requiring the Operability of both Class 1E electrical equipment A/C trains, a Condition and associated Required Actions are proposed to address the inoperability of one of the Class 1E electrical equipment A/C trains. The proposed Required Action(s) provides for more than merely specifying a Completion Time for restoring the inoperable train. Proposed Actions A.1 and A.2 together ensure a continuation of the Class 1E electrical equipment cooling function for both trains of equipment by requiring mitigating actions to be taken and periodic verification that room area temperatures remain within the specified limit. These Required Actions are met through enhanced ventilation capability provided by plant modifications that enable the remaining single Operable Class 1E electrical equipment A/C train to provide adequate cooling to the areas of both trains of Class 1E electrical equipment. This ensures continued area cooling during the period of time permitted for restoring the inoperable Class 1E electrical equipment A/C train.

The addition of TS 3.7.20 to the plant's Technical Specifications thus supports the availability of the Class 1E Electrical Equipment A/C cooling function, consistent with the assumptions of the plant's accident analysis. This support of the intended accident mitigation capability means that the proposed change does not involve a significant increase in the consequences of an accident previously evaluated.

In regard to the accident analyses and assumed overall protection system capability/response, protection system performance will remain within the bounds of the previously performed accident analyses since no hardware changes are being made to the protection systems. The same Reactor Trip System (RTS) and Engineered Safety Feature Actuation System (ESFAS) instrumentation will continue to be supported and used as assumed so that the protection systems will continue to function in a manner consistent with the plant design basis.

With regard to the proposed change to TS 5.5.11.e and the associated reduction in heater capacity for the heaters in the Control Room Pressurization System filter trains, the heaters function to mitigate accidents previously evaluated in the FSAR, but failure of the heaters themselves (or the filter trains themselves) is not an initiator of such accidents. Further, even with the proposed reduction in heater capacity (wattage), the new heater capacity will still exceed filter operational requirements and the required safety margin by a significant amount. Therefore, the proposed change to the heater capacity will not increase the probability or consequences of an accident described in the Callaway FSAR.

In consideration of all the above, for both TS changes, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of new or different kind of accident from any accident previously evaluated?

*Response:* No.

No new or different accidents are required to be postulated from addition of proposed TS 3.7.20. No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures will be introduced as a result of this amendment. The proposed LCO will require both Class 1E electrical equipment A/C trains to be maintained OPERABLE during plant operation, thereby maintaining the capability of the system to perform its specified safety function for the supported electrical equipment. The proposed license amendment includes regulatory commitments to achieve the capability for one OPERABLE Class 1E electrical equipment A/C train to provide adequate cooling for both trains of electrical equipment during normal and accident conditions via design changes, but that capability will only be utilized per the temporary provisions of a Condition and Required Action(s) under TS 3.7.20.

The proposed amendment will not alter the design or performance of the 7300 Process Protection System, Nuclear Instrumentation System, Solid State Protection System, Balance of Plant Engineered Safety Features Actuation System, Main Steam and Feedwater Isolation System, or Load Shedder and Emergency Load Sequencers used in the plant protection systems. As such, the change does not have a detrimental impact on the manner in which plant equipment operates or responds to an actuation signal.

With respect to the proposed change to TS 5.5.11.e and the associated reduction in heater capacity for the control room pressurization system filter trains, only the heater wattage/capacity is being changed. Overall system operation and required performance is not being changed. No other plant system is affected by this change (except for the beneficial effect of the reduced heat load on the Class 1E electrical equipment A/C system), and no new system operation or required response is introduced by this change.

Based on the above, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

*Response:* No.

Proposed TS 3.7.20 includes a provision for restoring an inoperable Class 1E electrical equipment cooling train to Operable status within a reasonable but required Completion Time, which is consistent with the many other Technical Specifications for systems having independent and redundant trains (based on the relatively low risk associated with such a condition when single-failure protection is momentarily not ensured for the affected system). In this case, however, if availability of the Class 1E electrical equipment supported by the Class 1E electrical equipment A/C system is considered a margin of safety, the reduction in such a margin of safety for when a Class 1E electrical equipment cooling train is declared inoperable is minimized due to the calculated capability of one A/C train to provide adequate cooling to both trains of Class 1E electrical equipment during normal and accident conditions (with proposed Condition A and its Required Actions in effect). The provision for restoring an inoperable Class 1E electrical equipment cooling train to Operable status within a reasonable but required Completion Time also allows a reasonable period to perform preventive and corrective maintenance, thus increasing or maintaining system reliability.

With respect to the Class 1E electrical equipment and the area temperatures assumed for this equipment during normal conditions, that associated margin of safety is maintained by the requirement under proposed TS 3.7.20 (for when one Class 1E electrical equipment A/C train is declared inoperable) to periodically verify that the area/room temperatures are maintained within the specified limit (of less than or equal to 90 °F [degrees Fahrenheit]). In addition, the capability to remain at or below the post-accident temperature limit (of 104 °F) for the Class 1E electrical equipment rooms will continue to be met, even with only one Class 1E electrical equipment A/C train OPERABLE, (providing the applicable Required Action under proposed TS 3.7.20 is met).

It should also be noted that the addition of TS 3.7.20 has no impact on calculated releases and doses for postulated accidents, or on ECCS [Emergency Core Cooling System] actuation or RPS [Reactor Protection System]/ESFAS protection setpoints/limiting safety system settings, or any other parameter that could affect a margin of safety.

For the proposed change to TS 5.5.11.e and the associated reduction in heater capacity for the charcoal filters in the control room pressurization trains, it should be noted that even with the proposed reduction, the minimum required heating capacity (for ensuring an influent air humidity of less than or equal to 70% relative humidity for the filter absorber train) would still be more than met. Thus, for this proposed change, there is no significant reduction in the margin of safety in regard to required pressurization train performance for the control room emergency ventilation system.

Therefore, based on the above, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* John O'Neill, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street NW, Washington, DC 20037.

*NRC Branch Chief:* Robert J. Pascarelli.

*Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation*

*Duke Energy Carolinas, LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina*

*NextEra Energy Duane Arnold, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa*

*Union Electric Company, Docket No. 50–483, Callaway Plant, Unit No. 1, Callaway County, Missouri*

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request access to SUNSI. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requester's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and requisite need, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requester may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

(3) Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311.

H. Review of Grants of Access. A party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within 5 days of the notification by the NRC staff of its grant of access and must be filed with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2.

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

The attachment to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

*It is so ordered.*

Dated at Rockville, Maryland, this 11th day of June, 2018.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

**Attachment 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information in This Proceeding**

| Day | Event/activity |
|---|---|
| 0 | Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests. |
| 10 | Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: Supporting the standing of a potential party identified by name and address; and describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding. |
| 60 | Deadline for submitting petition for intervention containing: (i) Demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply). |
| 20 | U.S. Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents). |
| 25 | If NRC staff finds no ''need'' or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access. |
| 30 | Deadline for NRC staff reply to motions to reverse NRC staff determination(s). |
| 40 | (Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI. |
| A | If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff. |
| A + 3 | Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order. |
| A + 28 | Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of opportunity to request a hearing and petition for leave to intervene), the petitioner may file its SUNSI contentions by that later deadline. |
| A + 53 | (Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI. |
| A + 60 | (Answer receipt +7) Petitioner/Intervenor reply to answers. |
| >A + 60 | Decision on contention admission. |

[FR Doc. 2018–12919 Filed 7–2–18; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2018–0001]**

### Sunshine Act Meeting Notice

**DATE:** Weeks of July 2, 9, 16, 23, 30, August 6, 2018.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**Week of July 2, 2018**

There are no meetings scheduled for the week of July 2, 2018.

**Week of July 9, 2018—Tentative**

There are no meetings scheduled for the week of July 9, 2018.

**Week of July 16, 2018—Tentative**

There are no meetings scheduled for the week of July 16, 2018.

**Week of July 23, 2018—Tentative**

There are no meetings scheduled for the week of July 23, 2018.

**Week of July 30, 2018—Tentative**

There are no meetings scheduled for the week of July 30, 2018.

**Week of August 6, 2018—Tentative**

There are no meetings scheduled for the week of August 6, 2018.

* * * * *

The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.*

* * * * *

The NRC Commission Meeting Schedule can be found on the internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Kimberly Meyer-Chambers, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear

Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or you may email *Patricia.Jimenez@nrc.gov* or *Wendy.Moore@nrc.gov.*

Dated: June 28, 2018.

**Denise L. McGovern,**

*Policy Coordinator, Office of the Secretary.*

[FR Doc. 2018–14471 Filed 6–29–18; 4:15 pm]

**BILLING CODE 7590–01–P**

## POSTAL REGULATORY COMMISSION

**[Docket Nos. CP2018–163; MC2018–187 and CP2018–261]**

### New Postal Products

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* July 5, 2018.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

### Table of Contents

I. Introduction
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 website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

### II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2018–163; *Filing Title:* USPS Notice of Amendment to Priority Mail Express & First-Class Package Service Contract 2, Filed Under Seal; *Filing Acceptance Date:* June 26, 2018; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Christopher C. Mohr, *Comments Due:* July 5, 2018.

2. *Docket No(s).:* MC2018–187 and CP2018–261; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & First-Class Package Service Contract 40 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* June 26, 2018; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Christopher C. Mohr, *Comments Due:* July 5, 2018.

This Notice will be published in the **Federal Register**.

**Stacy L. Ruble,**

*Secretary.*

[FR Doc. 2018–14228 Filed 7–2–18; 8:45 am]

**BILLING CODE 7710–FW–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–83537; File No. SR–CboeBZX–2018–042]**

### Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 11.9, Orders and Modifiers

June 28, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 18, 2018, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it 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 Substance of the Proposed Rule Change

The Exchange filed a proposal to add a new optional order type modifier to be known as Non-Displayed Swap. The proposed amendments are substantively identical to the rules of Cboe EDGX Exchange, Inc. (''EDGX'')[5] and substantially similar to the rules of the Nasdaq Stock Market LLC (''Nasdaq'')[6] and NYSE Arca, Inc. (''Arca'').[7]

The text of the proposed rule change is available at the Exchange's website at

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* EDGX Rules 11.6(n)(7), 11.8(b)(7) and 11.8(d)(5); *see also* Securities Exchange Act Release No. 80841 (June 1, 2017), 82 FR 26559 (June 7, 2017), (Notice of Filing and Immediate Effectiveness To Add a New Optional Order Instruction Known as Non-Displayed Swap).

[6] *See* Nasdaq Rule 4703(m) (defining the Trade Now order modifier); *see also* Securities Exchange Act Release No. 79282 (November 10, 2016), 81 FR 81219 (November 17, 2016) (Notice of Filing and Immediate Effectiveness of Proposed Rule change to Amend Rule 4702 and Rule 4703 to Add a ''Trade Now'' Instruction to Certain Order Types).

[7] *See* Arca Rule 7.31–E(d)(2)(B) (describing the Non-Display Remove Modifier); *see also* Securities Exchange Act Release No. 76267 (October 26, 2015), 80 FR 66951 (October 30, 2015) (Order Approving Proposed Rule change Adopting New Equity Trading Rules Relating to Orders and Modifiers and Retail Liquidity Program To Reflect the Implementation of Pillar, the Exchange's New Trading Technology Platform).

*www.markets.cboe.com,* at the Exchange's principal office and at the Public Reference Room of the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to add a new optional order type modifier to be known as Non-Displayed Swap. The proposed amendments are substantively identical to the rules of EDGX [8] and substantially similar to the rules of Nasdaq and Arca.[9]

The proposed Non-Displayed Swap (''NDS'') instruction would provide resting limit orders that are not displayed on the Exchange [10] and Mid-Point Peg Orders resting on the BZX Book [11] with a greater ability to receive an execution when that resting order is locked by an incoming order (*e.g.,* the price of the resting non-displayed order is equal to the price of the incoming order that is to be placed on the BZX Book). The NDS instruction would be an optional order instruction that would allow Users [12] to have their resting non-displayed orders execute against an incoming order with a Post Only instruction rather than have it be locked by the incoming order. NDS would be defined as an instruction on an order resting on the BZX Book that, when locked by an incoming order with a Post Only instruction that does not remove liquidity pursuant to paragraph (c)(6) of Exchange Rule 11.9,[13] causes such order to be converted to an executable order that removes liquidity against such incoming order. An NDS instruction would only be eligible for inclusion on a non-displayed limit order or a Mid-Point Peg Order. An order with a NDS instruction would not be eligible for routing pursuant to Exchange Rule 11.13, Order Execution and Routing. The proposed NDS instruction assists in the avoidance of an internally locked BZX Book (though such lock would not be displayed by the Exchange) [14] by facilitating the execution of orders that would otherwise lock each other.

The following example illustrates the operation of an order with a NDS instruction. Assume the National Best Bid and Offer is $10.00 by $10.04. There is a non-displayed limit order to buy resting on the BZX Book at $10.03. A BZX Post Only Order to sell priced at $10.03 is entered. Under current behavior, the incoming sell order marked as Post Only would post to the BZX Book because it would not receive sufficient price improvement.[15] This would result in the BZX Book being internally locked.[16] As proposed, if the non-displayed limit order to buy also included a NDS instruction, the orders would instead execute against each other at $10.03, with the resting buy order with the NDS instruction becoming the remover of liquidity and the incoming BZX Post Only Order to sell becoming the liquidity provider.

Assume the same facts as above, but that a non-displayed limit order to buy at $10.03 (''Order A'') is also resting on the BZX Book with time priority ahead of the non-displayed limit order mentioned above (''Order B''). Like above, a BZX Post Only Order to sell priced at $10.03 is entered. Under current behavior, the incoming BZX Post Only Order to sell would post to the BZX Book because the value of such execution against the resting buy interest when removing liquidity does not equal or exceed the value of such execution if the order instead posted to the BZX Book and subsequently provided liquidity, including the applicable fees charged or rebates provided. As proposed, if Order B also included a NDS instruction, the incoming sell order would execute against Order B and such order would become the remover of liquidity and the BZX Post Only Order to sell would become the liquidity provider. In such case, Order A cedes time priority to Order B because Order A did not also include a NDS instruction and thus the User that submitted Order A did not indicate the preference to be treated as the remover of liquidity in favor of an execution; instead, by not using NDS, a User indicates the preference to remain posted on the BZX Book as a liquidity provider.[17] However, if the incoming sell order was priced at $10.02, it would receive sufficient price improvement to execute upon entry against all resting buy limit orders in time priority at $10.03.[18]

If the order with a NDS instruction is only partially executed, the unexecuted portion of that order remains on the BZX Book and maintains its priority, as is the case today for an order that is partially executed and not cancelled by the User.[19] The Exchange is proposing to make the NDS instruction available to limit orders [20] that are not displayed on the Exchange [21] and MidPoint Peg Orders.[22] Because the NDS instruction would be only available to limit orders not displayed on the Exchange and to MidPoint Peg Orders, the NDS instruction would not be available to other order types provided by the Exchange under its Rule 11.9, such as BZX Market Orders, Reserve Orders, and Market Maker Peg Orders,[23] as the NDS instruction would be inconsistent with the use of those order types. The NDS instruction could, however, be combined with other instructions also

[8] *See supra* note 5.

[9] *See supra* notes 6 and 7.

[10] *See* Exchange Rule 11.9(c)(11).

[11] *See* Exchange Rule 1.5(e).

[12] *See* Exchange Rule 1.5(cc).

[13] Under Exchange Rule 11.9(c)(6), a BZX Post Only Order will remove contra-side liquidity from the BZX Book if the order is an order to buy or sell a security priced below $1.00 or if the value of such execution when removing liquidity equals or exceeds the value of such execution if the order instead posted to the BZX Book and subsequently provided liquidity, including the applicable fees charged or rebates provided. To determine at the time of a potential execution whether the value of such execution when removing liquidity equals or exceeds the value of such execution if the order instead posted to the BZX Book and subsequently provided liquidity, the Exchange will use the highest possible rebate paid and highest possible fee charged for such executions on the Exchange.

[14] *See* Exchange Rule 11.13(a)(4)(C).

[15] *Id.* [sic]

[16] In the event the incoming order with a Post Only instruction was to be displayed, it would post and display at $10.03 and the resting buy order with a Non-Displayed instruction would not execute against it or subsequent incoming sell orders at $10.03 for so long as the sell order was displayed on the Exchange. *See* Exchange Rule 11.13(a)(4)(C) and (D).

[17] Should the limit order to buy at $10.03 with time priority (*i.e.,* Order A) be displayed on the BZX Book, the incoming BZX Post Only Order to sell at $10.03 will not execute against the non-displayed buy order with a NDS instruction because displayed orders have priority over non-displayed orders. In such a case, the incoming limit order would be handled as it is today in accordance with existing Exchange rules. *See, e.g.,* Exchange Rules 11.9 and 11.13(a).

[18] The execution occurs here because the value of the execution against the buy order when removing liquidity exceeds the value of such execution if the order instead posted to the BZX Book and subsequently provided liquidity, including the applicable fees charged or rebates provided. *See supra* note 13.

[19] *See* Exchange Rule 11.12(a)(5).

[20] *See* Exchange Rule 11.9(a)(1).

[21] *See* Exchange Rule 11.9(c)(11).

[22] *See* Exchange Rule 11.9(c)(9).

[23] *See* Exchange Rules 11.9(a)(2), 11.9(c)(1) and 11.9(c)(16), respectively.

available to non-displayed limit orders, such as the Minimum Quantity Order instruction, the Primary Pegged Order instruction, the Market Pegged Order instruction or the Discretionary Order instruction.[24]

The Exchange notes that similar functionality exists on Nasdaq and Arca. Nasdaq refers to their functionality as the ''Trade Now'' instruction [25] and Arca refers to their functionality as the ''Non-Display Remove Modifier''.[26] On Arca, a Limit Non-Displayed Order may be designated with a Non-Display Remove Modifier. If so designated, a Limit Non-Displayed Order to buy (sell) will trade as the remover of liquidity with an incoming Adding Liquidity Only Order (''ALO Order'') to sell (buy) that has a working price equal to the working price of the Limit Non-Displayed Order.[27] On Nasdaq, Trade Now is an order attribute that allows a resting order that becomes locked by an incoming Displayed Order to execute against the available size of the contra-side locking order as a liquidity taker, and any remaining shares of the resting order will remain posted on the Nasdaq Book with the same priority.[28] Nasdaq requires the contra-side order to be display eligible, while the Exchange proposes to enable an order with a NDS instruction to remove liquidity regardless of whether the incoming order would have ultimately been eligible for display consistent with Arca's Non-Display Remove Modifier.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [29] in general, and furthers the objectives of Section 6(b)(5) of the Act [30] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest by offering Users optional functionality that will facilitate the execution of orders that would otherwise remain unexecuted, thereby increasing the efficient functioning of the Exchange. The NDS instruction is an optional feature that is intended to reflect the order management practices of various market participants. The proposed NDS instruction assists in the avoidance of an internally locked BZX Book by facilitating the execution of orders that would otherwise post, or remain posted, to the BZX Book.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. On the contrary, the Exchange believes the proposed rule change promotes competition because it will enable the Exchange to offer functionality substantially similar to that offered by Nasdaq and Arca (in addition to the fact that such functionality is identical to that already offered by the Exchange's affiliate, EDGX).[31] Therefore, the Exchange does not believe the proposed rule change will result in any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As the NDS feature will be equally available to all Users, the Exchange does not believe the proposed rule change will result in any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No comments were solicited or received on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [32] and subparagraph (f)(6) of Rule 19b–4 thereunder.[33]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii) [34] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. In its filing, BZX requested that the Commission waive the 30-day operative delay so that the Exchange can implement the proposed rule change promptly after filing. The Exchange noted that the proposed functionality is optional, may lead to increased order interaction on the Exchange, and is identical to functionality already provided on EDGX. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest, as such waiver will permit the Exchange to update its rule without delay so that it provides the same optional NDS functionality as is available on EDGX and potentially increase order interaction on the Exchange. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[35]

At any time within 60 days of the filing of the proposed rule change, the

[24] *See* Exchange Rules 11.9(c)(5), 11.9(c)(8)(A), 11.9(c)(8)(B) and 11.9(c)(10), respectively.

[25] *See* Nasdaq Rule 4703(m). *See also* Securities and Exchange Act Release No. 79282 (November 10, 2016), 81 FR 81219 (November 17, 2016) (SR–Nasdaq–2016–156) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 4703 and Rule 4703 to add a ''Trade Now'' Instruction to Certain Order Types).

[26] *See* Arca Rule 7.31–E(d)(2)(B). *See also* Securities and Exchange Act Release No. 76267 (October 26, 2015), 80 FR 66951 (October 30, 2015) (SR–NYSEArca–2015–56) (Order Approving Proposed Rule Change, and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 Thereto, Adopting New Equity Trading Rules Relating to Orders and Modifiers and the Retail Liquidity Program To Reflect the Implementation of Pillar, the Exchange's New Trading Technology Platform) (including the Non-Display Remove Modifier).

[27] *See* Arca Rule 7.31–E(d)(2)(b).

[28] Arca provides their Non-Display Remove Modifier to their Mid-Point Liquidity Orders (''MPL Orders'') designated Day and MPL–ALO Orders and Arca Only Orders. Nasdaq's Trade Now functionality is available to Price to Comply Orders, Price to Display Orders, Non-Displayed Orders, Post-Only Orders, Midpoint Peg Post-Only Orders, and Market Maker Peg Orders. To the extent the NDS instruction is only available to non-displayed limit orders and MidPoint Peg Orders, the Exchange notes that the NDS instruction will apply to different order types than Arca's Non-Display Remove Modifier and Nasdaq's Trade Now functionality.

[29] 15 U.S.C. 78f(b).

[30] 15 U.S.C. 78f(b)(5).

[31] *See supra* notes 5–7.

[32] 15 U.S.C. 78s(b)(3)(A)(iii).

[33] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[34] 17 CFR 240.19b–4(f)(6)(iii).

[35] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2018–042 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2018–042. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2018–042, and should be submitted on or before July 24, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–14297 Filed 7–2–18; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–83547; File No. SR–Phlx–2018–48]**

## Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Firm Participation Guarantee for a Floor Broker

June 28, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 14, 2018, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Commentary .02 to Rule 1064.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Rule 1064 entitled ''Crossing, Facilitation and Solicited Orders.'' Specifically, the Exchange proposes to amend Commentary .02(ii) to Rule 1064 to amend the firm participation guarantee for a Floor Broker.

Today, Phlx offers certain firm participation guarantees to a Floor Broker who holds an equity, index or U.S. dollar-settled foreign currency option order of the eligible order size or greater (''original order''), the Floor Broker is entitled to cross a certain percentage of the original order with other orders that he is holding or in the case of a public customer order, with a facilitation order of the originating firm (*i.e.,* the firm from which the original customer order originated). Today, the Exchange may determine, on an option by option basis, the eligible size for an order that may be transacted pursuant to this Commentary, however, the eligible order size may not be less than 500 contracts. Orders for less than 500 contracts may be crossed pursuant to Rule 1064 but are not subject to Commentary .02, subsection (iii) to Rule 1064 pertaining to participation guarantees. Similar to Cboe Exchange, Inc. (''CBOE'') the Exchange proposes to lower the eligible minimum order size from 500 to not less than 50 contracts.[3] The Commission noted in an approval of the reduction from 500 to 50 for CBOE that it had already approved the facilitation mechanism of ISE, which guarantees 40% of orders to facilitating firms for order sizes of 50 or more contracts.[4] In that approval order the Exchange approved the reduction in the size requirement, from 500 to 50 contracts, because the CBOE proposal raised no new regulatory issues.[5] The Commission noted that it will benefit options market participants by allowing

[36] 17 CFR 200.30–3(a)(12) and (59).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* CBOE Rule 6.74(d).

[4] *See* Securities Exchange Act Release No. 42835 (May 26, 2000), 65 FR 35683 (June 5, 2000) (SR–CBOE–99–10) (Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1, 2, and 3 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Participation Rights for Firms Crossing Orders.)

[5] *Id.*

for substantially consistent treatment of crossing mechanisms under the rules of the ISE and the CBOE, and will allow the CBOE to compete without disadvantage for facilitation orders.[6]

The Exchange notes that, today, Rule 1064, Commentary .02 provides that if the same member organization is the originating firm and also the specialist for the particular class of options to which the order relates, then the specialist is not entitled to any Enhanced Specialist Participation with respect to the particular cross transaction. The Exchange notes that this limitation is not being amended with this proposal. The specialist would not be able to obtain an allocation in excess of the 40% allocation.

The Exchange believes that this reduction from 500 to 50 contracts for the firm participation guarantee will continue to incentivize floor brokers to execute crossing orders on Phlx. The Exchange continues to reward the market participant that brought together market participants and executed orders on its trading floor. Further, the reduced contract size will benefit options market participants by allowing for substantially consistent treatment of crossing mechanisms with competing options venues. As noted in the CBOE proposal, today other competing mechanisms offer guarantees of 40% of orders to facilitating firms for order sizes of 50 or more contracts.[7] The Exchange believes that the ability to obtain a 40% guarantee on smaller sized orders will incentivize market participants to competitively price trades in order to execute a greater number of smaller orders. The Exchange believes that the incentive encourages competition on Phlx and in turn benefits market participants in terms of competitive pricing for those orders.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5) of the Act,[9] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by amending the eligible minimum order size within Commentary .02(ii) of Rule 1064, from 500 to not less than 50 contracts, to promote competition.

The Exchange's proposal to lower the current eligible minimum order size in Commentary .02(ii) of Rule 1064 from 500 to not less than 50 contracts is consistent with the Act as it should promote just and equitable principles of trade by allowing for substantially consistent treatment of crossing mechanisms with CBOE. Phlx market participants would be permitted to compete without disadvantage for facilitation orders with CBOE which today has the eligibility size proposed by Phlx.[10]

The Exchange believes that this reduction from 500 to 50 contracts for the firm participation guarantee will continue to incentivize floor brokers to execute crossing orders on Phlx. The Exchange continues to reward the market participant that brought together market participants and executed orders on its trading floor. Further, the reduced contract size will benefit options market participants by allowing for substantially consistent treatment of crossing mechanisms with competing options venues.

*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 amendment to Commentary .02(ii) of Rule 1064 does not impose an undue burden on intra-market competition because the proposed rule change will apply uniformly to all market participants. The Exchange currently has a competitive market for orders of 500 contracts or more, notwithstanding the current 40% firm participation guarantee for these orders, and therefore believes that extending this treatment to orders of 50 contracts or more (similar to other markets) will not have a significant impact on competition. The firm participation guarantee is designed as an incentive to market participants that bring order flow to the Phlx floor and is similar to allocation entitlements that exist on other floor based and electronic markets. The Commission has consistently found that rules entitling a market participant or participants up to 40% of an order are not inconsistent with the statutory standards of competition and free and open markets, including in approving the Exchange's own firm participation guarantee.[11] The Exchange believes that adopting a lower size threshold for this guarantee will benefit Phlx market participants by encouraging greater order flow and therefore increased opportunities for all market participants to trade, while ensuring that the trading crowd can still compete for a large portion of such orders. Furthermore, the proposal does not create an undue burden on inter-market competition because market participants would be permitted to compete without disadvantage for facilitation orders with CBOE. As noted in the CBOE proposal, today other competing mechanisms offer guarantees of 40% of orders to facilitating firms for order sizes of 50 or more contracts.[12] The Exchange believes the guarantee may incentivize an increase in the flow of smaller orders to the trading floor because it will encourage market participants to offer competitive pricing in order to interact with that order flow.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[13] and subparagraph (f)(6) of Rule 19b–4 thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6)[15] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[16] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposed rule changes may become operative immediately upon filing. The Exchange believes that waiver of the operative delay would allow the Exchange to more effectively compete

[6] *Id.*

[7] *See* note 4 above.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *See* note 4 above.

[11] *See* Securities Exchange Act Release No. 47819 (May 8, 2003), 68 FR 25924 (May 14, 2003) (SR–Phlx–2002–17) (Approval Order).

[12] *See* note 4 above.

[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] 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.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

with CBOE by offering a firm participation allocation with the same eligibility size that CBOE currently offers. Additionally, the Commission notes that the proposed rule change is based on the current rules of CBOE [17] and that it recently approved a similar rule change for the BOX Options Exchange LLC.[18] As such, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2018–48 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2018–48. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2018–48 and should be submitted on or before July 24, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–14301 Filed 7–2–18; 8:45 am]

**BILLING CODE 8011–01–P**

[17] *See supra* note 4.

[18] *See* Securities Exchange Act Release No. 82456 (January, 8, 2008), 83 FR 1651 (January 12, 2018) (SR–BOX–2017–33) (Approval Order).

[19] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–83539; File No. SR–BX–2018–026]**

## Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Period for the Retail Price Improvement Program Until December 31, 2018

June 28, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 21, 2018, Nasdaq BX, Inc. (''BX'' 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot period for the Exchange's Retail Price Improvement (''RPI'') Program (the ''Program''), which is set to expire on June 30, 2018, for an additional period, to expire on December 31, 2018.

The Exchange has designated July 1, 2018 as the date the proposed rule change becomes effective.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqbx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this filing is to extend the pilot period of the RPI Program,[3] currently scheduled to expire on June 30, 2018, for an additional period, to expire on December 31, 2018.

Background

In November 2014, the Commission approved the RPI Program on a pilot basis.[4] The Program is designed to attract retail order flow to the Exchange, and allow such order flow to receive potential price improvement. The Program is currently limited to trades occurring at prices equal to or greater than $1.00 per share. Under the Program, a new class of market participant called a Retail Member

[3] Securities Exchange Act Release No. 73702 (November 28, 2014), 79 FR 72049 (December 4, 2014) (''RPI Approval Order'') (SR–BX–2014–048).

[4] *See id.*

Organization (''RMO'') is eligible to submit certain retail order flow (''Retail Orders'') [5] to the Exchange. BX members (''Members'') are permitted to provide potential price improvement for Retail Orders in the form of non-displayed interest that is priced more aggressively than the Protected National Best Bid or Offer (''Protected NBBO'').[6]

The Program was approved by the Commission on a pilot basis running one-year from the date of implementation.[7] The Commission approved the Program on November 28, 2014.[8] The Exchange implemented the Program on December 1, 2014 and the pilot has since been extended for a one year period twice and for an additional six month period with it now scheduled to end on June 30, 2018.[9]

Proposal To Extend the Operation of the Program

The Exchange established the RPI Program in an attempt to attract retail order flow to the Exchange by potentially providing price improvement to such order flow. The Exchange believes that the Program promotes competition for retail order flow by allowing Exchange members to submit Retail Price Improvement Orders (''RPI Orders'') [10] to interact with Retail Orders. Such competition has the ability to promote efficiency by facilitating the price discovery process and generating additional investor interest in trading securities, thereby promoting capital formation. The Exchange believes that extending the pilot is appropriate because it will allow the Exchange and the Commission additional time to analyze data regarding the Program that the Exchange has committed to provide.[11] As such, the Exchange believes that it is appropriate to extend the current operation of the Program.[12] Through this filing, the Exchange seeks to amend BX Rule 4780(h) [13] and extend the current pilot period of the Program until the earlier of approval of the filing to make the Program permanent or December 31, 2018.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[14] in general, and with Section 6(b)(5) of the Act,[15] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that extending the pilot period for the RPI Program is consistent with these principles because the Program is reasonably designed to attract retail order flow to the exchange environment, while helping to ensure that retail investors benefit from the better price that liquidity providers are willing to give their orders. Additionally, as previously stated, the competition promoted by the Program may facilitate the price discovery process and potentially generate additional investor interest in trading securities. The extension of the pilot period will allow the Commission and the Exchange to continue to monitor the Program for its potential effects on public price discovery, and on the broader market structure.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed rule change extends an established pilot program for an additional period, to expire on December 31, 2018, thus allowing the RPI Program to enhance competition for retail order flow and contribute to the public price discovery process.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [16] and Rule 19b–4(f)(6) thereunder.[17] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [18] and Rule 19b–4(f)(6) thereunder.[19]

A proposed rule change filed under Rule 19b–4(f)(6) [20] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[21] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of

[5] A ''Retail Order'' is defined in BX Rule 4780(a)(2) by referencing BX Rule 4702, and BX Rule 4702(b)(6) says it is an order type with a non-display order attribute submitted to the Exchange by a RMO. A Retail Order must be an agency order, or riskless principal order that satisfies the criteria of FINRA Rule 5320.03. The Retail Order must reflect trading interest of a natural person with no change made to the terms of the underlying order of the natural person with respect to price (except in the case of a market order that is changed to a marketable limit order) or side of market and that does not originate from a trading algorithm or any other computerized methodology.

[6] The term Protected Quotation is defined in Chapter XII, Sec. 1(19) and has the same meaning as is set forth in Regulation NMS Rule 600(b)(58). The Protected NBBO is the best-priced protected bid and offer. Generally, the Protected NBBO and the national best bid and offer (''NBBO'') will be the same. However, a market center is not required to route to the NBBO if that market center is subject to an exception under Regulation NMS Rule 611(b)(1) or if such NBBO is otherwise not available for an automatic execution. In such case, the Protected NBBO would be the best-priced protected bid or offer to which a market center must route interest pursuant to Regulation NMS Rule 611.

[7] *See* RPI Approval Order, *supra* note 3 at 72053.

[8] *Id.* at 72049.

[9] *See* Securities Exchange Act Release No. 76490 (November 20, 2015), 80 FR 74165 (November 27, 2015) (SR–BX–2015–073); Securities Exchange Act Release No. 79446 (December 1, 2016), 81 FR 88290 (December 7, 2016) (SR–BX–2016–065); Securities Exchange Act Release No. 82192 (December 1, 2017), 82 FR 57809 (December 7, 2017) (SR–BX–2017–055).

[10] A Retail Price Improvement Order is defined in BX Rule 4780(a)(3) by referencing BX Rule 4702 and BX Rule 4702(b)(5) says that it is as an order type with a non-display order attribute that is held on the Exchange Book in order to provide liquidity at a price at least $0.001 better than the NBBO through a special execution process described in Rule 4780.

[11] *See* RPI Approval Order, *supra* note 3 at 72051.

[12] Concurrently with this filing, the Exchange has submitted a request for an extension of the exemption under Regulation NMS Rule 612 previously granted by the Commission that permits it to accept and rank the RPI orders in sub-penny increments. *See* Letter from Jeffrey S. Davis, Vice President and Deputy General Counsel and Secretary, Nasdaq BX, Inc. to Eduardo A. Aleman, Assistant Secretary, Securities and Exchange Commission dated June 21, 2018.

[13] The Exchange notes that the proposed amendment to BX Rule 4780(h) would amend the current version of BX Rule 4780(h), which the Exchange also proposes to amend as part of the Exchange's filing to make BX Rule 4780(h) permanent. *See* SR–BX–2018–025.

[14] 15 U.S.C. 78f.

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78s(b)(3)(A)(iii).

[17] 17 CFR 240.19b–4(f)(6).

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6)(iii).

investors and the public interest, because waiver would allow the pilot period to continue uninterrupted after its current expiration date of June 30, 2018, thereby avoiding any potential investor confusion that could result from temporary interruption in the Program. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[22]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2018–026 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2018–026. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2018–026, and should be submitted on or before July 24, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–14284 Filed 7–2–18; 8:45 am]

**BILLING CODE 8011–01–P**

[22] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange did not provide this notice, and it has requested that the Commission waive the requirement for this proposed rule change in order to allow the Program to continue uninterrupted. The Exchange asserts this would benefit market participants and help to eliminate the potential for investor confusion. For the same reasons stated above with regard to the Commission's waiver of the 30-day operative delay, the Commission permits this proposed rule change to be filed without advanced written notice of the Exchange's intent to file.

[23] 17 CFR 200.30–3(a)(12), (59).

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** 2:00 p.m. on Thursday, July 5, 2018.

**PLACE:** Closed Commission Hearing, Room 10800.

**STATUS:** This meeting will be closed to the public.

**MATTERS TO BE CONSIDERED:** Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Stein, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matters of the closed meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

**CONTACT PERSON FOR MORE INFORMATION:** For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: June 28, 2018.

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2018–14392 Filed 6–29–18; 11:15 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–83532; File No. SR–NYSEAMER–2018–32]**

### Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Modify the NYSE American Options Fee Schedule

June 28, 2018.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on June 20, 2018, NYSE American LLC (the ''Exchange'' or ''NYSE American'') 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

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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 modify the NYSE American Options Fee Schedule (''Fee Schedule''). The Exchange proposes to implement the fee change effective June 20, 2018.[4]. [sic] The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this filing is to modify portions of the Fee Schedule, effective June 20, 2018, by introducing defined terms and pricing for new functionality that facilitates executing Complex Orders using the Complex CUBE Auction mechanism (''Complex CUBE'' or ''Auction'').

On June 5, 2018, the Exchange received approval to adopt the Complex CUBE mechanism, which operates in a manner substantially similar to the existing Single-Leg CUBE Auction.[5] The Exchange proposes to adopt fees and credits for the Complex CUBE Auction so that such pricing will be in place once the Complex CUBE Auction mechanism is implemented on June 11, 2018.

In short, similar to the Single-Leg CUBE Auction, the Complex CUBE Auction allows an ATP Holder to guarantee the execution of an order it represents as agent on behalf of a public customer, broker dealer, or any other entity, via the Complex CUBE Auction (''Complex CUBE Order''). The ATP Holder that submits the Complex CUBE Order (the ''Initiating Participant'') agrees to guarantee the execution of the Complex CUBE Order by submitting a contra-side order (''Complex Contra Order'') representing principal interest or interest it has solicited to trade with the Complex CUBE Order. Although the Complex Contra Order would guarantee the execution of the Complex CUBE Order, the purpose of the Auction is to provide the Complex CUBE Order the opportunity for price improvement. Accordingly, the Exchange will notify market participants when an Auction is occurring and interested parties may submit ''RFR Responses'' during the auction.[6]

Key Terms and Definitions Related to Complex CUBE

First, the Exchange proposes to add (or modify) the following to the ''Key Terms and Definitions'' section of the Fee Schedule:[7]

- A ''Complex CUBE Auction'' would refer to the electronic crossing mechanism that provides opportunities for price improvement to Complex CUBE Orders submitted to such auctions.
- A ''Single-Leg CUBE Auction'' would refer to the electronic crossing mechanism that provides opportunities for price improvement to CUBE Orders submitted to such auctions.
- A ''CUBE Auction'' would refer collectively to the Single-Leg and Complex CUBE Auctions available on the Exchange. The Exchange will use this reference in the Fee Schedule when executions in (and resulting volume from) such auctions are treated the same.[8]
- A ''Complex CUBE Order'' would refer to an agency Complex Order that is guaranteed an execution in the Complex CUBE Auction by a Complex Contra Order.
  - In this regard, the Exchange proposes to modify the current definition of ''CUBE Order'' to specify that such orders relate to Single-Leg CUBE Auctions.
- A ''Complex Contra Order'' would be either principal interest or solicited interest an Initiating Participant is using to guarantee the execution of a Complex CUBE Order in the Complex CUBE Auction.
  - In this regard, the Exchange proposes to modify the current definition of ''Contra Order'' to specify that such orders relate to Single-Leg CUBE Auctions.
- To account for both Single-Leg and Complex CUBE Auctions, the Exchange proposes to modify ''Initiating Participant'' to refer to ''an ATP Holder that submits the CUBE Order (or Complex CUBE Order) and agrees to guarantee the execution of such order by submitting a Contra Order (or Complex Contra Order) representing principal interest or interest it has solicited to trade with the CUBE Order (or Complex CUBE Order).''

Fees and Credits Related to Complex CUBE

Section I.G. sets forth fees and credits related to Single-Leg CUBE Auctions for single-leg orders.[9] The Exchange proposes to implement a pricing structure for the Complex CUBE Auction that mirrors its pricing structure for Single-Leg CUBE Auctions, with differences described below.[10]

As noted above, there are three ways to participate in a Complex CUBE Auction: (i) As the Complex CUBE Order; (ii) as the Complex Contra Order; and (iii) as an RFR Response. The Exchange proposes to charge for participation in the Complex CUBE

[4] The Exchange originally filed to amend the Fee Schedule on June 11, 2018 (SR–NYSEAmer–2018–28) and withdrew such filing on June 20, 2018.

[5] *See* Securities Exchange Act Release Nos. 83384 (June 5, 2018), 83 FR 27061 (June 11, 2018) (SR–NYSEAMER–2018–05) (''Complex CUBE Approval Order''); 82802 (March 2, 2018), 83 FR 9769 (March 7, 2018) (SR–NYSEAMER–2018–05) (''Complex CUBE Notice'').

[6] Complex Orders on the opposite side of the market as Complex CUBE Order that arrive during the Auction and are eligible to trade with the Complex CUBE Order will be treated as RFR Responses and may trade in the Auction. *See* Complex CUBE Notice, id. [sic], 83 FR 9769, 9774–5.

[7] *See* proposed Fee Schedule, Key Terms and Definitions.

[8] *See, e.g.,* Fee Schedule, Sections I.A., note 6 (exempting executions in CUBE Auctions from Marketing Fees), I.C. (excluding CUBE Auction volume from monthly threshold calculations for the Market Maker Sliding Scale program), I.E. (including CUBE Auction volume in monthly threshold calculations for the American Customer Engagement Program (''ACE'') Program, but excluding CUBE Auction executions from eligibility for enhanced credits under the ACE Program), *available here, https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf.* In these instances, the Exchange believes it is reasonable to treat Complex CUBE Volume in the same manner as Single-Leg CUBE volume because all CUBE Auction volume is subject to separate fees and credits as set forth in Section I.G. of the Fee Schedule.

[9] *See id.,* Fee Schedule, Section I.G., CUBE Auction Fees & Credits. The Exchange is not modifying fees and credits related to the Single-Leg CUBE Auction. The Exchange proposes to modify Section I.G. to make clear that the current table relates to pricing for executions in a ''Single-Leg CUBE Auction'' and to add a new table that sets forth pricing for executions in a ''Complex CUBE Auction.'' *See* proposed Fee Schedule, Section I.G., CUBE Auction Fees & Credits.

[10] *See* Securities Exchange Act Release No. 72469 (June 25, 2014), 79 FR 37380 (July 1, 2014) (SR–NYSEMKT–2014–52) (adopting fees and credits related to Single-Leg CUBE Auctions).

Auction based on the following schedule of fees: [11]

* * * * *

COMPLEX CUBE AUCTION

| Participant/penny or non-penny | Standard option per contract fee or credit |
|---|---|
| Complex CUBE Order Fee Customer—All issues | $0.00 |
| Complex CUBE Order Fee Non-Customer—All issues | 0.20 |
| Complex Contra Order Fee—Penny Pilot issues | 0.05 |
| Complex Contra Order Fee—Non-Penny Pilot issues | 0.07 |
| RFR Response Fee Customer—All issues | 0.00 |
| RFR Response Fee Non-Customer—Penny Pilot | 0.50 |
| RFR Response Fee Non-Customer—Non-Penny Pilot | 1.05 |

This proposed pricing is the same as the pricing for participation in the Single-Leg CUBE Auction with the exception of the Complex Contra Order Fee—Non-Penny Pilot issues, which is $0.02 more than what is charged for such Contra Orders in the Single-Leg CUBE Auction.

The Exchange is also proposing to adopt credits to be paid to Initiating Participants for each Complex CUBE Order contract that does not trade with the Complex Contra Order, which credits increase if the Initiating Participant achieves Tier 2, 3, 4, or 5 of the ACE Program (or ''Program''), as set forth below.[12]

INITIATING PARTICIPANT CREDIT

| Base/ACE Tier | Penny pilot | Non-penny pilot |
|---|---|---|
| Base or Tier 1 | ($0.20) | ($0.50) |
| Tier 2 | ($0.23) | ($0.55) |
| Tier 3 | ($0.26) | ($0.60) |
| Tier 4 | ($0.28) | ($0.65) |
| Tier 5 | ($0.35) | ($0.75) |

Thus, as proposed, ATP Holders who do not participate in the ACE Program or ACE Program participants who achieve Tier 1 would be eligible for a per contract credit of $0.20 or $0.50 for Complex CUBE Orders in Penny Pilot issues or non-Penny Pilot issues, respectively. Further, the Exchange proposes that ACE Program participants that achieve at least Tier 2 would qualify for higher Initiating Credits, based on the Tier achieved, as outlined in the table above. In addition, the Exchange proposes to offer an alternative (higher) credit to ATP Holders that achieve Tier 5 and execute more than 1% TCADV in monthly Initiating Complex CUBE Orders (the ''enhanced Tier 5 credits''). The enhanced Tier 5 credits would be $(0.45) per contract for Penny Pilot issues and ($0.90) per contract for non-Penny Pilot issues. The Exchange believes enhanced Tier 5 credits would encourage ATP Holders to direct Complex Order volume to the Exchange, specifically via the Complex CUBE mechanism, which benefits all markets participants, particularly those that receive price improvement on their Complex Orders.

The Exchange also proposes to offer an additional $0.10 per contract rebate to Initiating Participants in the ACE Program (the ''ACE Initiating Participant Rebate'' or ''ACE Rebate''). The ACE Rebate would be available to ATP Holders that achieve at least Tier 1 of the Program and would be applied to each of the first 1,000 Customer contracts for each leg of a Complex CUBE Order execution in a Complex CUBE Auction. The proposed ACE Rebate is payable in addition to any other fees or credits accrued from the Auction (*e.g.,* in addition to the Initiating Participant Credit for both Penny and non-Penny Pilot issues). Thus, as proposed, the maximum potential Complex CUBE credit for Penny Pilot issues is $0.55 ($0.10 ACE Rebate + $0.45 Initiating Participant Credit for Tier 5 ACE Program Participants) and for non-Penny Pilot issues is $1.00 ($0.10 ACE Rebate + $0.90 Initiating Participant Credit for Tier 5 ACE Program Participants). The ACE Rebate is available regardless of whether the Complex CUBE Order trades with the Complex Contra Order or RFR Response(s), whereas the Initiating Participant Credits (set forth in the table above) are payable only for each Complex CUBE Order contract that does not trade with the Complex Contra Order.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[14] 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 proposal to add (or modify) defined terms related to the Complex CUBE are reasonable, equitable and not unfairly discriminatory as these terms would add clarity and transparency to the Fee Schedule making it easier to comprehend and navigate. The Exchange notes that the new definitions for Complex CUBE mirror the existing concepts defined in the Fee Schedule for Single-Leg CUBE and that the proposed updates to some existing Single-Leg CUBE definitions are meant to differentiate each of the auctions.

[11] *See* proposed Fee Schedule, Section I.G., CUBE Auction Fees & Credits. The Exchange proposes to modify the Single-Leg CUBE Auction table in Section I.G. to replace references to ''both Penny and Non-Penny Pilot'' with ''all issues'' in the table setting forth fees and credits for Single-Leg CUBE Auctions, which adds clarity, transparency and internal consistency to the Fee Schedule. *See id.* The Exchange likewise proposes to modify note 1 to Section I.G. of the Fee Schedule to make clear that ''Initiating Participant Credits are payable to the Initiating Participant for each contract in a Contra Order paired with a CUBE Order that does not trade with the CUBE Order because it is replaced in the auction,'' which adds clarity, transparency and internal consistency to the Fee Schedule. *See id.*

[12] *See* Fee Schedule, Section I.E., American Customer Engagement (''ACE'') Program,'' *supra* note 7 [sic].

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4) and (5).

Similarly, the proposed modifications to the current table in Section I.G., which are designed to streamline the pricing descriptions or to account for the addition of Complex CUBE pricing, would likewise add clarity and transparency to the Fee Schedule making it easier to comprehend and navigate. Finally, the proposal to treat Complex CUBE Auction executions/volume in the same manner as Single-Leg CUBE vis-à-vis other sections of the Fee Schedule (*see supra* note 7 [sic]) are reasonable, equitable and not unfairly discriminatory because the Complex CUBE Auction (like the Single-Leg CUBE auction) will be subject to the separate fees and credits as proposed herein.

The Exchange believes that the proposed fee structure for the Complex CUBE Auction is reasonable, equitable, and not unfairly discriminatory. The proposed fee structure is reasonably designed because it is intended to incentivize market participants to send Complex Order flow to the Exchange in order to participate in the price improvement mechanism in a manner that enables the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants. Complex CUBE Auctions and the corresponding fees are also reasonably designed because the proposed fees and credits are very similar to ones the Exchange assesses for Single-Leg CUBE Auctions, and are within the range of fees and credits assessed by other exchanges employing similar fee structures for complex orders submitted and executed in a price improvement mechanism.[15] Other competing exchanges offer different fees and credits for complex agency orders, contra-side orders, and responders to an auction in a manner similar to the proposal.[16] Other competing exchanges also charge different rates for transactions in their complex price improvement mechanisms for Customers versus their non-Customers in a manner similar to the proposal.[17]

The Complex CUBE transaction fees applied are reasonable, equitable, and not unfairly discriminatory because they would apply equally amongst all Customer orders in each category of Complex CUBE Auction participation and would also apply equally amongst all non-Customer orders in each category of Complex CUBE. Regarding Customers, all similarly situated orders for Customers are subject to the same transaction fee schedule and the Exchange believes that is equitable and not unfairly discriminatory that Customers be charged lower fees in Complex CUBE Auctions than other market participants. The exchanges in general have historically aimed to improve markets for investors and develop various features within market structure for customer benefit.[18] The Exchange assesses Customers lower or no transactions fees because Customer order flow enhances liquidity on the Exchange for the benefit of all market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Regarding Non-Customers, all similarly situated orders for market participants that are not Customers are subject to the same transaction fees and access to the Exchange is offered on terms that are not unfairly discriminatory.[19] Moreover, assessing a higher transaction fee on Non-Customer interest than on Customer interests for Complex CUBE Order transactions is reasonable, equitable, and not unfairly discriminatory because these types of market participants are more sophisticated and have higher levels of order flow activity and system usage, which system usage better equips Non-Customers to both interact with Auctions and to react to market changes. This level of trading activity draws on a greater amount of system resources than that of Customers, and thus, generates greater ongoing operational costs. Further, the Exchange believes that charging all market participants that are not Customers the same fee for all transactions is not unfairly discriminatory as the fees will apply to all these market participants equally.

The Exchange likewise believes that it is reasonable for Complex CUBE Orders and Complex Contra Orders to be assessed lower fees than those providing RFR Responses. Complex Contra Orders guarantee the Complex CUBE Order, and are subject to market risk during the time period that the Complex CUBE Order is exposed to other market participants. The Exchange believes that the market participants entering the Complex Contra Order plays a critical role in the Auction as their willingness to guarantee the Complex CUBE Order is the keystone to providing that CUBE Order the opportunity for price improvement. The Exchange believes that it is equitable and not unfairly discriminatory to assess fees to responders to the Complex CUBE Auction and credit another participant to provide incentive for participants to submit order flow to Complex CUBE Auctions (as discussed further below). The Exchange believes that it is appropriate to provide incentives to market participants to direct orders to participate in Complex CUBE Auction. Further, the Exchange believes that the proposed transaction fees for responding to the Auction would not deter market participants from providing price improvement.

Similarly, the Exchange believes that the proposed changes to CUBE Auction credits are reasonable, equitable and not unfairly discriminatory. First, as proposed, all Initiating Participants would receive a base per contract credit for each Complex CUBE Order contract that does not trade with the Complex Contra Order in a Complex CUBE Auction, regardless of whether that Initiating Participant qualifies for the ACE Program. Thus, the proposed credits are not applied in a discriminatory manner. The proposed credits of $0.20 per contract for Penny Pilot issues and $0.50 per contract for non-Penny Pilot issues are consistent

[15] *See e.g.,* Nasdaq ISE, LLC (''ISE'') Schedule of Fees, Section I, II, IV.B., *available here, http://ise.cchwallstreet.com/tools/PlatformViewer.asp?selectednode=chp_1_1_2&manual=%2Fcontents%2Fise%2Fise-fee%2F* (setting forth fees and credits related to its price improvement auction or PIM); BOX Options Exchange (''BOX'') Fee Schedule, *available here, https://boxoptions.com/assets/BOX-Fee-Schedule-as-of-April-2-2018.pdf* (setting forth fees and credits related to its price improvement auctions—PIP (for single-leg orders) or COPIP (for complex orders); MIAX Options fee schedule, *available here, https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Options_Fee_Schedule_03012018B.pdf* (setting forth fees and credits related to its price improvement auctions—PRIME (for single-leg orders) or cPRIME (for complex orders); Cboe fee schedule, *available here, http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf* (setting forth fees and credits related to its price improvement auction or AIM).

[16] *See id.*

[17] *See id.* For example, on ISE, fees for trades in Select and Non-Select Symbols are $0.00 per contract for Priority Customer Crossing Orders and $0.20 per contract for non-Priority Customer Crossing Orders. Similarly, BOX charges $0.00 per contract for Customer COPIP orders, but charges $0.05 per contract for COPIP orders submitted on behalf of Professional Customers, Broker Dealers or Market.

[18] The Exchange notes that, as discussed below, certain Non-Customers may be eligible to enhanced Initiating Participant Credits based on volume executed on the Exchange, which would offset their transaction costs.

[19] For example, the Exchange offers Customers preferential rates for other trades executed on the Exchange such as for Qualified Contingent Cross (''QCC'') orders. *See, e.g.,* Fee Schedule, Section I.F., *supra* note 7 [sic] (assessing $0.00 per contract for Customer QCC orders and $0.20 per contract for non-Customer QCC orders).

with ''break up'' credits offered on other exchanges.[20]

The Exchange also believes the proposal to provide ATP Holders the opportunity to achieve greater Initiating Participant Credits, based on Tier, if those ATP Holders achieve at least Tier 2 of the ACE Program is likewise reasonable, equitable and not unfairly discriminatory. The ACE Program is based on the amount of Customer business transacted on the Exchange and offers ATP Holders an enhanced per contract credit on transaction fees for Customer volumes above certain minimum thresholds (established in Tiers 1–5). Thus, the Exchange believes this proposed change is reasonably designed because it would incentivize providers of Customer order flow to direct that order flow to the Exchange to receive greater Complex CUBE credits in a manner that enables the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants. The proposed (tiered) rebate is fair, equitable, and not unreasonably discriminatory because it would apply equally to all Customer orders submitted as a Complex CUBE Order. The Exchange also notes that the concept of offering a tiered rebate in connection with a price improvement auction is not new or novel.[21] Finally, the Exchange believes this proposed tiered rebate is reasonable because it would attract more volume and liquidity to the Exchange generally, and to Complex CUBE Auctions specifically, and would therefore benefit all market participants (including those that do not participate in the ACE Program) through increased opportunities to trade at potentially improved prices as well as enhancing price discovery. The Exchange believes enhanced Tier 5 credits would encourage ATP Holders to direct Complex Order volume to the Exchange, specifically via the Complex CUBE mechanism, which benefits all markets participants, particularly those that receive price improvement on their Complex Orders.

The Exchange believes that the proposed ACE Initiating Participant credit is likewise reasonable, equitable and not unfairly discriminatory. Specifically, the ACE Initiating Participant Rebate is based on the amount of business transacted on the Exchange and is designed to attract more volume and liquidity to the Exchange generally, and to CUBE Auctions specifically, which will benefit all market participants (including those that do not participate in the ACE Program) through increased opportunities to trade at potentially improved prices as well as enhancing price discovery. Furthermore, the proposed ACE Rebate is reasonably designed and not unfairly discriminatory because it is available regardless of the parties that trade with the Complex CUBE Order (*i.e.,* whether the CUBE Order trades with the Complex Contra Order or otherwise). The Exchange notes that the proposal to offer an additional incentive to participate in the Complex CUBE Auction to those ATP Holders that have achieved certain monthly volume thresholds is also not new or novel.[22] Nor it is novel that the Exchange caps the amount of the potential rebate at the first 1,000 contracts per leg of a Complex CUBE Order, as the Exchange currently caps the potential rebate in the Single-Leg CUBE at the first 5,000 Customer contracts of a CUBE Order.[23] The Exchange notes that although the proposed ACE Rebate applies solely to Customer orders, it is nonetheless equitable and not unfairly discriminatory because it would enhance the incentives to ATP Holders to transact Customer orders on the Exchange and an increase in Customer order flow would bring greater volume and liquidity to the Exchange. Increased volume to the Exchange benefits all market participants by providing more trading opportunities and tighter spreads, even to those market participants that do not participate in the ACE Program.

The Exchange believes that it is reasonable to assess lower transaction and credit rates to Penny Pilot option classes than non-Penny Pilot option classes. The Exchange believes that options that trade at these wider spreads merit offering greater inducement for market participants. In particular, within the Complex CUBE Auction, option classes that typically trade in minimum increments of $0.05 or $0.10 provide greater opportunity for market participants to offer price improvement. As such, the Exchange believes that the opportunity for additional price improvement provided by these wider spreads again merits offering greater incentive for market participants to increase the potential price improvement for customer orders in these transactions.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act,[24] the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed change would enhance the competiveness of the Exchange relative to other exchanges that offer their own electronic crossing mechanisms, including for complex orders.[25] The Exchange believes that the proposed fees and rebates for participation in the Complex CUBE Auction would not have an impact on intra-market competition based on the total cost for participants to transact in such order types versus the cost for participants to transact in the other order types available for trading on the Exchange.

As noted above, the Exchange believes that the proposed pricing for the Complex CUBE Auction is comparable to its own pricing for Single-Leg CUBE and that of other exchanges offering similar electronic price improvement mechanisms for complex orders.[26] The Exchange believes that, based on experience with electronic price improvement crossing mechanisms on other markets, market participants understand that the price-improving benefits offered by the Complex CUBE Auction justify the transaction costs associated with the Auction. To the extent that there is a difference between non-Complex CUBE Auction transactions and Complex CUBE Auction transactions, the Exchange does not believe this

[20] For example, the ISE pays a volume-based Complex PIM Break Up Rebate ranging from a base rate of $0.26 per contract in Select Symbols to $0.85 in the highest tier for contracts submitted to a PIM that do not trade with their contra order. *See* ISE fee schedule, *supra* note 15.

[21] *See id.*

[22] For example, MIAX offers an additional per contract rebate on certain agency orders executed in PRIME, which provides for a maximum credit of $0.12 per contract, based on a member achieving certain monthly volume thresholds. *See* MIAX fee schedule, Priority Customer Rebate Program, *supra* note 15.

[23] Similar to the Exchange, Cboe also caps the number of contracts submitted to its price improvement auction that are eligible for additional volume rebates. Cboe's cap is at 1,000 contracts per order for simple executions and at 1,000 contracts per leg for complex executions. *See* Cboe fee schedule, Volume Incentive Program, *supra* note 15.

[24] 15 U.S.C. 78f(b)(8).

[25] *See supra* note 14. *See also* Chicago Board Options Exchange, Inc. (''CBOE'') Rule 6.74A—Automated Improvement Mechanism (''AIM''); Nasdaq PHLX, LLC (''PHLX'') Rule 1087—Price Improvement XL (''PIXL''); BOX Options Exchange LLC (''BOX'') Rule 7245—Complex Order Price Improvement Period (''COPIP''); Nasdaq ISE, LLC (''ISE'') Rule 723—Price Improvement Mechanism (''PIM''); Miami International Securities Exchange, LLC (''MIAX'') Rule 515A, Interpretation and Policies .12—Price Improvement Mechanism (''PRIME'').

[26] *See* Fee Schedule, Section I.G., CUBE Auction Fees & Credits, *supra* note 8 and *supra* note 16 (citing the fee schedules of other exchanges that set forth pricing for price improvement auctions).

difference would cause participants to refrain from responding to Complex CUBE Auctions. The Exchange expects to see robust competition within the Complex CUBE Auction to trade against the Complex CUBE Order.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. The Exchange believes that the proposed rule change reflects this competitive environment because it establishes a fee structure in a manner that encourages market participants to direct their order flow, to provide liquidity, and to attract additional transaction volume to the Exchange.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[27] of the Act and subparagraph (f)(2) of Rule 19b–4[28] 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)[29] of the Act to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2018–32 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2018–32. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2018–32 and should be submitted on or before July 24, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–14293 Filed 7–2–18; 8:45 am]

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[27] 15 U.S.C. 78s(b)(3)(A).

[28] 17 CFR 240.19b–4(f)(2).

[29] 15 U.S.C. 78s(b)(2)(B).

[30] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–83538; File No. SR–NYSEArca–2018–46]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Period for the Exchange's Retail Liquidity Program Until December 31, 2018

June 28, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 15, 2018, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') 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 extend the pilot period for the Exchange's Retail Liquidity Program (the ''Retail Liquidity Program'' or the ''Program''), which is currently scheduled to expire on June 30, 2018, until December 31, 2018. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to extend the pilot period of the Retail Liquidity Program, currently scheduled to expire on June 30, 2018,[3] until December 31, 2018.

Background

In December 2013, the Commission approved the Retail Liquidity Program on a pilot basis.[4] The Program is designed to attract retail order flow to the Exchange, and allows such order flow to receive potential price improvement. The Program is currently limited to trades occurring at prices equal to or greater than $1.00 per share. Under the Program, Retail Liquidity Providers (''RLPs'') are able to provide potential price improvement in the form of a non-displayed order that is priced better than the Exchange's best protected bid or offer (''PBBO''), called a Retail Price Improvement Order (''RPI''). When there is an RPI in a particular security, the Exchange disseminates an indicator, known as the Retail Liquidity Identifier, indicating that such interest exists. Retail Member Organizations (''RMOs'') can submit a Retail Order to the Exchange, which would interact, to the extent possible, with available contra-side RPIs.

The Retail Liquidity Program was approved by the Commission on a pilot basis. Pursuant to NYSE Arca Rule 7.44–E(m), the pilot period for the Program is scheduled to end on December 31, 2017 [sic].

Proposal To Extend the Operation of the Program

The Exchange established the Retail Liquidity Program in an attempt to attract retail order flow to the Exchange by potentially providing price improvement to such order flow. The Exchange believes that the Program promotes competition for retail order flow by allowing Exchange members to submit RPIs to interact with Retail Orders. Such competition has the ability to promote efficiency by facilitating the price discovery process and generating additional investor interest in trading securities, thereby promoting capital formation. The Exchange believes that extending the pilot is appropriate because it will allow the Exchange and the Commission additional time to analyze data regarding the Program that the Exchange has committed to provide.[5] As such, the Exchange believes that it is appropriate to extend the current operation of the Program.[6] Through this filing, the Exchange seeks to amend NYSE Arca Rule 7.44–E(m) and extend the current pilot period of the Program until December 31, 2018.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5),[8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that extending the pilot period for the Retail Liquidity Program is consistent with these principles because the Program is reasonably designed to attract retail order flow to the exchange environment, while helping to ensure that retail investors benefit from the better price that liquidity providers are willing to give their orders. Additionally, as previously stated, the competition promoted by the Program may facilitate the price discovery process and potentially generate additional investor interest in trading securities. The extension of the pilot period will allow the Commission and the Exchange to continue to monitor the Program for its potential effects on public price discovery, and on the broader market structure.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change simply extends an established pilot program for an additional six months, thus allowing the Retail Liquidity Program to enhance competition for retail order flow and contribute to the public price discovery process.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6)[13] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, because waiver would allow the pilot period to continue uninterrupted after its current expiration date of June 30, 2018, thereby avoiding any potential investor confusion that could result from temporary interruption in the pilot program. For this reason, the

[3] *See* Securities Exchange Act Release No. 82289 (December 11, 2017), 82 FR 59677 (December 15, 2017) (SR–NYSEArca–2017–137).

[4] *See* Securities Exchange Act Release No. 71176 (December 23, 2013), 78 FR 79524 (December 30, 2013) (SR–NYSEArca–2013–107) (''RLP Approval Order'').

[5] *See id.,* 78 FR at 79529.

[6] Concurrently with this filing, the Exchange has submitted a request for an extension of the exemption under Regulation NMS Rule 612 previously granted by the Commission that permits it to accept and rank the undisplayed RPIs. *See* Letter from Martha Redding, Asst. Corporate Secretary, NYSE Group, Inc. to Brent J. Fields, Secretary, Securities and Exchange Commission, dated June 14, 2018.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2018–46 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–2018–46. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2018–46, and should be submitted on or before July 24, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

**Eduardo A. Aleman,**

*Assistant Secretary.*

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[15] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12), (59).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–83541; File No. SR–NYSE–2011–55]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting an Extension to Limited Exemptions From Rule 612(c) of Regulation NMS in Connection With the Exchange's Retail Liquidity Program Until December 31, 2018

June 28, 2018.

On July 3, 2012, the Securities and Exchange Commission (''Commission'') issued an order pursuant to its authority under Rule 612(c) of Regulation NMS (''Sub-Penny Rule'') [1] that granted the New York Stock Exchange LLC (''NYSE'') a limited exemption from the Sub-Penny Rule in connection with the operation of the Exchange's Retail Liquidity Program (the ''Program'').[2] The limited exemption was granted concurrently with the Commission's approval of the Exchange's proposal to adopt its Program for a one-year pilot term.[3] The exemption was granted coterminous with the effectiveness of the pilot Program; both the pilot Program and exemption are scheduled to expire on June 30, 2018.[4]

The Exchange now seeks to extend the exemption until December 31, 2018.[5] The Exchange's request was made in conjunction with an immediately effective filing that extends

[1] 17 CFR 242.612(c).

[2] *See* Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) (SR–NYSE–2011–55; SR–NYSEAmex–2011–84) (''Order'').

[3] *See id.*

[4] On July 30, 2013, the Exchange requested an extension of the exemption for the Program. *See* Letter from Janet McGinness, SVP and Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated July 30, 2013. The pilot period for the Program was extended until July 31, 2014. *See* Securities Exchange Act Release No. 70096 (August 2, 2013), 78 FR 48520 (August 8, 2013) (SR–NYSE–2013–48). On July 30, 2014, the Exchange requested another extension of the exemption for the Program. *See* Letter from Martha Redding, Chief Counsel, NYSE, to Kevin M O'Neill, Deputy Secretary, Commission, dated July 30, 2014. The pilot period for the Program was extended until March 31, 2015. *See* Securities Exchange Act Release No. 72629 (July 16, 2014), 79 FR 42564 (July 22, 2014) (SR–NYSE–2014–35). On February 27, 2015, the Exchange requested another extension of the exemption for the Program. *See* Letter from Martha Redding, Senior Counsel, NYSE, to Brent J. Fields, Secretary, Commission, dated February 27, 2015. The pilot period for the Program was extended until September 30, 2015. *See* Securities Exchange Act Release No. 74454 (March 6, 2015), 80 FR 13054 (March 12, 2015) (SR–NYSE–2015–10). On September 17, 2015, the Exchange requested another extension of the exemption for the Program. *See* Letter from Martha Redding, Senior Counsel, NYSE, to Brent J. Fields, Secretary, Commission, dated September 17, 2015. The pilot period for the Program was extended until March 31, 2016. *See* Securities Exchange Act Release No. 75993 (September 28, 2015), 80 FR 59844 (October 2, 2015) (SR–NYSE2015–41). On March 17, 2016, the Exchange requested another extension of the exemption for the Program. *See* Letter from Martha Redding, Senior Counsel, NYSE, to Brent J. Fields, Secretary, Commission, dated March 17, 2016. The pilot period for the Program was extended until August 31, 2016. *See* Securities Exchange Act Release No. 77426 (March 23, 2016), 81 FR 17533 (March 29, 2016) (SR–NYSE–2016–25). On August 8, 2016, the Exchange requested another extension of the exemption for the Program. *See* Letter from Martha Redding, Associate General Counsel, NYSE, to Brent J. Fields, Secretary, Commission, dated August 8, 2016. The pilot period for the Program was extended until December 31, 2016. *See* Securities Exchange Act Release No. 78600 (August 17, 2016), 81 FR 57642 (August 23, 2016) (SR–NYSE–2016–54). On November 28, 2016, the Exchange requested another extension of the exemption for the Program. *See* Letter from Martha Redding, Associate General Counsel, NYSE, to Brent J. Fields, Secretary, Commission, dated November 28, 2016. The pilot period for the Program was extended until June 30, 2017. *See* Securities Exchange Act Release No.79493 (December 7, 2016), 81 FR 90019 (December 13, 2016) (SR–NYSE–2016–82). On May 23, 2017, the Exchange requested another extension of the exemption for the Program. *See* Letter from Martha Redding, Associate General Counsel, NYSE, to Brent J. Fields, Secretary, Commission, dated May 23, 2017. The pilot period for the Program was extended until December 31, 2017. *See* Securities Exchange Act Release No. 80844 (June 1, 2017), 82 FR 26562 (June 7, 2017) (SR–NYSE–2017–26). On November 30, 2017, the Exchange requested another extension of the exemption for the Program. *See* Letter from Martha Redding, Assistant Secretary, NYSE, to Brent J. Fields, Secretary, Commission, dated November 30, 2017. The pilot period for the Program was extended until June 30, 2018. *See* Securities Exchange Act Release No. 82230 (December 7, 2017), 82 FR 58667 (December 13, 2017) (SR–NYSE–2017–64).

[5] *See* Letter from Martha Redding, Associate General Counsel and Assistant Secretary, NYSE to Brent J. Fields, Secretary, Commission, dated June 14, 2018.

the operation of the Program through the same date.[6] In its request to extend the exemption, the Exchange notes that the participation in the Program has increased more recently with additional Retail Liquidity Providers. Accordingly, the Exchange has asked for additional time to both allow for additional opportunities for greater participation in the Program and allow for further assessment of the results of such participation. For this reason and the reasons stated in the Order originally granting the limited exemptions, the Commission finds that extending the exemption, pursuant to its authority under Rule 612(c) of Regulation NMS, is appropriate in the public interest and consistent with the protection of investors.

*Therefore, it is hereby ordered* that, pursuant to Rule 612(c) of Regulation NMS, the Exchange is granted a limited exemption from Rule 612 of Regulation NMS that allows it to accept and rank orders priced equal to or greater than $1.00 per share in increments of $0.001, in connection with the operation of its Retail Liquidity Program, until December 31, 2018.

The limited and temporary exemption extended by this Order is subject to modification or revocation if at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Securities Exchange Act of 1934. Responsibility for compliance with any applicable provisions of the Federal securities laws must rest with the persons relying on the exemptions that are the subject of this Order.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–14287 Filed 7–2–18; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–83534; File No. SR–MRX–2018–22]**

## Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Penny Pilot Program

June 28, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 26, 2018, Nasdaq MRX, LLC (''MRX'' 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 rules to extend a pilot program to quote and to trade certain options classes in penny increments (''Penny Pilot Program'').

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqmrx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Under the Penny Pilot Program, the minimum price variation for all participating options classes, except for the Nasdaq-100 Index Tracking Stock (''QQQQ''), the SPDR S&P 500 Exchange Traded Fund (''SPY'') and the iShares Russell 2000 Index Fund (''IWM''), is $0.01 for all quotations in options series that are quoted at less than $3 per contract and $0.05 for all quotations in options series that are quoted at $3 per contract or greater. QQQQ, SPY and IWM are quoted in $0.01 increments for all options series. The Penny Pilot Program is currently scheduled to expire on June 30, 2018.[3] The Exchange proposes to extend the Penny Pilot Program through December 31, 2018, and to provide a revised date for adding replacement issues to the Penny Pilot Program. The Exchange proposes that any Penny Pilot Program issues that have been delisted may be replaced on the second trading day following July 1, 2018. The replacement issues will be selected based on trading activity for the most recent six month period excluding the month immediately preceding the replacement (*i.e.,* beginning December 1, 2017, and ending May 31, 2018). This filing does not propose any substantive changes to the Penny Pilot Program: All classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh any increase in quote traffic.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[4] Specifically, the proposed rule change is consistent with Section 6(b)(5) of the Act,[5] because it is designed to promote just and equitable principles of trade, 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. In particular, the proposed rule change, which extends the Penny Pilot Program for an additional six months, will enable public customers and other market participants to express their true prices to buy and sell options to the benefit of all market participants.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act,[6] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that, by extending the expiration of the Penny Pilot

[6] *See* SR–NYSE–2018–29.

[7] 17 CFR 200.30–3(a)(83).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 82364 (December 19, 2017), 82 FR 61056 (December 26, 2017) (SR–MRX–2017–28).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(8).

Program, the proposed rule change will allow for further analysis of the Penny Pilot Program and a determination of how the Penny Pilot Program should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[9] normally does not become operative prior to 30 days after the date of the filing.[10] However, pursuant to Rule 19b–4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program and will allow the Exchange and the Commission additional time to analyze the impact of the Pilot Program.[12] Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[13]

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–MRX–2018–22 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MRX–2018–22. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MRX–2018–22 and should be submitted on or before July 24, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–14295 Filed 7–2–18; 8:45 am]

**BILLING CODE 8011–01–P**

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and 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. The Exchange has satisfied this pre-filing requirement.

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] *See* Securities Exchange Act Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR–NYSEArca–2009–44).

[13] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78s(b)(2)(B).

[15] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–83546; File No. SR–NYSEArca–2018–40]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Regarding Investments of the REX BKCM ETF

June 28, 2018.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on June 26, 2018, NYSE Arca, Inc. (''NYSE Arca'' or 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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes certain changes regarding investments of the REX BKCM ETF, shares of which are currently listed on the Exchange under NYSE Arca Rule 8.600–E (''Managed Fund Shares''). The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes certain changes, described below under ''Application of Generic Listing Requirements'', regarding investments of the REX BKCM ETF (''Fund''), shares (''Shares'') of which are currently listed and traded on the Exchange under NYSE Arca Rule 8.600–E, which governs the listing and trading of Managed Fund Shares [4] on the Exchange. Shares of the Fund commenced trading on the Exchange on May 16, 2018 in accordance with the generic listing standards in Commentary .01 to NYSE Arca Rule 8.600–E.

The Fund is a series of the Exchange Listed Funds Trust (''Trust'').[5] Exchange Traded Concepts, LLC (''Adviser'') is the investment adviser to the Fund. BKCM LLC (''BKCM'') and Vident Investment Advisory, LLC are the sub-advisers (''Sub-Advisers'') to the Fund. Foreside Fund Services, LLC (''Distributor'') is the distributor of the Fund's Shares. BNY Mellon serves as the Fund's transfer agent and custodian. BNY Mellon and UMB Fund Services (''UMBFS'') serve as administrators to the Fund (''Administrator'').[6]

Commentary .06 to Rule 8.600–E provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[7] In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. The Adviser and Sub-Advisers are not registered as broker-dealers or affiliated with a broker-dealer. In the event (a) the Adviser or a Sub-Adviser becomes registered as a broker-dealer or newly affiliated with one or more broker-dealers, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

REX BKCM ETF

Principal Investments

According to the Registration Statement, the Fund's investment objective is to seek total return. The Fund will seek to achieve its investment objective, under normal market conditions,[8] by obtaining investment exposure to an actively managed portfolio consisting of equity securities of cryptocurrency-related and other blockchain technology-related companies.

According to the Registration Statement, in implementing the Fund's investment strategy, BKCM will seek to identify companies utilizing blockchain technologies to generate present or future revenue from their core business. A company will only be eligible for inclusion in the portfolio to the extent that BKCM determines the company has committed material resources to the development of such revenue stream. Cryptocurrency-related companies mine, trade, or promote the mainstream adoption of cryptocurrencies or provide trading venues for cryptocurrencies and other blockchain applications. Other blockchain technology-related companies utilize blockchain technology in connection with disrupting traditional financial transaction mechanisms, develop enterprise blockchain solutions, or use

[4] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Rule 5.2–E(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[5] The Trust is registered under the 1940 Act. On May 7, 2018, the Trust filed with the Commission an amendment to its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) (''Securities Act'') and the 1940 Act relating to the Fund (File Nos. 333–180871 and 811–22700) (the ''Registration Statement''). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. The Trust will file an amendment to the Registration Statement as necessary to conform to representations in this filing. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 30445 (April 2, 2013) (''Exemptive Order''). Investments made by the Fund will comply with the conditions set forth in the Exemptive Order.

[6] The Commission has previously approved listing and trading on the Exchange of other series of Managed Fund Shares under Rule 8.600–E. *See, e.g.,* Securities Exchange Act Release Nos. 79683 (December 23, 2016) (SR–NYSEArca–2016–82) (order approving a proposed rule change to list and trade shares of the JPMorgan Diversified Event Driven ETF under NYSE Arca Equities Rule 8.600); 77904 (May 25, 2016) (SR–NYSEArca–2016–17) (order approving a proposed rule change to list and trade of shares of the JPMorgan Diversified Alternatives ETF under NYSE Arca Equities Rule 8.600).

[7] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and Sub-Advisers and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[8] The term ''normal market conditions'' is defined in NYSE Arca Rule 8.600–E(c)(5).

blockchain technology to decentralize user data and enhance privacy on the internet.

The Fund, through its ''Subsidiary'', (as described below), may invest up to 15% of its total assets in the following over-the-counter (''OTC'') equity securities: shares of the Bitcoin Investment Trust (''GBTC'').[9] The Subsidiary's investment in GBTC will be reflected in the net asset value of the Fund's Shares based on the closing price of GBTC on OTCQX Best Marketplace.

The Fund expects to obtain exposure to certain investments, including GBTC, by investing up to 25% of its total assets, as measured at the end of every quarter of the Fund's taxable year, in a wholly-owned and controlled Cayman Islands subsidiary (''Subsidiary''), as described below in ''Investment in the Subsidiary''.

The Fund and the Subsidiary may invest in the securities of non-exchange-traded open-end investment companies (*i.e.,* mutual funds).

As discussed below under ''Application of Generic Listing Requirements'' below, with the exception of the Subsidiary's holdings of shares of GBTC and the Fund's and the Subsidiary's investment in non-exchange-traded open-end investment company securities, the Fund's and the Subsidiary's investment in equity securities will satisfy the requirements of Commentary .01(a) of NYSE Arca Rule 8.600–E.

The Fund and the Subsidiary may hold fixed income securities. Such holdings will comply with the criteria in Commentary .01(b) of NYSE Arca Rule 8.600–E.

The Fund and the Subsidiary may hold cash and cash equivalents. Such holdings will comply with the criteria in Commentary .01(c) of NYSE Arca Rule 8.600–E.

The Fund and the Subsidiary may hold listed derivatives.[10] Such holdings will comply with the criteria in Commentary .01(d) and (f) of NYSE Arca Rule 8.600–E.

The Fund and the Subsidiary may hold OTC derivatives.[11] Such holdings will comply with the criteria in Commentary .01(e) and (f) of NYSE Arca Rule 8.600–E.

Investment in the Subsidiary

According to the Registration Statement, the Fund expects to obtain additional exposure through investment in the Subsidiary. Such investment may not exceed 25% of the Fund's total assets, as measured at the end of every quarter of the Fund's taxable year. The Subsidiary otherwise is subject to the same general investment policies and restrictions as the Fund. Except as noted, references to the investment strategies of the Fund for non-equity securities and other financial instruments include the investment strategies of the Subsidiary.

The Subsidiary is not registered under the 1940 Act. The Board has oversight responsibility for the investment activities of the Fund, including its investments in the Subsidiary, and the Fund's role as the sole shareholder of the Subsidiary. Also, in managing the Subsidiary's portfolio, the Adviser would be subject to the same investment restrictions and operational guidelines that apply to the management of the Fund.

Any Subsidiary will be advised by the Adviser and will be managed on a day-to-day basis by the Sub-Advisers, and will have the same investment objective as the Fund. According to the Registration Statement, the Fund's investment in the Subsidiary would be expected to provide the Fund with an effective means of obtaining exposure to certain cryptocurrency investments in a manner consistent with U.S. federal tax law requirements applicable to regulated investment companies.

Creations and Redemptions

According to the Registration Statement, the Fund offers and issues Shares at net asset value (''NAV'') in ''Creation Unit Aggregations'' (or ''Creation Units''), generally in exchange for the ''Deposit Securities'' and the ''Cash Component'' (each as defined below). Shares are redeemable only in Creation Unit Aggregations and, generally, in exchange for the Deposit Securities and Cash Component.

The Trust reserves the right to offer an ''all cash'' option for creations and redemptions of Creation Units for the Fund.[12]

The Trust issues and sells Shares of the Fund only in Creation Units on a continuous basis through the Distributor, at their NAV next determined after receipt, on any business day, of an order received in proper form.

The consideration for purchase of a Creation Unit of the Fund generally consists of an in-kind deposit of a designated portfolio of securities—the ''Deposit Securities''—per each Creation Unit constituting a substantial replication, or a representation, of the securities included in the Fund's portfolio and an amount of cash—the Cash Component. The Cash Component is an amount equal to the difference between the net asset value of the Shares (per Creation Unit) and the market value of the Deposit Securities. Together, the Deposit Securities and the Cash Component constitute the ''Fund Deposit,'' which represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund.

The Administrator, through the National Securities Clearing Corporation (''NSCC''), makes available on each business day, immediately prior to the opening of business on the Exchange (currently 9:30 a.m., Eastern Time), the list of the names and the required number of shares of each Deposit Security to be included in the current Fund Deposit (based on information at the end of the previous business day) for the Fund. Such Fund Deposit is applicable, subject to any adjustments, in order to effect creations of Creation Units of the Fund until such time as the next-announced composition of the Deposit Securities is made available.

The identity and number of shares of the Deposit Securities required for the Fund Deposit for the Fund changes as rebalancing adjustments and corporate action events are reflected from time to time by the Sub-Advisers with a view to the Fund's investment objective. In addition, the Trust reserves the right to permit or require the substitution of an amount of cash—*i.e.,* a ''cash in lieu'' amount—to be added to the Cash Component to replace any Deposit Security which may not be available in sufficient quantity for delivery or which may not be eligible for transfer through the ''Clearing Process'' (discussed

[9] The Bitcoin Investment Trust is a private, open-ended trust available to accredited investors that derives its value from the price of bitcoin. Shares of GBTC are restricted securities that may not be resold except in transactions exempt from registration under the Securities Act. On March 4, 2016, GBTC submitted to the Commission an amended Form D as a business trust. Shares of GBTC have been quoted on OTC Markets Group, Inc.'s (''OTC Markets'') OTCQX Best Marketplace under the symbol ''GBTC'' since March 26, 2015. On April 2, 2018, GBTC published an annual report for GBTC for the period ended December 31, 2017. Both GBTC's Form D and annual report can be found on OTC Market's website: *http://www.otcmarkets.com/stock/GBTC/filings.*

OTC Markets is a wholly owned subsidiary of OTC Link LLC, which is a member of the Financial Industry Regulatory Authority (''FINRA'') and is registered with the Commission as an alternative trading system (''OTC Link ATS'').

[10] The Fund will not hold listed derivatives based on bitcoin or other cryptocurrencies.

[11] The Fund will not hold OTC derivatives based on bitcoin or other cryptocurrencies.

[12] The Adviser represents that, to the extent the Trust effects the creation or redemption of Shares wholly or partially in cash, such transactions will be effected in the same manner for all Authorized Participants (as defined below).

below), or which may not be eligible for trading by an ''Authorized Participant'' (as defined below) or the investor for which it is acting. The Trust also reserves the right to offer an ''all cash'' option for creations of Creation Units for the Fund.

In addition to the list of names and numbers of securities constituting the current Deposit Securities of the Fund Deposit, the Administrator, through the NSCC, also makes available on each business day, the estimated Cash Component, effective through and including the previous business day, per outstanding Creation Unit of the Fund.

To be eligible to place orders with the Distributor to create a Creation Unit of the Fund, an entity must be (i) a ''Participating Party,'' *i.e.,* a broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of the NSCC (the ''Clearing Process''), a clearing agency that is registered with the Commission; or (ii) a Depository Trust Company (''DTC'') Participant, and, in each case, must have executed an agreement with the Trust, the Distributor and the Administrator with respect to creations and redemptions of Creation Units (''Participant Agreement''). A Participating Party and DTC Participant are collectively referred to as an ''Authorized Participant.''

All orders to create Creation Units must be placed for one or more Creation Unit size aggregations of at least 50,000 Shares. The size of a Creation Unit is subject to change. All orders to create Creation Units, whether through the Clearing Process (through a Participating Party) or outside the Clearing Process (through a DTC Participant), must be placed in the manner and by the time set forth in the Participant Agreement and/or applicable order form. The date on which an order to create Creation Units (or an order to redeem Creation Units as discussed below) is placed is referred to as the ''Transmittal Date.''

If permitted by a Sub-Adviser in its sole discretion with respect to the Fund, an Authorized Participant may also agree to enter into or arrange for an exchange of a futures contract for related position (''EFCRP'') or block trade with the relevant Fund or its Subsidiary whereby the Authorized Participant would also transfer to such Fund a number and type of exchange-traded futures contracts at or near the closing settlement price for such contracts on the purchase order date. Similarly, a Sub-Adviser in its sole discretion may agree with an Authorized Participant to use an EFCRP or block trade to effect an order to redeem Creation Units.[13]

Redemption

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Fund through the Administrator and only on a business day. The Trust will not redeem Shares in amounts less than Creation Units. Shareholders must accumulate enough Shares in the secondary market to constitute a Creation Unit in order to have such shares redeemed by the Trust.

With respect to the Fund, the Administrator, through the NSCC, will make available immediately prior to the opening of business on the Exchange (currently 9:30 a.m., Eastern Time) on each business day, the ''Fund Securities'' that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day. Fund Securities received on redemption may not be identical to Deposit Securities which are applicable to creations of Creation Units.

Unless cash redemptions are available or specified for the Fund, the redemption proceeds for a Creation Unit generally consist of Fund Securities—as announced by the Administrator on the business day of the request for redemption received in proper form—plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after receipt of a request in proper form, and the value of the Fund Securities (the ''Cash Redemption Amount''), less a redemption transaction fee. In the event that the Fund Securities have a value greater than the NAV of the Shares, a compensating cash payment equal to the differential is required to be made by or through an Authorized Participant by the redeeming shareholder.

If it is not possible to effect deliveries of the Fund Securities, the Trust may in its discretion exercise its option to redeem such Shares in cash, and the redeeming Beneficial Owner will be required to receive its redemption proceeds in cash. In addition, an investor may request a redemption in cash which the Fund may, in its sole discretion, permit. In either case, the investor will receive a cash payment equal to the NAV of its Shares based on the NAV of Shares of the Fund next determined after the redemption request is received in proper form (minus a redemption transaction fee and additional charge for requested cash redemptions specified above, to offset the Trust's brokerage and other transaction costs associated with the disposition of Fund Securities). The Fund may also, in its sole discretion, upon request of a shareholder, provide such redeemer a portfolio of securities which differs from the exact composition of the Fund Securities but does not differ in NAV.

An Authorized Participant or an investor for which it is acting subject to a legal restriction with respect to a particular stock included in the Fund Securities applicable to the redemption of a Creation Unit may be paid an equivalent amount of cash. The Trust also reserves the right to offer an ''all cash'' option for redemptions of Creation Units for the Fund.[14]

Intraday Indicative Value

Information regarding the intraday value of Shares of the Fund, also known as the ''intraday indicative value'' (''IIV''), will be disseminated every 15 seconds during the Exchange's Core Trading Session by market data vendors or other information providers. The IIV will generally be determined by using both current market quotations and/or price quotations obtained from broker-dealers that may trade in the portfolio securities and other financial instruments held by the Fund.

Other Restrictions

The Fund's investments, including derivatives, will be consistent with the Fund's investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*e.g.,* 2X or –3X) of the Fund's primary broad-based

[13] As described in the Registration Statement, an EFCRP is a technique permitted by the rules of certain futures exchanges that, as utilized by the Fund in a Sub-Adviser's discretion, would allow such Fund or its Subsidiary to take a position in a futures contract from an Authorized Participant, or give futures contracts to an Authorized Participant, in the case of a redemption, rather than to enter the futures exchange markets to obtain such a position. An EFCRP by itself will not change either party's net risk position materially. Because the futures position that the Fund would otherwise need to take in order to meet its investment objective can be obtained without unnecessarily impacting the financial or futures markets or their pricing, EFCRPs can generally be viewed as transactions beneficial to the Fund. A block trade is a technique that permits certain funds to obtain a futures position without going through the market auction system and can generally be viewed as a transaction beneficial to the Fund.

[14] *See* note 11, *supra.*

securities benchmark index (as defined in Form N–1A).[15]

The Fund's Use of Derivatives

To the extent the Fund or the Subsidiary invests in derivative instruments, such investments will be made consistent with the Fund's investment objective and policies. In addition, the Fund will include appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of the Fund, including the Fund's or the Subsidiary's use of derivatives, may give rise to leverage, causing the Fund to be more volatile than if it had not been leveraged.[16] Because the markets for certain assets, or the assets themselves, may be unavailable or cost prohibitive as compared to derivative instruments, suitable derivative transactions may be an efficient alternative for the Fund to obtain the desired asset exposure.

Derivatives Valuation Methodology for Purposes of Determining Intra-Day Indicative Value

On each business day, before commencement of trading in Fund Shares on NYSE Arca, the Fund will disclose on its website the identities and quantities of the portfolio instruments and other assets held by the Fund including assets directly held by the Subsidiary, that will form the basis for the Fund's calculation of NAV at the end of the business day.

In order to provide additional information regarding the intra-day value of Shares of the Fund, one or more major market data vendors will disseminate an updated IIV for the Fund. A third party market data provider will calculate the IIV for the Fund. The third party market data provider may use market quotes if available or may fair value securities against proxies (such as swap or yield curves).

Disclosed Portfolio

The Fund's disclosure of derivative positions in the applicable Disclosed Portfolio will include information that market participants can use to value these positions intraday. On a daily basis, the Fund will disclose the information regarding the Disclosed Portfolio required under NYSE Arca Rule 8.600–E(c)(2) to the extent applicable. The Fund's website information will be publicly available at no charge.

Impact on Arbitrage Mechanism

The Adviser believes there will be minimal impact to the arbitrage mechanism as a result of any use by the Fund or the Subsidiary of derivatives. Market makers and participants should be able to value derivatives as long as the positions are disclosed with relevant information. The Adviser believes that the price at which Shares trade will continue to be disciplined by arbitrage opportunities created by the ability to purchase or redeem creation Shares at their NAV, which should ensure that Shares will not trade at a material discount or premium in relation to their NAV.

The Adviser does not believe there will be any significant impacts to the settlement or operational aspects of the Fund's arbitrage mechanism due to the use of derivatives.

Application of Generic Listing Requirements

The Exchange is submitting this proposed rule change because the portfolio for the Fund will not meet all of the ''generic'' listing requirements of Commentary .01 to NYSE Arca Rule 8.600–E applicable to the listing of Managed Fund Shares. The Fund's portfolio would meet all such requirements except for those set forth in Commentary .01(a)(1) to NYSE Arca Rule 8.600–E.

As noted above, the Fund, through its Subsidiary, may invest up to 15% of its total assets in OTC equity securities issued by GBTC, a trust that has as its investment objective for the net asset value per share to reflect the performance of the market price of bitcoin, less GBTC's expenses. The Exchange believes that it is appropriate and in the public interest to approve listing and trading of Shares of the Fund on the Exchange notwithstanding that the Fund would not meet the requirements of Commentary .01(a)(1)(E) to Rule 8.600–E with respect to the Fund's investments, through the Subsidiary, in such OTC securities. While the Fund's investments in GBTC would not meet the requirements of Commentary .01(a)(1)(E) to Rule 8.600–E, such investments satisfy several other important criteria. For example, shares of GBTC have a minimum monthly trading volume of 250,000 shares, or a minimum notional volume traded per month of $25 million, averaged over the last six months, and a market value in excess of the required $75 million. Shares of GBTC have been quoted on OTC Market's OTCQX Best Marketplace under the symbol ''GBTC'' since March 26, 2015. The Exchange represents, for informational purposes, that, as of May 7, 2018, approximately 187,572,000 shares of GBTC were outstanding, with a market capitalization of $2,807,952,840 based on the last traded price. Moreover, average trading volume for the 6 months ended May 7, 2018 was 7,107,650 shares per day, and total trading volume for 2017 was 1,576,551,613 shares.

As noted above, GBTC has demonstrated significant liquidity. The liquid market in the shares of GBTC also alleviates many of the valuation concerns raised by the Staff. The substantial and sustained trading volume in shares of GBTC, as well as the fact that such investment will be limited to 15% of the Fund's assets, would help to limit any adverse effect on the Fund's arbitrage mechanism.

As noted above, on February 27, 2018, GBTC submitted to the Commission an amended Form D as a business trust. On April 2, 2018, GBTC published an annual report for the period ended December 31, 2017. This report can be found on OTC Market's website.

As noted above, the Fund and the Subsidiary may invest in equity securities that are non-exchange-traded securities of other open-end investment company securities (*i.e.,* mutual funds). The Exchange believes that it is appropriate and in the public interest to approve listing and trading of Shares of the Fund on the Exchange notwithstanding that the Fund would not meet the requirements of Commentary .01(a)(1)(A) through (E) to Rule 8.600–E with respect to the Fund's and the Subsidiary's investments in such securities.[17] Investments in such

[15] The Fund's broad-based securities benchmark index will be identified in a future amendment to the Registration Statement following the Fund's first full calendar year of performance.

[16] To mitigate leveraging risk, the Adviser will segregate or ''earmark'' liquid assets or otherwise cover the transactions that may give rise to such risk.

[17] Commentary .01(a) to Rule 8.600–E specifies the equity securities accommodated by the generic criteria in Commentary .01(a), namely, U.S. Component Stocks (as described in Rule 5.2–E(j)(3)); Non-U.S. Component Stocks (as described in Rule 5.2–E(j)(3)); Derivative Securities Products (*i.e.,* Investment Company Units and securities described in Section 2 of Rule 8–E); and Index-Linked Securities that qualify for Exchange listing and trading under Rule 5.2–E(j)(6). Commentary .01(a)(1) to Rule 8.600–E (U.S. Component Stocks) provides that the component stocks of the equity portion of a portfolio that are U.S. Component Stocks shall meet the following criteria initially and on a continuing basis:

(A) Component stocks (excluding Derivative Securities Products and Index-Linked Securities) that in the aggregate account for at least 90% of the equity weight of the portfolio (excluding such Derivative Securities Products and Index-Linked Securities) each shall have a minimum market value of at least $75 million;

(B) Component stocks (excluding Derivative Securities Products and Index-Linked Securities) that in the aggregate account for at least 70% of the

equity securities will not be principal investments of the Fund.[18] Such investments, which may include mutual funds that invest, for example, principally in fixed income securities, would be utilized to help the Fund meet its investment objective and to equitize cash in the short term.[19] Because such securities have a net asset value based on the value of securities and financial assets the investment company holds, the Exchange believes it is both unnecessary and inappropriate to apply to such investment company securities the criteria in Commentary .01(a)(1).

The Exchange notes that Commentary .01(a)(1)(A) through (D) to Rule 8.600–E exclude application of those provisions to certain ''Derivative Securities Products'' that are exchange-traded investment company securities, including Investment Company Units (as described in NYSE Arca Rule 5.2–E(j)(3)), Portfolio Depositary Receipts (as described in NYSE Arca Rule 8.100–E) and Managed Fund Shares (as described in NYSE Arca Rule 8.600–E).[20] In its 2008 Approval Order approving amendments to Commentary .01(a) to Rule 5.2(j)(3) that exclude Derivative Securities Products from certain provisions of Commentary .01(a) (which exclusions are similar to those in Commentary .01(a)(1) to Rule 8.600–E), the Commission stated that ''based on the trading characteristics of Derivative Securities Products, it may be difficult for component Derivative Securities Products to satisfy certain quantitative index criteria, such as the minimum market value and trading volume limitations.'' The Exchange notes that it would be difficult or impossible to apply to non-exchange-traded investment company securities the generic quantitative criteria (*e.g.,* market capitalization, trading volume, or portfolio criteria) in Commentary .01(a)(1)(A) through (D) applicable to U.S. Component Stocks. For example, the requirement for U.S. Component Stocks in Commentary .01(a)(1)(B) that there be minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of $25,000,000, averaged over the last six months is tailored to exchange-traded securities (*e.g.,* U.S. Component Stocks) and not to mutual fund shares, which do not trade in the secondary market. Moreover, application of such criteria would not serve the purpose applicable with respect to U.S. Component Stocks, namely, to establish minimum liquidity and diversification criteria for U.S. Component Stocks held by series of Managed Fund Shares.

In addition, the Commission has previously approved listing and trading of an issue of Managed Fund Shares that may invest in equity securities that are non-exchange-traded securities of other open-end investment company securities notwithstanding that the fund would not meet the requirements of Commentary .01(a)(1)(A) through (E) to Rule 8.600–E with respect to such fund's investments in such securities.[21] Thus, the Exchange believes that it is appropriate to permit the Fund and the Subsidiary to invest in non-exchange-traded open-end management investment company securities, as described above.

The Exchange notes that, other than Commentary .01(a)(1) to Rule 8.600–E, the Fund will meet all other requirements of Rule 8.600–E.

## Availability of Information

The Fund's website (*www.rexshares.com*), which is publicly available, includes a form of the prospectus for the Fund that may be downloaded. The Fund's website will include additional quantitative information updated on a daily basis, including, for the Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[22] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Adviser will disclose on the Fund's website the Disclosed Portfolio for the Fund as defined in NYSE Arca Rule 8.600–E(c)(2) that will form the basis for the Fund's calculation of NAV at the end of the business day.[23]

equity weight of the portfolio (excluding such Derivative Securities Products and Index-Linked Securities) each shall have a minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of $25,000,000, averaged over the last six months;

(C) The most heavily weighted component stock (excluding Derivative Securities Products and Index-Linked Securities) shall not exceed 30% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted component stocks (excluding Derivative Securities Products and Index-Linked Securities) shall not exceed 65% of the equity weight of the portfolio;

(D) Where the equity portion of the portfolio does not include Non-U.S. Component Stocks, the equity portion of the portfolio shall include a minimum of 13 component stocks; provided, however, that there shall be no minimum number of component stocks if (i) one or more series of Derivative Securities Products or Index-Linked Securities constitute, at least in part, components underlying a series of Managed Fund Shares, or (ii) one or more series of Derivative Securities Products or Index-Linked Securities account for 100% of the equity weight of the portfolio of a series of Managed Fund Shares;

(E) Except as provided herein, equity securities in the portfolio shall be U.S. Component Stocks listed on a national securities exchange and shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Securities Exchange Act of 1934; and

(F) American Depositary Receipts (''ADRs'') in a portfolio may be exchange-traded or nonexchange-traded. However, no more than 10% of the equity weight of a portfolio shall consist of non-exchange-traded ADRs.

[18] For purposes of this section of the filing, non-exchange-traded securities of other registered investment companies do not include money market funds, which are cash equivalents under Commentary .01(c) to Rule 8.600–E and for which there is no limitation in the percentage of the portfolio invested in such securities.

[19] The Commission has previously approved proposed rule changes under Section 19(b) of the Act for series of Managed Fund Shares that may invest in non-exchange traded investment company securities. *See, e.g.,* Securities Exchange Act Release No. 78414 (July 26, 2016), 81 FR 50576 (August 1, 2016) (SR–NYSEArca–2016–79) (order approving listing and trading of shares of the Virtus Japan Alpha ETF under NYSE Arca Equities Rule 8.600).

[20] The Commission initially approved the Exchange's proposed rule change to exclude ''Derivative Securities Products'' (*i.e.,* Investment Company Units and securities described in Section 2 of Rule 8) and ''Index-Linked Securities (as described in Rule 5.2–E(j)(6)) from Commentary .01(a)(A) (1) through (4) to Rule 5.2–E(j)(3) in Securities Exchange Act Release No. 57751 (May 1, 2008), 73 FR 25818 (May 7, 2008) (SR–NYSEArca–2008–29) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Amend the Eligibility Criteria for Components of an Index Underlying Investment Company Units) (''2008 Approval Order''). *See also,* Securities Exchange Act Release No. 57561 (March 26, 2008), 73 FR 17390 (April 1, 2008) (Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto to Amend the Eligibility Criteria for Components of an Index Underlying Investment Company Units). The Commission subsequently approved generic criteria applicable to listing and trading of Managed Fund Shares, including exclusions for Derivative Securities Products and Index-Linked Securities in Commentary .01(a)(1)(A) through (D), in Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320 (July 27, 2016) (Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 7 Thereto, Amending NYSE Arca Equities Rule 8.600 To Adopt Generic Listing Standards for Managed Fund Shares). *See also,* Amendment No. 7 to SR–NYSEArca–2015–110, available at *https://www.sec.gov/comments/sr-nysearca-2015-110/nysearca2015110-9.pdf*.

[21] *See* Securities Exchange Act Release No. 83319 (May 24, 2018) (SR–NYSEArca–2018–15) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Continue Listing and Trading Shares of the PGIM Ultra Short Bond ETF Under NYSE Arca Rule 8.600–E).

[22] The Bid/Ask Price of the Fund's Shares will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[23] Under accounting procedures to be followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the

Continued

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the Fund's Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov*.

Quotation and last sale information for the Shares and U.S. exchange-traded equity securities will be available via the CTA high speed line. Quotation and last sale information for futures, exchange-traded options and non-U.S. exchange-traded equity securities will be available from the exchange on which they are listed. Information regarding market price and trading volume for the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Price information for fixed income securities, cash equivalents, non-exchange-traded investment company securities (other than money market funds), shares of GBTC, listed derivatives and OTC derivatives may be obtained from brokers and dealers who make markets in such securities or through nationally recognized pricing services through subscription agreements. Price information for money market funds and other non-exchange-traded investment company securities also will be available from the applicable investment company's website and from market data vendors.

In addition, the IIV, as defined in NYSE Arca Rule 8.600–E(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.[24] The dissemination of the IIV, together with the Disclosed Portfolio, will allow investors to determine the approximate value of the underlying portfolio of the Fund on a daily basis and will provide a close estimate of that value throughout the trading day.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[25] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares of the Fund inadvisable.

Trading in the Shares will be subject to NYSE Arca Rule 8.600–E(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

The Exchange 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. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. E.T. in accordance with NYSE Arca Rule 7.34–E (Early, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Rule 7.6–E, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The Shares of the Fund will conform to the initial and continued listing criteria under NYSE Arca Rule 8.600–E. The Exchange represents that, for initial and continued listing, the Fund will be in compliance with Rule 10A–3 [26] under the Act, as provided by NYSE Arca Rule 5.3–E. A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares of the Fund that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Surveillance

The Exchange represents that 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, which are designed to detect violations of Exchange rules and applicable federal securities laws.[27] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, certain exchange-traded equity securities, certain futures and certain options with other markets and other entities that are members of the Intermarket Surveillance Group (''ISG''), and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such securities and financial instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in such securities and financial instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[28]

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the portfolio or reference assets, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares on the Exchange.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the

Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[24] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IIVs taken from the CTA or other data feeds.

[25] *See* NYSE Arca Rule 7.12–E.

[26] 17 CFR 240.10A–3.

[27] FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[28] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (''ETP'') Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares of the Fund. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) NYSE Arca Rule 9.2–E(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; (3) the risks involved in trading the Shares during the Early and Late Trading Sessions when an updated IIV will not be calculated or publicly disseminated; (4) how information regarding the IIV and the Disclosed Portfolio is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares of the Fund will be calculated after 4:00 p.m. E.T. each trading day.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [29] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.600–E. The Adviser and Sub-Advisers are not registered as broker-dealers or affiliated with a broker-dealer. The Exchange represents that 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, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, certain exchange-traded equity securities, certain futures and certain options with other markets and 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 such securities and financial instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in such securities and financial instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Exchange is also able to obtain information regarding trading in the Shares, the commodity underlying futures or options on futures through ETP Holders, in connection with such ETP Holders' proprietary or customer trades which they effect through ETP Holders on any relevant market. The IIV, as defined in NYSE Arca Rule 8.600–E(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.

The Shares of the Fund will conform to the initial and continued listing criteria under NYSE Arca Rule 8.600–E. The Exchange represents that, for initial and continued listing, the Fund will be in compliance with Rule 10A–3 under the Act, as provided by NYSE Arca Rule 5.3–E. A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares of the Fund that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. The Fund's portfolio holdings will be disclosed on its website daily after the close of trading on the Exchange and prior to the opening of trading on the Exchange the following day. On a daily basis, the Fund will disclose the information regarding the Disclosed Portfolio required under NYSE Arca Rule 8.600–E(c)(2) to the extent applicable. The Fund's website information will be publicly available at no charge. With respect to the Fund's holdings of shares of GBTC, on March 4, 2016, GBTC submitted to the Commission an amended Form D as a business trust. Shares of GBTC have been quoted on OTC Market's OTCQX Best Marketplace under the symbol ''GBTC'' since March 26, 2015. On April 2, 2018, GBTC published an annual report for the period ended December 31, 2017. Such reports are available on OTC Market's website.

Investors can also obtain the Trust's SAI, the Fund's Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov.*

The Exchange believes that it is appropriate and in the public interest to approve listing and trading of Shares of the Fund on the Exchange notwithstanding that the Fund would not meet the requirements of Commentary .01(a)(1)(A) through (E) to Rule 8.600–E with respect to the Fund's investments in non-exchange-traded open-end investment company securities. Investments in such equity securities will not be principal investments of the Fund. Such investments, which may include mutual funds that invest, for example, principally in fixed income securities, would be utilized to help the Fund meet its investment objective and to equitize cash in the short term. Because such securities have a net asset value based on the value of securities and financial assets the investment company holds, the Exchange believes it is both unnecessary and inappropriate to apply to such investment company securities the criteria in Commentary .01(a)(1).

The Exchange notes that Commentary .01(a)(1)(A) through (D) to Rule 8.600–E exclude application of those provisions to certain ''Derivative Securities Products'' that are exchange-

[29] 15 U.S.C. 78f(b)(5).

traded investment company securities, including Investment Company Units (as described in NYSE Arca Rule 5.2–E(j)(3)), Portfolio Depositary Receipts (as described in NYSE Arca Rule 8.100–E) and Managed Fund Shares (as described in NYSE Arca Rule 8.600–E). In its 2008 Approval Order approving amendments to Commentary .01(a) to Rule 5.2(j)(3) that exclude Derivative Securities Products from certain provisions of Commentary .01(a) (which exclusions are similar to those in Commentary .01(a)(1) to Rule 8.600–E), the Commission stated that ''based on the trading characteristics of Derivative Securities Products, it may be difficult for component Derivative Securities Products to satisfy certain quantitative index criteria, such as the minimum market value and trading volume limitations.'' The Exchange notes that it would be difficult or impossible to apply to non-exchange-traded investment company securities the generic quantitative criteria (*e.g.,* market capitalization, trading volume, or portfolio criteria) in Commentary .01(a)(1) (A) through (D) applicable to U.S. Component Stocks. Moreover, application of such criteria would not serve the purpose served with respect to U.S. Component Stocks, namely, to establish minimum liquidity and diversification criteria for U.S. Component Stocks held by series of Managed Fund Shares.

In addition, the Commission has previously approved listing and trading of an issue of Managed Fund Shares that may invest in equity securities that are non-exchange-traded securities of other open-end investment company securities notwithstanding that the fund would not meet the requirements of Commentary .01(a)(1)(A) through (E) to Rule 8.600–E with respect to such fund's investments in such securities.[30] Thus, the Exchange believes that it is appropriate to permit the Fund to invest in non-exchange-traded open-end management investment company securities, as described above.

As noted above, the Fund's investments in derivative instruments will be consistent with the Fund's investment objective and policies. In addition, the Fund will include appropriate risk disclosure in its offering documents, including leveraging risk. To mitigate leveraging risk, the Adviser will segregate or ''earmark'' liquid assets or otherwise cover the transactions that may give rise to such risk. Because the markets for certain assets, or the assets themselves, may be unavailable or cost prohibitive as compared to derivative instruments, suitable derivative transactions may be an efficient alternative for the Fund to obtain the desired asset exposure. In addition, OTC derivatives may be tailored more specifically to the assets held by the Fund than available listed derivatives.

The Exchange notes that, other than Commentary .01(a)(1) to Rule 8.600–E, the Fund will meet all other requirements of Rule 8.600–E.

The website for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares of the Fund. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Rule 8.600–E(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IIV, the Disclosed Portfolio, and quotation and last sale information for the Shares. The Fund's investments, including derivatives, will be consistent with the Fund's investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*e.g.,* 2X or –3X) of the Fund's primary broad-based securities benchmark index (as defined in Form N–1A).

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that holds fixed income securities, equity securities and derivatives and that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares of the Fund and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IIV, the Disclosed Portfolio for the Fund, and quotation and last sale information for the Shares of the Fund.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of another type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

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**

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArc–2018–40 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.

[30] *See* note 21, *supra.*

All submissions should refer to File Number SR–NYSEArca–2018–40. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2018–40, and should be submitted on or before July 24, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–14300 Filed 7–2–18; 8:45 am]

**BILLING CODE 8011–01–P**

[31] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–83544; File No. SR–DTC–2018–002]**

## Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Rules and Fee Schedule Relating to Participant and Pledgee Applications

June 28, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 21, 2018, The Depository Trust Company (''DTC'') 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. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rules 19b–4(f)(2) and (f)(4) thereunder.[4] 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 of DTC[5] consists of proposed modifications to (i) the DTC Fee Schedule (''Fee Schedule'')[6] to add two new application fees that would be charged, respectively, to legal entities that formally submit an application (''Application'') to become either a Participant[7] (each, a ''Participant Applicant'') or a Pledgee[8] (each, a ''Pledgee Applicant'') of DTC (Participant Applicants and Pledgee Applicants, referred to collectively as ''Applicants''), and (ii) DTC's Policy Statements on the Admission of Participants (jointly referred to as the ''Policy Statement'') with respect to the provision that requires a non-U.S. entity that applies to become a Participant (''Non-U.S. Participant Applicant'') to provide to DTC a legal opinion (''Foreign Legal Opinion'') of its counsel in its jurisdiction of organization (''Jurisdiction of Organization'').[9] With respect to (i) above, the Fee Schedule would be amended to charge (A) each Participant Applicant a fee of $5,000 in connection with its Application to become a Participant (''Participant Application Fee''), and (B) each Pledgee Applicant a fee of $2,500 in connection with its Application to become a Pledgee (''Pledgee Application Fee'') (Participant Application Fee and Pledgee Application Fee, collectively referred to as ''Application Fees''). With respect to (ii) above, the Policy Statement would be amended to (A) remove the provision that requires each Non-U.S. Participant Applicant to obtain a Foreign Legal Opinion from its counsel and (B) provide that DTC would obtain a Foreign Legal Opinion from its outside counsel (''DTC Counsel'') in the Jurisdiction of Organization of a new Non-U.S. Participant Applicant, which opinion DTC would use in conjunction with its review of the Application of that and each subsequent new Non-U.S. Participant Applicant domiciled in that Jurisdiction of Organization, as described below. Each Non-U.S. Participant Applicant would be charged a fee (''Foreign Legal Opinion Fee'') with respect to the applicable Foreign Legal Opinion obtained by DTC, as described below. The proposed rule change would also amend the Policy Statement to impose a time limit (''Time Limit'') of six months for an Applicant to complete its Application with required documentation (''Required Documentation''),[10] before its Application would expire, as described below. The proposed rule change would also make other changes of a technical nature to the Rules text, as described below.

### 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2) and (f)(4).

[5] Capitalized terms not defined herein are defined in the Rules, By-Laws and Organization Certificate of DTC (the ''Rules''), *available at www.dtcc.com/~/media/Files/Downloads/legal/rules/dtc_rules.pdf.*

[6] *Available at http://www.dtcc.com/~/media/Files/Downloads/legal/fee-guides/dtcfeeguide.pdf?la=en.*

[7] *See* Rule 2, Section 1, *supra* note 5.

[8] *See* Rule 2, Section 3, *supra* note 5.

[9] *See* Policy Statement, *supra* note 5 at 133–134.

[10] The Required Documentation relates to the DTC services the Applicant seeks to utilize and includes, but is not limited to, the applicable form of agreement with DTC providing, among other matters, that the Applicant will abide by the Rules and agreeing to New York governing law. There is a standard form Participant's Agreement to be signed by a Participant Applicant, and a standard form Pledgee's Agreement to be signed by a Pledgee Applicant. Certain certifications and other documentation, including but not limited to opinions of counsel, authorizing resolutions and appointment of authorized signers, may be required of a Participant Applicant depending on the nature and level of DTC services the Participant Applicant seeks to use. Participant Applicants are also required to provide certain financial and regulatory reports and other information, as applicable, to allow DTC to evaluate the Applicant's financial condition, operational capability and character. *See* Rule 2, *supra* note 5, and the Policy Statement, *supra* note 9.

*(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The proposed rule change consists of proposed modifications to (i) the Fee Schedule [11] to add the Application Fees and (ii) the Policy Statement with respect to the provision that requires a Non-U.S. Participant Applicant to provide a Foreign Legal Opinion, as described below. With respect to (i) above, the Fee Schedule would be amended to charge (A) each Participant Applicant the proposed Participant Application Fee, and (B) each Pledgee Applicant the proposed Pledgee Application Fee, as described below. With respect to (ii) above, the Policy Statement would be amended to (A) remove the provision that requires each Non-U.S. Participant Applicant to obtain a Foreign Legal Opinion from its counsel and (B) provide that DTC would obtain a Foreign Legal Opinion from DTC Counsel in the Jurisdiction of Organization of a new Non-U.S. Participant Applicant. Each Non-U.S. Participant Applicant would be charged a Foreign Legal Opinion Fee with respect to the applicable Foreign Legal Opinion obtained by DTC, as described below. The proposed rule change would also amend the Policy Statement to impose the Time Limit of six months for an Applicant to submit an Application, with Required Documentation, before its Application would expire, as described below. The proposed rule change would also make other changes of a technical nature to the Rules text, as described below.

Proposed Application Fees and Time Limit

DTC may approve an Applicant eligible for admission as a Participant or Pledgee [12] only upon a determination by DTC that the Applicant meets reasonable standards of financial condition, operational capability and character at the time of its Application and on an ongoing basis thereafter.[13] To facilitate DTC's review of an Application, the Applicant must satisfy DTC's Application requirements in form and substance satisfactory to DTC, including Required Documentation, in accordance with the Rules.[14]

The review of Participant and Pledgee Applications by DTC requires significant application of personnel and other resources related to legal, risk, compliance, account administration and other functions. In order to align revenue with these costs, DTC proposes to amend the Fee Schedule to charge (i) a Participant Application Fee of $5,000 to each Participant Applicant that formally submits a Participant Application on or after July 2, 2018 (''Effective Date'') and (ii) a Pledgee Application Fee of $2,500 to each Pledgee Applicant that formally submits a Pledgee Application on or after the Effective Date.

Payment of the full amount of the applicable Application Fee would be due as of the date DTC provides the Applicant with access to DTC's online Application portal (''Portal'') [15] and related payment instructions. An Application Fee would be non-refundable regardless of the outcome of the respective Application (*i.e.,* approval, disapproval or expiration).

Pursuant to the proposed rule change, if an Applicant does not submit a completed Application with Required Documentation within the Time Limit of six months (''Submission Timeframe''), then the Application would expire. If after the expiration of an Application, the entity still wishes to apply, it would be required to formally re-apply by submitting a new Application with the Required Documentation, and incur another charge for the applicable Application Fee. The Submission Timeframe would begin on the date that DTC provides the Applicant with access to the Portal.

DTC believes the proposed Time Limit is reasonable, necessary and appropriate because (i) Required Documentation consists primarily of standard forms and other documentation, certifications and information, as applicable, that would be readily available to an Applicant that meets the applicable DTC membership qualifications and financial and operational requirements mentioned above and (ii) information contained in the Application and Required Documentation submitted by the Applicant, including financial reports and information, authorizing resolutions, appointment of authorized signers and opinions of counsel, may become out-of-date and/or inaccurate due to internal operational or financial changes at the Applicant, or due to changes in applicable law, if an Applicant does not complete an Application in a timely manner.

Proposed Legal Opinion Fee

The Required Documentation for U.S. and Non-U.S. Participant Applicants includes an opinion of counsel of the Applicant.[16] The Applicant's counsel must provide an opinion to the effect that the Participant's Agreement—which, among other provisions, provides that the DTC Rules and By-Laws shall be a part of the terms and conditions of every contract or transaction that the Participant may make or have with DTC—will be binding and enforceable on the Applicant when it becomes a Participant.[17] To the extent that a Participant Applicant is organized under the laws of a jurisdiction outside of the United States, the required opinion must, in addition, specifically address issues such as DTC's ability to enforce its Rules (including its netting and default management rules) under the applicable insolvency regime of the Jurisdiction of Organization, and the enforceability of the choice of New York law to govern the Participant's Agreement and Rules.[18]

In order to address the legal costs of the review of legal opinion letters for Non-U.S. Participant Applicants, DTC proposes to modify the current process for obtaining Foreign Legal Opinions and implement the new Foreign Legal Opinion Fee.

Currently, the Non-U.S. Participant Applicant provides a Foreign Legal Opinion from counsel in its Jurisdiction of Organization; the opinion is then reviewed (and negotiated with the Applicant's counsel, as needed) by DTC with the advice of DTC's counsel.

Costs to DTC to review Foreign Legal Opinions vary depending on issues raised by an Applicant's counsel in their Foreign Legal Opinion, and the level of review and negotiation required for DTC to gain comfort that the law of the Applicant's Jurisdiction of Organization does not provide material impediments to enforcement of the Rules. Foreign Legal Opinion review is typically conducted by DTC with its U.S. counsel. Often, DTC may also need advice from outside counsel in the foreign jurisdiction of the Applicant, adding to the cost of the review.

[11] *Supra* note 6.

[12] *See* Rule 3, *supra* note 5 (setting forth qualifications for eligibility for Participants) and Section 3 of Rule 2, *supra* note 5 (setting forth Persons/entity types that may become Pledgees).

[13] *See* Rule 2, *supra* note 5.

[14] *See* Rule 2, *supra* note 5, and the Policy Statement, *supra* note 9 (setting forth Required Documentation and other requirements that an Applicant must satisfy prior to DTC's approval of the Applicant's Application).

[15] The Portal is a closed website that allows Applicants to retrieve the Application forms and templates of Required Documentation and to submit completed Applications, including Required Documentation, to DTC.

[16] *See* Sections 1 and 2 of Policy Statement, *supra* note 9.

[17] *See* Section 1 of Rule 2, *supra* note 5 (setting forth the terms of the Participant's Agreement).

[18] *See* Section 2 of Policy Statement, *supra* note 9.

Pursuant to the proposed rule change, DTC would select DTC Counsel to provide a Foreign Legal Opinion satisfactory to DTC for each applicable Jurisdiction of Organization. DTC would rely on each Foreign Legal Opinion for a specified time (subject to any interim change in applicable law). The proposed rule change would benefit Non-U.S. Participant Applicants because efficiencies would be gained from consolidating the process so that each Non-U.S. Participant Applicant would not be required to obtain a separate Foreign Legal Opinion. When the specified period expires, DTC would obtain periodic updates from its counsel, as reasonable.

Pursuant to the proposed rule change, the Fee Schedule would reflect that the initial Non-U.S. Participant Applicant from a given Jurisdiction of Organization to submit a Participant Application after the Effective Date, would be advised of a ''Maximum Estimated Charge'' based on an estimate of fees and charges provided to DTC by DTC Counsel with respect to obtaining a Foreign Legal Opinion for that Jurisdiction of Organization. DTC would advise the Non-U.S. Participant Applicant of the Maximum Estimated Charge in writing after DTC has had a reasonable opportunity to consult with DTC Counsel and obtain an estimate of fees and charges of DTC Counsel that would comprise the Maximum Estimated Charge.

DTC would attempt to minimize costs of DTC Counsel as reasonable. The amount of the Foreign Legal Opinion Fee charged to the Non-U.S. Participant Applicant would be the lesser of the Maximum Estimated Charge and the actual costs charged to DTC by DTC Counsel in connection with the review of the Foreign Legal Opinion. If within five business days after DTC advises the Non-U.S. Participant Applicant of the Maximum Estimated Charge, as described above, the Non-U.S. Participant Applicant notifies DTC in writing that it will terminate its Participant Application, the Non-U.S. Participant Applicant would not be charged a Foreign Legal Opinion Fee. If the Application is terminated, the Maximum Estimated Charge would no longer apply and DTC would obtain a new Maximum Estimated Charge from DTC Counsel if it receives a subsequent Application. If the initial Non-U.S. Participant Applicant does not terminate its Application within five business days of DTC advising it of the Maximum Estimated Charge, then the Non-U.S. Applicant would be billed for the Legal Opinion Fee in the amount that would be determined as described above, promptly after DTC Counsel has provided to DTC a final invoice stating the actual amount to be charged to DTC for the Foreign Legal Opinion. Payment by the Non-U.S. Participant Applicant of the full amount of the Foreign Legal Opinion Fee would be due within ten business days of the Non-U.S. Participant Applicant's receipt of an invoice, including payment instructions, from DTC.

Each subsequent Non-U.S. Participant Applicant (''Subsequent Non-U.S. Applicant'') from a Jurisdiction of Organization would be charged a Foreign Legal Opinion Fee in an amount equal to the Foreign Legal Opinion Fee charged to the first Non-U.S. Participant Applicant from the Jurisdiction of Organization that was charged a Foreign Legal Opinion Fee. DTC would notify each Subsequent Non-U.S. Applicant in writing of the amount of the Legal Opinion Fee that was determined as described above. If within five business days after DTC advises the Subsequent Non-U.S. Participant Applicant of the applicable Legal Opinion Fee, the Non-U.S. Participant Applicant notifies DTC in writing that it will terminate its Participant Application, the Non-U.S. Participant Applicant would not be charged a Foreign Legal Opinion Fee. If the Subsequent Non-U.S. Applicant does not terminate its Application within five business days of DTC advising it of the amount of the Legal Opinion Fee, then the Applicant would be billed accordingly. Payment by the Non-U.S. Participant Applicant of the full amount of the Foreign Legal Opinion Fee would be due within ten business days of the Non-U.S. Participant Applicant's receipt of an invoice, including payment instructions, from DTC.

The Fee Schedule would not expressly include an absolute maximum amount for the Foreign Legal Opinion Fee because, based on DTC's experience in reviewing Foreign Legal Opinions, the level of review required for DTC to gain comfort that the law of the Applicant's Jurisdiction of Organization does not provide material impediments to enforcement of the Rules can vary significantly by jurisdiction, resulting in significant variance in counsel costs to DTC. The Fee Schedule would not include an absolute minimum amount for the Foreign Legal Opinion Fee, because DTC would not charge an Applicant a Foreign Legal Opinion Fee that is in an amount that is higher than the actual amount billed by DTC Counsel to provide the applicable Foreign Legal Opinion.

Proposed Rule Changes

DTC proposes to amend (i) the text of the Policy Statement to (a) delete text requiring that a Foreign Legal Opinion be submitted by each Non-U.S. Participant Applicant, (b) add text to reflect that the Non-U.S. Participant Applicant would be required to agree to pay a fee (*i.e.,* Foreign Legal Opinion Fee) relating to DTC obtaining a Foreign Legal Opinion from DTC Counsel, as discussed above, and (c) add a new Section 3 to the Policy Statement titled ''Policy Statement on Application Fees and Time Limit for Submission of Applications and Required Documentation by Applicants,'' which would set forth the proposed Time Limit and a reference to the proposed Application Fees, as described above, and (ii) the DTC Fee Schedule to add the Application Fees and Foreign Legal Opinion Fee (and related terms of payment), as described above.

The proposed rule change would also make a technical change to modify the title of the Policy Statement to ''Policy Statements on the Admission of Participants and Pledgees.''

In addition, the Policy Statement would be amended to add a legend (''Legend'') stating that changes to the Policy Statement, as amended by this proposed rule change, are available at a link on *www.dtcc.com.* The Legend would also state that the changes have become effective upon filing with the Commission but have not yet been implemented. The Legend would state that on the Effective Date these changes will be implemented and the Legend will automatically be removed from the Policy Statement.

Effective Date

The proposed rule change would become effective on the Effective Date.

2. Statutory Basis

Section 17A(b)(3)(D) of the Act [19] requires that the Rules provide for the equitable allocation of reasonable dues, fees, and other charges among its participants. DTC believes that the proposed Application Fees for Participants would be (i) equitably allocated because each Participant Applicant would be charged a fee for its Participant Application in an amount equal to the amount that each other Participant Applicant would be charged and (ii) reasonable because the respective Application Fees would allow DTC to pass through to Participant Applicants the substantial costs to DTC associated with the review of Participant Applications that would

[19] 15 U.S.C. 78q–1(b)(3)(D).

otherwise be incurred by DTC. DTC believes the proposed Foreign Legal Opinion Fee would be equitably allocated because the amount charged to each Non-U.S. Participant Applicant with respect to a given Jurisdiction of Organization would be tied to, and would not exceed, the cost to DTC in obtaining the opinion for that jurisdiction, and, in accordance with the amendment to the Fee Schedule as described above, a Foreign Legal Opinion Fee in the same amount would be charged to all Applicants domiciled in the Jurisdiction of Organization for which an applicable Foreign Legal Opinion was obtained. In addition, DTC believes that the proposed Foreign Legal Opinion Fee would be reasonable because it (i) would be capped in the amount of the Maximum Estimated Charge, as described above, (ii) the amount of a Foreign Legal Opinion Fee charged to an Applicant would not be greater than the costs DTC may incur in connection with obtaining the applicable Foreign Legal Opinion, as described above and (iii) would allow DTC to pass through to Non-U.S. Participant Applicants the substantial costs to DTC associated with the review of Foreign Legal Opinions that would otherwise be incurred by DTC. Therefore, DTC believes that the proposed rule change would provide for the equitable allocation of reasonable fees among its participants, and is consistent with Section 17A(b)(3)(D).[20]

Section 17A(b)(3)(F) [21] of the Act, requires, *inter alia,* that the Rules are designed to promote the prompt and accurate clearance and settlement of securities transactions. DTC believes that the proposed rule change to implement the Pledgee Application Fee is consistent with this provision because collection of the Pledgee Application Fee would facilitate DTC's ability to cover costs to it associated with DTC's review of Pledgee Applications, and therefore would facilitate DTC's ability to make prompt determinations as to whether to make its services available to a Pledgee Applicant and allow the processing of Pledges by Participants to it within DTC's system. Therefore, DTC believes that by facilitating the prompt admission of qualified Pledgees to DTC, and the inclusion of related pledge activity within the DTC system, the proposed rules change would promote the prompt and accurate clearance and settlement of securities transactions.[22] In addition, DTC believes that the proposed rule change to modify the title of the Policy Statement to ''Policy Statements on the Admission of Participants and Pledgees'' is consistent with this provision because it would enhance clarity as to the application of the Policy Statement, and the users of DTC's services that would be affected by it. By providing for enhanced clarity for users of DTC's services in this regard, the proposed rule change would provide users with enhanced transparency with regard to the Rules relating to applying to be able to use DTC's services, including for the processing of securities transactions, and, therefore, the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions.

Section 17A(b)(3)(F) [23] of the Act, requires, *inter alia,* that the Rules are not designed to permit unfair discrimination in the admission of participants in the use of the clearing agency. DTC believes the proposed rule changes are consistent with this provision because (i) the proposal for DTC to obtain a single Foreign Legal Opinion from DTC Counsel for all new Non-U.S. Participant Applicants domiciled within a Jurisdiction of Organization, rather than requiring each Non-U.S. Participant Applicant to obtain an opinion from its own in its Jurisdiction of Organization, would provide for enhanced consistency in the review performed by DTC by eliminating the need for it to review multiple legal opinions submitted by each Applicant individually, and (ii) the proposed Time Limit would allow a sufficient amount of time for an Applicant to complete and submit to DTC the documentation and information necessary for DTC to be able to conduct its review of the Applicant's Application, as discussed above. Therefore, DTC believes that the proposed rule change would not permit unfair discrimination in the admission of participants in the use of DTC, and is consistent with the provisions of Section 17A(b)(3)(F).[24]

*(B) Clearing Agency's Statement on Burden on Competition*

DTC believes that the proposed changes to the Fee Schedule could impose a burden on competition because it would implement new fees payable by an Applicant in connection with an Application to DTC, thereby creating costs to the Applicant not previously realized by Applicants. DTC does not believe that any burden on competition imposed by the changes to the Fee Schedule would be significant because (i) the Application Fees would represent de minimus amounts for qualified Applicants that meet DTC's financial standards as set forth in the Policy Statement [25] and (ii) the Foreign Legal Opinion Fee is unlikely to cause a material impact to a Non-U.S. Participant Applicant's overall cost of applying for DTC membership due to the coinciding proposal to eliminate the requirement for Non-U.S. Participant Applicants to provide a Foreign Legal Opinion, as described above, resulting in the elimination of the Applicant incurring the cost of obtaining a Foreign Legal Opinion from its own counsel. DTC believes that any burden on competition that is created by the proposed changes to the Fee Schedule would be necessary and appropriate in furtherance of the purposes of the Act [26] in order to cover substantial costs to DTC associated with the review of Participant and Pledgee Applications and Foreign Legal Opinions that would otherwise be incurred by DTC, and ultimately, because DTC operates on an ''at cost'' fee model, its Participants generally.

DTC does not believe that the proposed rule change for DTC to obtain a single Foreign Legal Opinion from DTC Counsel for all Non-U.S. Participant Applicants domiciled within a Jurisdiction of Organization would impose a burden on competition, because it would it would merely shift the task of obtaining Foreign Legal Opinions to DTC. The proposed rule change may promote competition because DTC believes that the elimination of the requirement for each individual Non-U.S. Participant Applicant to obtain a Foreign Legal Opinion would facilitate enhanced consolidation and efficiency in the review of Non-U.S. Participant Applicants' Applications by DTC, as described above.

DTC does not believe the proposed rule change to implement the Time Limit for submission of Required Documentation would impact competition, because the Required Documentation consists primarily of standard agreements, forms and other documentation, certifications and information, as applicable, that are currently required of Applicants and would be readily available, or could be readily prepared, within the proposed Time Limit, by an Applicant that meets the applicable DTC membership qualifications and financial and

[20] *Id.*

[21] 15 U.S.C. 78q–1(b)(3)(F).

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *See supra* note 9 at 132 and 134.

[26] 15 U.S.C. 78q–1(b)(3)(I).

operational requirements mentioned above.

*(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

DTC has not received or solicited any written comments relating to this proposal. DTC will notify the Commission of any written comments received by DTC.

**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–DTC–2018–002 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–DTC–2018–002. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of DTC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2018–002 and should be submitted on or before July 24, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–14298 Filed 7–2–18; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–83530; File No. SR–Phlx–2018–50]**

## Self-Regulatory Organizations; Nasdaq Phlx LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Exchange's Penny Pilot Program

June 28, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 25, 2018, Nasdaq Phlx LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend Phlx Rule 1034 (Minimum Increments) [3] to extend through December 31, 2018 or the date of permanent approval, if earlier, the Penny Pilot Program in options classes in certain issues (''Penny Pilot'' or ''Pilot''), and to change the date when delisted classes may be replaced in the Penny Pilot.

The text of the proposed rule change is set forth below. Proposed new language is *italicized* and proposed deleted language is in brackets.

* * * * *

Nasdaq PHLX Rules

Options Rules

* * * * *

Rule 1034. Minimum Increments

(a) Except as provided in sub-paragraphs (i)(B) and (iii) below, all options on stocks, index options, and Exchange Traded Fund Shares quoting in decimals at $3.00 or higher shall have a minimum increment of $.10, and all options on stocks and index options quoting in decimals under $3.00 shall have a minimum increment of $.05.

(i)(A) No Change.

(B) For a pilot period scheduled to expire [June 30, 2018]*December 31, 2018* or the date of permanent approval, if earlier (the ''pilot''), certain options shall be quoted and traded on the Exchange in minimum increments of $0.01 for all series in such options with a price of less than $3.00, and in minimum increments of $0.05 for all series in such options with a price of $3.00 or higher, except that options overlying the PowerShares QQQ Trust (''QQQQ'')®, SPDR S&P 500 Exchange Traded Funds (''SPY''), and iShares Russell 2000 Index Funds (''IWM'') shall be quoted and traded in minimum increments of $0.01 for all series regardless of the price. A list of such options shall be communicated to membership via an Options Trader Alert (''OTA'') posted on the Exchange's website.

The Exchange may replace any pilot issues that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the pilot, based on trading activity in the previous six months. The replacement issues may be added to the pilot on the second trading day following [January 1, 2018]*July 1, 2018.*

(C) No Change.

[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] References herein to rules refer to rules of Phlx, unless otherwise noted.

(ii)–(v) No Change.

* * * * *

The text of the proposed rule change is also available on the Exchange's website at *http://nasdaqomxphlx.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this filing is to amend Phlx Rule 1034 to extend the Penny Pilot through December 31, 2018 or the date of permanent approval, if earlier,[4] and to change the date when delisted classes may be replaced in the Penny Pilot. The Exchange believes that extending the Penny Pilot will allow for further analysis of the Penny Pilot and a determination of how the program should be structured in the future.

Under the Penny Pilot, the minimum price variation for all participating options classes, except for the Nasdaq-100 Index Tracking Stock (''QQQQ''), the SPDR S&P 500 Exchange Traded Fund (''SPY'') and the iShares Russell 2000 Index Fund (''IWM''), is $0.01 for all quotations in options series that are quoted at less than $3 per contract and $0.05 for all quotations in options series that are quoted at $3 per contract or greater. QQQQ, SPY and IWM are quoted in $0.01 increments for all options series. The Penny Pilot is currently scheduled to expire on June 30, 2018.[5]

The Exchange proposes to extend the time period of the Penny Pilot through December 31, 2018 or the date of permanent approval, if earlier, and to provide a revised date for adding replacement issues to the Penny Pilot. The Exchange proposes that any Penny Pilot Program issues that have been delisted may be replaced on the second trading day following July 1, 2018. The replacement issues will be selected based on trading activity in the previous six months.[6]

This filing does not propose any substantive changes to the Penny Pilot Program; all classes currently participating in the Penny Pilot will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the potential increase in quote traffic.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

In particular, the proposed rule change, which extends the Penny Pilot for an additional six months through December 31, 2018 or the date of permanent approval, if earlier, and changes the date for replacing Penny Pilot issues that were delisted to the second trading day following July 1, 2018, will enable public customers and other market participants to express their true prices to buy and sell options for the benefit of all market participants. This is consistent with the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, this proposal is pro-competitive because it allows Penny Pilot issues to continue trading on the Exchange.

Moreover, the Exchange believes that the proposed rule change will allow for further analysis of the Pilot and a determination of how the Pilot should be structured in the future; and will serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

The Pilot is an industry-wide initiative supported by all other option exchanges. The Exchange believes that extending the Pilot will allow for continued competition between market participants on the Exchange trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Pilot.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[11] normally does not become operative prior to 30 days after

[4] The options exchanges in the U.S. that have pilot programs similar to the Penny Pilot (together ''pilot programs'') are currently working on a proposal for permanent approval of the respective pilot programs.

[5] *See* Securities Exchange Act Release No. 82370 (December 20, 2017), 82 FR 61351 (December 27, 2017) (SR–Phlx–2017–104).

[6] The replacement issues will be announced to the Exchange's membership via an Options Trader Alert (OTA) posted on the Exchange's website. Penny Pilot replacement issues will be selected based on trading activity in the previous six months, as is the case today. The replacement issues would be identified based on The Options Clearing Corporation's trading volume data. For example, for the July replacement, trading volume from December 1, 2017 through May 31, 2018 would be analyzed. The month immediately preceding the replacement issues' addition to the Pilot Program (*i.e.,* June) would not be used for purposes of the six-month analysis.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6).

the date of the filing.[12] However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program and will allow the Exchange and the Commission additional time to analyze the impact of the Pilot Program.[14] Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[15]

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)[16] 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–Phlx–2018–50 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2018–50. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2018–50 and should be submitted on or before July 24, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–14291 Filed 7–2–18; 8:45 am]

**BILLING CODE 8011–01–P**

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and 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. The Exchange has satisfied this pre-filing requirement.

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] *See* Securities Exchange Act Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR–NYSEArca–2009–44).

[15] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78s(b)(2)(B).

[17] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–83536; File No. SR–CboeBYX–2018–009]**

## Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 11.9, Orders and Modifiers

June 28, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 18, 2018, Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it 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 Substance of the Proposed Rule Change

The Exchange filed a proposal to add a new optional order type modifier to be known as Non-Displayed Swap. The proposed amendments are substantively identical to the rules of Cboe EDGX Exchange, Inc. (''EDGX'')[5] and substantially similar to the rules of the Nasdaq Stock Market LLC (''Nasdaq'')[6] and NYSE Arca, Inc. (''Arca'').[7]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* EDGX Rules 11.6(n)(7), 11.8(b)(7) and 11.8(d)(5); *see also* Securities Exchange Act Release No. 80841 (June 1, 2017), 82 FR 26559 (June 7, 2017), (Notice of Filing and Immediate Effectiveness To Add a New Optional Order Instruction Known as Non-Displayed Swap).

[6] *See* Nasdaq Rule 4703(m) (defining the Trade Now order modifier); *see also* Securities Exchange Act Release No. 79282 (November 10, 2016), 81 FR 81219 (November 17, 2016) (Notice of Filing and Immediate Effectiveness of Proposed Rule change to Amend Rule 4702 and Rule 4703 to Add a ''Trade Now'' Instruction to Certain Order Types).

[7] *See* Arca Rule 7.31–E(d)(2)(B) (describing the Non-Display Remove Modifier); *see also* Securities Exchange Act Release No. 76267 (October 26, 2015), 80 FR 66951 (October 30, 2015) (Order Approving Proposed Rule change Adopting New Equity Trading Rules Relating to Orders and Modifiers and Retail Liquidity Program To Reflect the Implementation of Pillar, the Exchange's New Trading Technology Platform).

The text of the proposed rule change is available at the Exchange's website at *www.markets.cboe.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to add a new optional order type modifier to be known as Non-Displayed Swap. The proposed amendments are substantively identical to the rules of EDGX [8] and substantially similar to the rules of Nasdaq and Arca.[9]

The proposed Non-Displayed Swap (''NDS'') instruction would provide resting limit orders that are not displayed on the Exchange [10] and Mid-Point Peg Orders resting on the BYX Book [11] with a greater ability to receive an execution when that resting order is locked by an incoming order (*e.g.,* the price of the resting non-displayed order is equal to the price of the incoming order that is to be placed on the BYX Book). The NDS instruction would be an optional order instruction that would allow Users [12] to have their resting non-displayed orders execute against an incoming order with a Post Only instruction rather than have it be locked by the incoming order. NDS would be defined as an instruction on an order resting on the BYX Book that, when locked by an incoming order with a Post Only instruction that does not remove liquidity pursuant to paragraph (c)(6) of Exchange Rule 11.9,[13] causes such order to be converted to an executable order that removes liquidity against such incoming order. An NDS instruction would only be eligible for inclusion on a non-displayed limit order or a Mid-Point Peg Order. An order with a NDS instruction would not be eligible for routing pursuant to Exchange Rule 11.13, Order Execution and Routing. The proposed NDS instruction assists in the avoidance of an internally locked BYX Book (though such lock would not be displayed by the Exchange) [14] by facilitating the execution of orders that would otherwise lock each other.

The following example illustrates the operation of an order with a NDS instruction. Assume the National Best Bid and Offer is $10.00 by $10.04. There is a non-displayed limit order to buy resting on the BYX Book at $10.03. A BYX Post Only Order to sell priced at $10.03 is entered. Under current behavior, the incoming sell order marked as Post Only would post to the BYX Book because it would not receive sufficient price improvement.[15] This would result in the BYX Book being internally locked.[16] As proposed, if the non-displayed limit order to buy also included a NDS instruction, the orders would instead execute against each other at $10.03, with the resting buy order with the NDS instruction becoming the remover of liquidity and the incoming BYX Post Only Order to sell becoming the liquidity provider.

Assume the same facts as above, but that a non-displayed limit order to buy at $10.03 (''Order A'') is also resting on the BYX Book with time priority ahead of the non-displayed limit order mentioned above (''Order B''). Like above, a BYX Post Only Order to sell priced at $10.03 is entered. Under current behavior, the incoming BYX Post Only Order to sell would post to the BYX Book because the value of such execution against the resting buy interest when removing liquidity does not equal or exceed the value of such execution if the order instead posted to the BYX Book and subsequently provided liquidity, including the applicable fees charged or rebates provided. As proposed, if Order B also included a NDS instruction, the incoming sell order would execute against Order B and such order would become the remover of liquidity and the BYX Post Only Order to sell would become the liquidity provider. In such case, Order A cedes time priority to Order B because Order A did not also include a NDS instruction and thus the User that submitted Order A did not indicate the preference to be treated as the remover of liquidity in favor of an execution; instead, by not using NDS, a User indicates the preference to remain posted on the BYX Book as a liquidity provider.[17] However, if the incoming sell order was priced at $10.02, it would receive sufficient price improvement to execute upon entry against all resting buy limit orders in time priority at $10.03.[18]

If the order with a NDS instruction is only partially executed, the unexecuted portion of that order remains on the BYX Book and maintains its priority, as is the case today for an order that is partially executed and not cancelled by the User.[19] The Exchange is proposing to make the NDS instruction available to limit orders [20] that are not displayed on the Exchange [21] and MidPoint Peg Orders.[22] Because the NDS instruction would be only available to limit orders not displayed on the Exchange and to MidPoint Peg Orders, the NDS instruction would not be available to other order types provided by the Exchange under its Rule 11.9, such as BYX Market Orders, Reserve Orders, and Market Maker Peg Orders,[23] as the NDS instruction would be inconsistent with the use of those order types. The NDS instruction could, however, be

[8] *See supra* note 5.

[9] *See supra* notes 6 and 7.

[10] *See* Exchange Rule 11.9(c)(11).

[11] *See* Exchange Rule 1.5(e).

[12] *See* Exchange Rule 1.5(cc).

[13] Under Exchange Rule 11.9(c)(6), a BYX Post Only Order will remove contra-side liquidity from the BYX Book if the order is an order to buy or sell a security priced below $1.00 or if the value of such execution when removing liquidity equals or exceeds the value of such execution if the order instead posted to the BYX Book and subsequently provided liquidity, including the applicable fees charged or rebates provided. To determine at the time of a potential execution whether the value of such execution when removing liquidity equals or exceeds the value of such execution if the order instead posted to the BYX Book and subsequently provided liquidity, the Exchange will use the highest possible rebate paid and highest possible fee charged for such executions on the Exchange.

[14] *See* Exchange Rule 11.13(a)(4)(C).

[15] *Id.* [sic]

[16] In the event the incoming order with a Post Only instruction was to be displayed, it would post and display at $10.03 and the resting buy order with a Non-Displayed instruction would not execute against it or subsequent incoming sell orders at $10.03 for so long as the sell order was displayed on the Exchange. *See* Exchange Rule 11.13(a)(4)(C) and (D).

[17] Should the limit order to buy at $10.03 with time priority (*i.e.,* Order A) be displayed on the BYX Book, the incoming BYX Post Only Order to sell at $10.03 will not execute against the non-displayed buy order with a NDS instruction because displayed orders have priority over non-displayed orders. In such a case, the incoming limit order would be handled as it is today in accordance with existing Exchange rules. *See, e.g.,* Exchange Rules 11.9 and 11.13(a).

[18] The execution occurs here because the value of the execution against the buy order when removing liquidity exceeds the value of such execution if the order instead posted to the BYX Book and subsequently provided liquidity, including the applicable fees charged or rebates provided. *See supra* note 13.

[19] *See* Exchange Rule 11.12(a)(5).

[20] *See* Exchange Rule 11.9(a)(1).

[21] *See* Exchange Rule 11.9(c)(11).

[22] *See* Exchange Rule 11.9(c)(9).

[23] *See* Exchange Rules 11.9(a)(2), 11.9(c)(1) and 11.9(c)(16), respectively.

combined with other instructions also available to non-displayed limit orders, such as the Minimum Quantity Order instruction, the Primary Pegged Order instruction, the Market Pegged Order instruction or the Discretionary Order instruction.[24]

The Exchange notes that similar functionality exists on Nasdaq and Arca. Nasdaq refers to their functionality as the ''Trade Now'' instruction[25] and Arca refers to their functionality as the ''Non-Display Remove Modifier''.[26] On Arca, a Limit Non-Displayed Order may be designated with a Non-Display Remove Modifier. If so designated, a Limit Non-Displayed Order to buy (sell) will trade as the remover of liquidity with an incoming Adding Liquidity Only Order (''ALO Order'') to sell (buy) that has a working price equal to the working price of the Limit Non-Displayed Order.[27] On Nasdaq, Trade Now is an order attribute that allows a resting order that becomes locked by an incoming Displayed Order to execute against the available size of the contra-side locking order as a liquidity taker, and any remaining shares of the resting order will remain posted on the Nasdaq Book with the same priority.[28] Nasdaq requires the contra-side order to be display eligible, while the Exchange proposes to enable an order with a NDS instruction to remove liquidity regardless of whether the incoming order would have ultimately been eligible for display consistent with Arca's Non-Display Remove Modifier.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[29] in general, and furthers the objectives of Section 6(b)(5) of the Act[30] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest by offering Users optional functionality that will facilitate the execution of orders that would otherwise remain unexecuted, thereby increasing the efficient functioning of the Exchange. The NDS instruction is an optional feature that is intended to reflect the order management practices of various market participants. The proposed NDS instruction assists in the avoidance of an internally locked BYX Book by facilitating the execution of orders that would otherwise post, or remain posted, to the BYX Book.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. On the contrary, the Exchange believes the proposed rule change promotes competition because it will enable the Exchange to offer functionality substantially similar to that offered by Nasdaq and Arca (in addition to the fact that such functionality is identical to that already offered by the Exchange's affiliate, EDGX).[31] Therefore, the Exchange does not believe the proposed rule change will result in any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As the NDS feature will be equally available to all Users, the Exchange does not believe the proposed rule change will result in any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No comments were solicited or received on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[32] and subparagraph (f)(6) of Rule 19b–4 thereunder.[33]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii)[34] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. In its filing, BYX requested that the Commission waive the 30-day operative delay so that the Exchange can implement the proposed rule change promptly after filing. The Exchange noted that the proposed functionality is optional, may lead to increased order interaction on the Exchange, and is identical to functionality already provided on EDGX. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest, as such waiver will permit the Exchange to update its rule without delay so that it provides the same optional NDS functionality as is available on EDGX and potentially increase order interaction on the Exchange. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[35]

At any time within 60 days of the filing of the proposed rule change, the

[24] *See* Exchange Rules 11.9(c)(5), 11.9(c)(8)(A), 11.9(c)(8)(B) and 11.9(c)(10), respectively.

[25] *See* Nasdaq Rule 4703(m). *See also* Securities and Exchange Act Release No. 79282 (November 10, 2016), 81 FR 81219 (November 17, 2016) (SR–Nasdaq–2016–156) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 4703 and Rule 4703 to add a ''Trade Now'' Instruction to Certain Order Types).

[26] *See* Arca Rule 7.31–E(d)(2)(B). *See also* Securities and Exchange Act Release No. 76267 (October 26, 2015), 80 FR 66951 (October 30, 2015) (SR–NYSEArca–2015–56) (Order Approving Proposed Rule Change, and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 Thereto, Adopting New Equity Trading Rules Relating to Orders and Modifiers and the Retail Liquidity Program To Reflect the Implementation of Pillar, the Exchange's New Trading Technology Platform) (including the Non-Display Remove Modifier).

[27] *See* Arca Rule 7.31–E(d)(2)(b).

[28] Arca provides their Non-Display Remove Modifier to their Mid-Point Liquidity Orders (''MPL Orders'') designated Day and MPL–ALO Orders and Arca Only Orders. Nasdaq's Trade Now functionality is available to Price to Comply Orders, Price to Display Orders, Non-Displayed Orders, Post-Only Orders, Midpoint Peg Post-Only Orders, and Market Maker Peg Orders. To the extent the NDS instruction is only available to non-displayed limit orders and MidPoint Peg Orders, the Exchange notes that the NDS instruction will apply to different order types than Arca's Non-Display Remove Modifier and Nasdaq's Trade Now functionality.

[29] 15 U.S.C. 78f(b).

[30] 15 U.S.C. 78f(b)(5).

[31] *See supra* notes 5–7.

[32] 15 U.S.C. 78s(b)(3)(A)(iii).

[33] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[34] 17 CFR 240.19b–4(f)(6)(iii).

[35] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBYX–2018–009 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–CboeBYX–2018–009. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBYX–2018–009, and should be submitted on or before July 24, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–14296 Filed 7–2–18; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–83542; File No. SR–BX–2014–048]**

## Self-Regulatory Organizations; Nasdaq BX; Order Granting an Extension to Limited Exemptions From Rule 612(c) of Regulation NMS in Connection With the Exchange's Retail Price Improvement Program Until December 31, 2018

June 28, 2018.

On November 28, 2014 the Securities and Exchange Commission (''Commission'') issued an order pursuant to its authority under Rule 612(c) of Regulation NMS (''Sub-Penny Rule'') [1] that granted Nasdaq BX, Inc. (''BX'' or ''Exchange'') a limited exemption from the Sub-Penny Rule in connection with the operation of the Exchange's Retail Price Improvement Program (the ''RPI Program'').[2] The limited exemption was granted concurrently with the Commission's approval of the Exchange's proposal to adopt its RPI Program for a one-year pilot term.[3] On November 20, 2015, the Commission extended the temporary exemption until December 2016 concurrently with an immediately effective filing that extended the operation of the RPI Program until December 1, 2016.[4] On December 1, 2016, the Commission extended the temporary exemption until December 1, 2017 concurrently with an immediately effective filing that extended the operation of the RPI Program until December 1, 2017.[5] On December 1, 2017, the Commission again extended the temporary exemption until June 30, 2018 concurrently with an immediately effective filing that extended the operation of the RPI Program until December 1, 2017.[6]

The Exchange now seeks to extend the exemption until December 31, 2018.[7] The Exchange's request was made in conjunction with an immediately effective filing that extends the operation of the RPI Program through the same date.[8] In its request to extend the exemption, the Exchange notes that given the gradual implementation of the RPI Program and the preliminary participation and results, extending the exemption would provide additional opportunities for greater participation and assessment of the results.[9] Accordingly, the Exchange has asked additional time to allow it and the Commission to analyze data concerning the RPI Program, which the Exchange committed to provide to the Commission.[10] For this reason and the reasons stated in the RPI Approval Order originally granting the limited exemption, the Commission, pursuant to its authority under Rule 612(c) of Regulation NMS, finds that pursuant to its authority under Rule 612(c) of Regulation NMS, extending the exemption is appropriate in the public interest and consistent with the protection of investors.

*Therefore, it is hereby ordered* that, pursuant to Rule 612(c) of Regulation NMS, the Exchange is granted a limited exemption from Rule 612 of Regulation NMS that allows the Exchange to accept and rank orders priced equal to or greater than $1.00 per share in increments of $0.001, in connection with the operation of its RPI Program, until December 31, 2018.

The limited and temporary exemption extended by this Order is subject to modification or revocation if at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Securities Exchange Act of 1934. Responsibility for compliance with any applicable provisions of the Federal securities laws must rest with the

[36] 17 CFR 200.30–3(a)(12) and (59).

[1] 17 CFR 242.612(c).

[2] *See* Securities Exchange Act Release No. 73702, 79 FR 72049 (December 4, 2014) (SRBX–2014–048) (''RPI Approval Order'').

[3] *See id.*

[4] *See* Securities Exchange Act Release No. 76490 (November 20, 2015), 80 FR 74165 (November 27, 2015) (SR–BX–2015–073).

[5] *See* Securities Exchange Act Release No. 79446 (December 1, 2016), 81 FR 88290 (December 7, 2016) (SR–BX–2016–065).

[6] *See* Securities Exchange Act Release No. 82192 (December 1, 2017), 82 FR 57809 (December 7, 2017) (SR–BX–2017–055).

[7] *See* Letter from Jeffrey S. Davis, Vice President and Deputy General Counsel and Secretary, Nasdaq BX, Inc. to Eduardo A. Aleman, Assistant Secretary, Securities and Exchange Commission dated June 21, 2018 (''BX Letter'').

[8] *See* SR–BX–2018–026.

[9] *See, e.g.,* BX Letter at 3; RPI Approval Order, supra note 2.

[10] *See, e.g., id.;* RPI Approval Order, supra note 2.

persons relying on the exemptions that are the subject of this Order.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–14288 Filed 7–2–18; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–83533; File No. SR–GEMX–2018–23]**

## Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Exchange's Penny Pilot Program

June 28, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 25, 2018, Nasdaq GEMX, LLC (''GEMX'' 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 rules to extend a pilot program to quote and to trade certain options classes in penny increments (''Penny Pilot Program'').

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqgemx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Under the Penny Pilot Program, the minimum price variation for all participating options classes, except for the Nasdaq-100 Index Tracking Stock (''QQQQ''), the SPDR S&P 500 Exchange Traded Fund (''SPY'') and the iShares Russell 2000 Index Fund (''IWM''), is $0.01 for all quotations in options series that are quoted at less than $3 per contract and $0.05 for all quotations in options series that are quoted at $3 per contract or greater. QQQQ, SPY and IWM are quoted in $0.01 increments for all options series. The Penny Pilot Program is currently scheduled to expire on June 30, 2018.[3] The Exchange proposes to extend the Penny Pilot Program through December 31, 2018, and to provide a revised date for adding replacement issues to the Penny Pilot Program. The Exchange proposes that any Penny Pilot Program issues that have been delisted may be replaced on the second trading day following July 1, 2018. The replacement issues will be selected based on trading activity for the most recent six month period excluding the month immediately preceding the replacement (*i.e.,* beginning December 1, 2017, and ending May 31, 2018). This filing does not propose any substantive changes to the Penny Pilot Program: All classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh any increase in quote traffic.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[4] Specifically, the proposed rule change is consistent with Section 6(b)(5) of the Act,[5] because it is designed to promote just and equitable principles of trade, 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. In particular, the proposed rule change, which extends the Penny Pilot Program for an additional six months, will enable public customers and other market participants to express their true prices to buy and sell options to the benefit of all market participants.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act,[6] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that, by extending the expiration of the Penny Pilot Program, the proposed rule change will allow for further analysis of the Penny Pilot Program and a determination of how the Penny Pilot Program should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

[11] 17 CFR 200.30–3(a)(83).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 82356 (December 19, 2017), 82 FR 61089 (December 26, 2017) (SR–GEMX–2017–57).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(8).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

A proposed rule change filed under Rule 19b–4(f)(6) [9] normally does not become operative prior to 30 days after the date of the filing.[10] However, pursuant to Rule 19b–4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program and will allow the Exchange and the Commission additional time to analyze the impact of the Pilot Program.[12] Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[13]

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.

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and 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. The Exchange has satisfied this pre-filing requirement.

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] *See* Securities Exchange Act Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR–NYSEArca–2009–44).

[13] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78s(b)(2)(B).

Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–GEMX–2018–23 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–GEMX–2018–23. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–GEMX–2018–23 and should be submitted on or before July 24, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–14294 Filed 7–2–18; 8:45 am]

**BILLING CODE 8011–01–P**

[15] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–83540; File No. SR–NYSE–2018–29]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Period for the Exchange's Retail Liquidity Program Until December 31, 2018

June 28, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 20, 2018, New York Stock Exchange LLC (''NYSE'' 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 extend the pilot period for the Exchange's Retail Liquidity Program (the ''Retail Liquidity Program'' or the ''Program''), which is currently scheduled to expire on June 30, 2018, until the earlier of approval of the filing to make the Program permanent or December 31, 2018. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to extend the pilot period for the Retail Liquidity Program, currently scheduled to expire on June 30, 2018,[3] until the earlier of approval of the filing to make the Program permanent or December 31, 2018.

Background

In July 2012, the Commission approved the Retail Liquidity Program on a pilot basis.[4] The Program is designed to attract retail order flow to the Exchange, and allows such order flow to receive potential price improvement. The Program is currently limited to trades occurring at prices equal to or greater than $1.00 per share. Under the Program, Retail Liquidity Providers (''RLPs'') are able to provide potential price improvement in the form of a non-displayed order that is priced better than the Exchange's best protected bid or offer (''PBBO''), called a Retail Price Improvement Order (''RPI''). When there is an RPI in a particular security, the Exchange disseminates an indicator, known as the Retail Liquidity Identifier, indicating that such interest exists. Retail Member Organizations (''RMOs'') can submit a Retail Order to the Exchange, which would interact, to the extent possible, with available contra-side RPIs.

The Retail Liquidity Program was approved by the Commission on a pilot basis. Pursuant to NYSE Rule 107C(m), the pilot period for the Program is scheduled to end on June 30, 2018.

Proposal To Extend the Operation of the Program

The Exchange established the Retail Liquidity Program in an attempt to attract retail order flow to the Exchange by potentially providing price improvement to such order flow. The Exchange believes that the Program promotes competition for retail order flow by allowing Exchange members to submit RPIs to interact with Retail Orders. Such competition has the ability to promote efficiency by facilitating the price discovery process and generating additional investor interest in trading securities, thereby promoting capital formation. The Exchange believes that extending the pilot is appropriate because it will allow the Exchange and the Commission additional time to analyze data regarding the Program that the Exchange has committed to provide and consider the Exchange's filing to make the filing permanent.[5] As such, the Exchange believes that it is appropriate to extend the current operation of the Program.[6] Through this filing, the Exchange seeks to amend NYSE Rule 107C(m)[7] and extend the current pilot period of the Program until the earlier of approval of the filing to make the Program permanent or December 31, 2018.

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 Section 6(b)(5) of the Act,[9] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that extending the pilot period for the Retail Liquidity Program is consistent with these principles because the Program is reasonably designed to attract retail order flow to the exchange environment, while helping to ensure that retail investors benefit from the better price that liquidity providers are willing to give their orders. Additionally, as previously noted, the competition promoted by the Program may facilitate the price discovery process and potentially generate additional investor interest in trading securities. The extension of the pilot period will allow the Commission and the Exchange to continue to monitor the Program for its potential effects on public price discovery, and on the broader market structure.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change simply extends an established pilot program for an additional six months, thus allowing the Retail Liquidity Program to enhance competition for retail order flow and contribute to the public price discovery process.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6)[14] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative

[3] *See* Securities Exchange Act Release No. 82230 (December 7, 2017), 82 FR 58667 (December 13, 2017) (SR–NYSE–2017–64).

[4] *See* Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) (SR–NYSE–2011–55) (''RLP Approval Order'').

[5] *See id.* at 40681; *see also* SR–NYSE–2018–28 (filing to make Rule 107C, which sets forth the Exchange's Retail Liquidity Program, permanent).

[6] Concurrently with this filing, the Exchange has submitted a request for an extension of the exemption under Regulation NMS Rule 612 previously granted by the Commission that permits it to accept and rank the undisplayed RPIs. *See* Letter from Martha Redding, Asst. Corporate Secretary, NYSE Group, Inc. to Brent J. Fields, Secretary, Securities and Exchange Commission, dated June 14, 2018.

[7] The Exchange notes that the proposed amendment to Rule 107C(m) would amend the current version of Rule 107C(m), which the Exchange also proposes to amend as part of the Exchange's filing to make Rule 107C permanent. *See* SR–NYSE–2018–28.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, because waiver would allow the pilot period to continue uninterrupted after its current expiration date of June 30, 2018, thereby avoiding any potential investor confusion that could result from temporary interruption in the pilot program. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2018–29 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–NYSE–2018–29. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2018–29, and should be submitted on or before July 24, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–14286 Filed 7–2–18; 8:45 am]

**BILLING CODE 8011–01–P**

[16] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12), (59).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–83543; File No. SR–NYSEArca–2013–107]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting an Extension to Limited Exemptions From Rule 612(c) of Regulation NMS In Connection With the Exchange's Retail Liquidity Programs Until December 31, 2018

June 28, 2018.

On December 23, 2013, the Securities and Exchange Commission (''Commission'') issued an order pursuant to its authority under Rule 612(c) of Regulation NMS (''Sub-Penny Rule'') [1] that granted NYSE Arca, Inc. (''Exchange'') a limited exemption from the Sub-Penny Rule in connection with the operation of the Exchange's Retail Liquidity Program (the ''Program'').[2] The limited exemption was granted concurrently with the Commission's approval of the Exchange's proposal to adopt its Program for a one-year pilot term.[3] The exemption was granted coterminous with the effectiveness of the pilot Program; both the pilot Program and exemption are scheduled to expire on June 30, 2018.[4]

The Exchange now seeks to extend the exemptions until December 31, 2018.[5] The Exchange's request was made in conjunction with an immediately effective filing that extends

[1] 17 CFR 242.612(c).

[2] See Securities Exchange Act Release No. 71176 (December 23, 2013), 78 FR 79524 (December 30, 2013) (SR–NYSEArca–2013–107) (''Order'').

[3] *See id.*

[4] On March 19, 2015, the Exchange requested an extension of the exemption for the Program. *See* letter from Martha Redding, Senior Counsel and Assistant Secretary, to Brent J. Fields, Secretary, Commission, dated March 19, 2015. The pilot period for the Program was extended until September 30, 2015. *See* Securities Exchange Act Release No. 74572 (Mar. 24, 2015), 80 FR 16705 (Mar. 30, 2015) (SR–NYSEArca–2015–22). On September 17, 2015, the Exchange requested another extension of the exemption for the Program. *See* letter from Martha Redding, Senior Counsel and Assistant Secretary, to Brent J. Fields, Secretary, Commission, dated September 17, 2015. The pilot period for the Program was extended until March 31, 2016. *See* Securities Exchange Act Release Nos. 75994 (Sept. 28, 2015), 80 FR 59834 (Oct. 2, 2015) (SR–NYSEArca–2015–84) and 77236 (Feb. 25, 2016), 81 FR 10943 (Mar. 2, 2016) (SR–NYSEArca–2016–30). On March 17, 2016, the Exchange requested another extension of the exemption for the Program. *See* letter from Martha Redding, Senior Counsel and Assistant Secretary, to Brent J. Fields, Secretary, Commission, dated March 17, 2016. The pilot period for the Program was extended until August 31, 2016. *See* Securities Exchange Act Release No. 77425 (Mar. 23, 2016), 81 FR 17523 (Mar. 29, 2016) (SR–NYSEArca–2016–47). On August 8, 2016, the Exchange requested another extension of the exemption for the Program. *See* Letter from Martha Redding, Associate General Counsel and Assistant Secretary, to Brent J. Fields, Secretary, Commission, dated August 8, 2016. The pilot period for the Program was extended until December 31, 2016. *See* Securities Exchange Act Release No. 78601 (Aug. 17, 2016), 81 FR 57632 (Aug. 23, 2016) (SR–NYSEArca–2016–113). On November 28, 2016, the Exchange requested another extension of the exemption for the program. *See* Letter from Martha Redding, Associate General Counsel and Assistant Secretary, to Brent J. Fields, Secretary, Commission, dated November 28, 2016. The pilot period for the Program was extended until June 30, 2017. *See* Securities Exchange Act Release No. 79495 (Dec. 7, 2016), 81 FR 90033 (Dec. 13, 2016) (SR–NYSEArca–2016–157). On May 23, 2017, the Exchange requested another extension of the exemption for the program. *See* Letter from Martha Redding, Associate General Counsel and Assistant Secretary, to Brent J. Fields, Secretary, Commission, dated May 23, 2017. The pilot period for the Program was extended until December 31, 2017. *See* Securities Exchange Act Release No. 80851 (June 2, 2017), 82 FR 26722 (June 8, 2017) (SR–NYSEArca–2017–63). On November 30, 2017, the Exchange requested another extension of the exemption to the program. *See* Letter from Martha Redding, Assistant Secretary, NYSE, to Brent J. Fields, Secretary, Commission, dated November 30, 2017. The pilot period for the Program was extended until June 30, 2018. *See* Securities Exchange Act Release No. 82289 (December 11, 2017), 82 FR 59677 (December 15, 2017) (SR–NYSEArca–2017–137).

[5] *See* Letter from Martha Redding, Associate General Counsel and Assistant Secretary, NYSE to Brent J. Fields, Secretary, Commission, dated June 14, 2018.

the operation of the Program through the same date.[6] In its request to extend the exemption, the Exchange notes that the participation in the Program has increased more recently with additional Retail Liquidity Providers. Accordingly, the Exchange has asked for additional time to both allow for additional opportunities for greater participation in the Program and allow for further assessment of the results of such participation. For this reason and the reasons stated in the Order originally granting the limited exemptions, the Commission finds that extending the exemption, pursuant to its authority under Rule 612(c) of Regulation NMS, is appropriate in the public interest and consistent with the protection of investors.

*Therefore, it is hereby ordered* that, pursuant to Rule 612(c) of Regulation NMS, the Exchange is granted a limited exemption from Rule 612 of Regulation NMS that allows it to accept and rank orders priced equal to or greater than $1.00 per share in increments of $0.001, in connection with the operation of its Retail Liquidity Program, until December 31, 2018.

The limited and temporary exemption extended by this Order is subject to modification or revocation if at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Securities Exchange Act of 1934. Responsibility for compliance with any applicable provisions of the Federal securities laws must rest with the persons relying on the exemptions that are the subject of this Order.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–14283 Filed 7–2–18; 8:45 am]

**BILLING CODE 8011–01–P**

[6] *See* SR–NYSEArca–2018–46.

[7] 17 CFR 200.30–3(a)(83).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–83529; File No. SR–OCC–2018–802]**

## Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Advance Notice of and No Objection to The Options Clearing Corporation's Proposal To Enter Into a New Credit Facility Agreement

June 27, 2018.

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing and Settlement Supervision Act of 2010 (''Clearing Supervision Act'') [1] and Rule 19b–4(n)(1)(i) [2] under the Securities Exchange Act of 1934 (''Act''),[3] notice is hereby given that on May 25, 2018, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') an advance notice as described in Items I, II and III below, which Items have been prepared by OCC. On June 26, 2018, OCC filed Amendment No. 1 to the advance notice.[4] The Commission is publishing this notice to solicit comments on the advance notice from interested persons, and to provide notice that the Commission does not object to the changes set forth in the advance notice.

### I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This advance notice is filed in connection with a proposed change to its operations in the form of the replacement of a revolving credit facility that OCC maintains for a 364-day term and that it may use (i) in anticipation of a potential default by or suspension of a Clearing Member, (ii) to meet obligations arising out of the default or suspension of a Clearing Member, (iii) to meet reasonably anticipated liquidity needs for same-day settlement as a result of the failure of any bank or securities or commodities clearing organization to achieve daily settlement, or (iv) to meet obligations arising out of the failure of a bank or securities or commodities clearing organization to perform its obligations due to its bankruptcy, insolvency, receivership or suspension of operations.

All terms with initial capitalization not defined herein have the same meaning as set forth in OCC's By-Laws and Rules.[5]

### II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the advance notice and discussed any comments it received on the advance notice. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections A and B below, of the most significant aspects of these statements.

*(A) Clearing Agency's Statement on Comments on the Advance Notice Received From Members, Participants or Others*

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received. OCC will notify the Commission of any written comments received by OCC.

*(B) Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing, and Settlement Supervision Act*

Description of the Proposed Change

Background

This advance notice is being filed in connection with a proposed change in the form of the replacement of a revolving credit facility that OCC maintains for a 364-day term and that it may use (i) in anticipation of a potential default by or suspension of a Clearing Member, (ii) to meet obligations arising out of the default or suspension of a Clearing Member, (iii) to meet reasonably anticipated liquidity needs for same-day settlement as a result of the failure of any bank or securities or commodities clearing organization to achieve daily settlement, or (iv) to meet obligations arising out of the failure of a bank or securities or commodities clearing organization to perform its obligations due to its bankruptcy, insolvency, receivership or suspension of operations (''Permitted Use Circumstances''). In any such Permitted Use Circumstance, OCC has certain conditional authority under its By-Laws and Rules to borrow or otherwise obtain funds from third parties using Clearing Member margin deposits and/or Clearing Fund contributions.[6]

OCC's existing credit facility (''Existing Facility'') was implemented as of June 30, 2017, through the execution of a credit agreement among OCC, the administrative agent, collateral agent and the lenders that are parties to the agreement from time to time. The Existing Facility provides short-term secured borrowings in an aggregate principal amount of $2 billion but may be increased to $3 billion if OCC so requests and sufficient commitments

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] 15 U.S.C. 78a *et seq.*

[4] Amendment No. 1 replaced and superseded the Initial Filing in its entirety. The only substantive change in Amendment No. 1 was to remove OCC's proposal to establish certain ''evergreen'' provisions for future renewals of its revolving credit facility. Amendment No. 1 did not change the purpose, basis, or terms of the proposed renewal.

[5] OCC's By-Laws and Rules can be found on OCC's public website: *http://optionsclearing.com/about/publications/bylaws.jsp.*

[6] *See generally* Article VIII, Sections 5(a), (b) and (e) of OCC's By-Laws; Interpretation and Policy .06 to Article VIII, Section 5; OCC Rules 1102 and 1104(b).

from lenders are received and accepted. To obtain a loan under the Existing Facility, OCC must pledge as collateral U.S. dollars, securities issued or guaranteed by the U.S. Government or the Government of Canada, Standard & Poor's 500 Market Index equities, Exchange-Traded Funds (''ETFs''), American Depositary Receipts (''ADRs'') or certain government-sponsored enterprise debt securities. Certain mandatory prepayments or deposits of additional collateral are required depending on changes in the collateral's market value. In connection with OCC's past implementation of the Existing Facility, OCC filed an advance notice with the Commission on May 4, 2017, and the Commission published a Notice of No-Objection on June 30, 2017.[7]

Description of the Proposal

*Renewal.* The Existing Facility is set to expire on June 29, 2018. OCC is currently negotiating the terms of a new credit facility (''New Facility'') on substantially similar terms as the Existing Facility, and the definitive documentation concerning the New Facility is expected to be substantially similar to the definitive documentation concerning the Existing Facility. The proposed terms and conditions that are expected to be applicable to the New Facility, subject to agreement by the lenders, are set forth in the Summary of Terms and Conditions, which is not a public document.[8]

Certain administrative changes are presently expected in connection with the New Facility that include representations, warranties and covenants related to applicable regulations and the provision of information by OCC in certain circumstances to the lenders and administrative agent in connection with regulatory requirements, such as ''know your customer'' and anti-money-laundering regulations. The conditions regarding the availability of the New Facility, which OCC anticipates will be satisfied on or about June 28, 2018, include the execution and delivery of (i) a credit agreement between OCC and the administrative agent, collateral agent and various lenders under the New Facility, (ii) a pledge agreement between OCC and the administrative agent or collateral agent, and (iii) such other documents as may be required by the parties. The definitive documentation concerning the New Facility is expected to be consistent with the Summary of Terms and Conditions that is provided as Exhibit 3, although it may include certain changes to business terms as may be necessary to obtain the agreement of lenders with sufficient funding commitments and certain changes as may be necessary regarding administrative and operational terms being finalized between the parties.

Anticipated Effect on and Management of Risk

Completing timely settlement is a key aspect of OCC's role as a clearing agency performing central counterparty services. Overall, the New Facility would continue to promote the reduction of risks to OCC, its Clearing Members and the options market in general because it would allow OCC to obtain short-term funds in the Permitted Use Circumstances. The existence of the New Facility would therefore help OCC minimize losses in the event of a Permitted Use Circumstance by allowing it to obtain funds on extremely short notice to ensure clearance and settlement of transactions in options and other contracts without interruption. OCC believes that the reduced settlement risk presented by OCC resulting from the New Facility would correspondingly reduce systemic risk and promote the safety and soundness of the clearing system. By drawing on the New Facility, OCC would also be able to avoid liquidating margin deposits or Clearing Fund contributions in what would likely be volatile market conditions, which would preserve funds available to cover any losses resulting from the failure of a Clearing Member, bank or other clearing organization.

Consistency With the Payment, Clearing and Settlement Supervision Act

The stated purpose of the Clearing Supervision Act is to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically important financial market utilities and strengthening the liquidity of systemically important financial market utilities.[9] Section 805(a)(2) of the Clearing Supervision Act[10] also authorizes the Commission to prescribe risk management standards for the payment, clearing and settlement activities of designated clearing entities, like OCC, for which the Commission is the supervisory agency. Section 805(b) of the Clearing Supervision Act[11] states that the objectives and principles for risk management standards prescribed under Section 805(a) shall be to:

- Promote robust risk management;
- promote safety and soundness;
- reduce systemic risks; and
- support the stability of the broader financial system.

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act and the Act in furtherance of these objectives and principles.[12] Rule 17Ad–22 requires registered clearing agencies, like OCC, to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk management practices on an ongoing basis.[13] Therefore, the Commission has stated[14] that it believes it is appropriate to review changes proposed in advance notices against Rule 17Ad–22 and the objectives and principles of these risk management standards as described in Section 805(b) of the Clearing Supervision Act.[15]

OCC believes that the proposed changes are consistent with Section 805(b)(1) of the Clearing Supervision Act[16] because the New Facility would provide OCC with continued access to a stable and reliable source of committed liquidity that can be accessed in a timely manner to meet its settlement obligations, contain losses and liquidity pressures and mitigate OCC's liquidity risk. Accordingly, OCC believes the proposed changes are designed to (i) promote robust risk management; (ii) promote safety and soundness; and (iii) reduce systemic risks and promote the stability of the broader financial system.

OCC believes that New Facility also is consistent with the requirements of Rule 17Ad–22(e)(7) under the Act.[17] Rule 17Ad–22(e)(7) requires OCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage liquidity risk that arises in or is borne by OCC, including measuring, monitoring, and managing its settlement and funding

[7] *See* Securities Exchange Act Release No. 81058 (June 30, 2017), 82 FR 31370 (July 6, 2017) (SR–OCC–2017–803).

[8] OCC has separately submitted a request for confidential treatment to the Commission regarding the Summary of Terms and Conditions, which is included in this filing as Exhibit 3.

[9] 12 U.S.C. 5461(b).

[10] 12 U.S.C. 5464(a)(2).

[11] 12 U.S.C. 5464(b).

[12] 17 CFR 240. 17Ad–22. *See* Securities Exchange Act Release Nos. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (S7–08–11) (''Clearing Agency Standards''); 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7–03–14) (''Standards for Covered Clearing Agencies'').

[13] 17 CFR 240.17Ad–22.

[14] *See supra* note 6.

[15] 12 U.S.C. 5464(b).

[16] 12 U.S.C. 5464(b)(1).

[17] 17 CFR 240.17Ad–22(e)(7).

flows on an ongoing and timely basis, and its use of intraday liquidity, as specified in the rule.[18]

In particular, Rule 17Ad–22(e)(7)(i) under the Act[19] directs that OCC meet this obligation by, among other things, ''[m]aintaining sufficient liquid resources at the minimum in all relevant currencies to effect same-day . . . settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes, but is not limited to, the default of the participant family that would generate the largest aggregate payment of obligation for [OCC] in extreme but plausible market conditions.''

As described above, the New Facility would provide OCC with a readily available liquidity resource that would enable it to, among other things, continue to meet its obligations in a timely fashion in a Permitted Use Circumstance and as an alternative to selling Clearing Member collateral under what may be stressed and volatile market conditions. For these reasons, OCC believes that the proposal is consistent with Rule 17Ad–22(e)(7)(i).[20]

Rule 17Ad–22(e)(7)(ii) under the Act requires OCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to hold qualifying liquid resources sufficient to satisfy payment obligations owed to Clearing Members.[21] Rule 17Ad–22(a)(14) of the Act defines ''qualifying liquid resources'' to include, among other things, lines of credit without material adverse change provisions, that are readily available and convertible into cash.[22] As with the Existing Facility, the New Facility would not be subject to any material adverse change provision and would continue to be designed to permit OCC to, among other things, help ensure that OCC has sufficient, readily-available qualifying liquid resources to meet the cash settlement obligations of its largest Clearing Member Group. Therefore, OCC believes that the proposal is consistent with Rule 17Ad–22(e)(7)(ii).[23]

For the foregoing reasons, OCC believes that the proposed changes are consistent with Section 805(b)(1) of the Clearing Supervision Act[24] and Rule 17Ad–22(e)(7)[25] under the Act.

[18] *Id.*

[19] 17 CFR 240.17Ad–22(e)(7)(i).

[20] *Id.*

[21] 17 CFR 240.17Ad–22(e)(7)(ii).

[22] 17 CFR 240.17Ad–22(a)(14).

[23] 17 CFR 240.17Ad–22(e)(7)(ii).

[24] 12 U.S.C. 5464(b)(1).

[25] 17 CFR 240.17Ad–22(e)(7).

Accelerated Commission Action Requested

Pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act,[26] OCC requests that the Commission notify OCC that it has no objection to the New Facility not later than Tuesday, June 26, 2018, which is two business days prior to the expected June 28, 2018, availability of the New Facility. OCC requests Commission action by this date to ensure that there is no period that OCC operates without this essential liquidity resource, given its importance to OCC's borrowing capacity in connection with its management of liquidity and settlement risk and timely completion of clearance and settlement.

## III. Date of Effectiveness of the Advance Notice and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date the proposed change was filed with the Commission or (ii) the date any additional information requested by the Commission is received. OCC shall not implement the proposed change if the Commission has any objection to the proposed change.

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. A proposed change may be implemented in less than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies the clearing agency in writing that it does not object to the proposed change and authorizes the clearing agency to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

OCC shall post notice on its website of proposed changes that are implemented. The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the advance notice is consistent with the Clearing Supervision Act. Comments may be submitted by any of the following methods:

[26] 12 U.S.C. 5465(e)(1)(I).

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–OCC–2018–802 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–OCC–2018–802. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the advance notice that are filed with the Commission, and all written communications relating to the advance notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at *https://www.theocc.com/about/publications/bylaws.jsp.*

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–OCC–2018–802 and should be submitted on or before July 24, 2018.

## V. Commission Findings and Notice of No Objection

Although the Clearing Supervision Act does not specify a standard of review for an advance notice, its stated purpose is instructive: To mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically important financial market utilities and strengthening the liquidity

of systemically important financial market utilities.[27] Section 805(a)(2) of the Clearing Supervision Act authorizes the Commission to prescribe risk management standards for the payment, clearing, and settlement activities of designated clearing entities and financial institutions engaged in designated activities for which it is the supervisory agency or the appropriate financial regulator.[28] Section 805(b) of the Clearing Supervision Act[29] states that the objectives and principles for the risk management standards prescribed under Section 805(a) shall be to:

- Promote robust risk management;
- promote safety and soundness;
- reduce systemic risks; and
- support the stability of the broader financial system.[30]

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act[31] and Section 17A of the Act (''Rule 17Ad–22'').[32] Rule 17Ad–22 requires registered clearing agencies to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk management practices on an ongoing basis.[33] Therefore, it is appropriate for the Commission to review changes proposed in advance notices against Rule 17Ad–22 and the objectives and principles of the risk management standards described in Section 805(b) of the Clearing Supervision Act.[34] As discussed below, the Commission believes that the proposal in this advance notice is consistent with the objectives and principles described in Section 805(b) of the Clearing Supervision Act,[35] and in Rule 17Ad–22 under the Act, particularly Rule 17Ad–22(e)(7).[36]

*A. Consistency With Section 805(b) of the Clearing Supervision Act*

The Commission believes that the changes proposed in the advance notice are consistent with Section 805(b) of the Clearing Supervision Act because they: (i) Promote robust risk management; (ii) are consistent with promoting safety and soundness; and (iii) are consistent with reducing systemic risks and promoting the stability of the broader financial system.

The Commission believes that the changes proposed in the advance notice are consistent with promoting robust risk management, in particular management of liquidity risk presented to OCC. Renewing and maintaining a credit facility for this purpose and in the manner proposed by OCC would diversify the liquidity resources that OCC may use to resolve a Member default. As such, the Commission believes that the proposal would promote robust risk management practices at OCC, consistent with Section 805(b) of the Clearing Supervision Act.[37]

The Commission also believes that the changes proposed in the advance notice are consistent with promoting safety and soundness. As described above, the currently proposed credit facility would provide OCC with an additional liquidity resource in the event of a Member default. This liquidity would promote safety and soundness for Members because it would provide OCC with a readily available liquidity resource that would enable OCC to continue to meet its respective obligations in a timely fashion in the event of a Member default, thereby helping to contain losses and liquidity pressures from that default. As such, the Commission believes it is consistent with promoting safety and soundness as contemplated in Section 805(b) of the Clearing Supervision Act.[38]

In addition, the Commission believes that the proposal contained in the advance notice is consistent with reducing systemic risks and promoting the stability of the broader financial system. As mentioned above, allowing OCC to enter into the currently proposed credit facility would enable OCC, which has been designated a systemically important FMU,[39] to maintain an additional liquidity resource that OCC may access to help manage a Member default and avoid a gap in availability of this liquidity resource. Accordingly, the Commission believes that the proposal would help to reduce the systemic risk of OCC, which in turn would help to support the stability of the broader financial system, consistent with Section 805(b) of the Clearing Supervision Act.[40]

*B. Consistency With Rule 17Ad–22(e)(7)*

The Commission believes that the proposed changes associated with the New Facility are consistent with the requirements of Rule 17Ad–22(e)(7) under the Act.[41] This rule requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to ''effectively measure, monitor, and manage the liquidity risk that arises in or is borne by [it], including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity.''[42]

In particular, Rule 17Ad–22(e)(7)(i) directs that a covered clearing agency meet this obligation by, among other things, ''[m]aintaining sufficient liquid resources at the minimum in all relevant currencies to effect same-day . . . settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes, but is not limited to, the default of the participant family that would generate the largest aggregate payment obligation for the covered clearing agency in extreme but plausible conditions.''[43]

The Commission believes that the changes proposed by the advance notice are consistent with the requirements of Rules 17Ad–22(e)(7) under the Act.[44] Rule 17Ad–22(e)(7) requires OCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage liquidity risk that arises in or is borne by OCC, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity, as specified in the rule.[45]

In particular, Rule 17Ad–22(e)(7)(i) under the Act[46] requires that registered clearing agencies establish, implement, maintain and enforce written policies and procedures reasonably designed to ''effectively measure, monitor, and manage the liquidity risk that arises in or is borne by [it], including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity by . . . [m]aintaining sufficient liquid resources at the minimum in all relevant currencies to effect same-day . . . settlement of

[27] 12 U.S.C. 5461(b).
[28] 12 U.S.C. 5464(a)(2).
[29] 12 U.S.C. 5464(b).
[30] *Id.*
[31] 12 U.S.C. 5464(a)(2).
[32] *See* 17 CFR 240.17Ad–22.
[33] *Id.*
[34] 12 U.S.C. 5464(b).
[35] *Id.*
[36] *See* 17 CFR 240.17Ad–22(e)(7).
[37] 12 U.S.C. 5464(b).
[38] *Id.*
[39] The Financial Stability Oversight Council designated OCC a systemically important financial market utility on July 18, 2012. See Financial Stability Oversight Council 2012 Annual Report, Appendix A, *http://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf.*
[40] *Id.*
[41] 17 CFR 240.17Ad–22(e)(7).
[42] *Id.*
[43] 17 CFR 240.17Ad–22(e)(7)(i).
[44] 17 CFR 240.17Ad–22(e)(7).
[45] *Id.*
[46] 17 CFR 240.17Ad–22(e)(7)(i).

payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes, but is not limited to, the default of the participant family that would generate the largest aggregate payment of obligation for the covered clearing agency in extreme but plausible conditions.''

As described above, the currently proposed credit facility would provide OCC with a readily available liquidity resource that would enable OCC to continue to meet its respective obligations in a timely fashion in the event of a Member default, thereby helping to contain losses and liquidity pressures from that default. Additionally, the currently proposed credit facility would allow OCC to avoid a gap in liquidity coverage and better allow OCC to continually maintain sufficient liquidity resources. Therefore, the Commission believes that the proposal is consistent with Rule 17Ad–22(e)(7)(i).

Rule 17Ad–22(e)(7)(ii) under the Act requires OCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to hold qualifying liquid resources sufficient to satisfy payment obligations owed to clearing members.[47] Rule 17Ad–22(a)(14) of the Act defines ''qualifying liquid resources'' to include, among other things, lines of credit without material adverse change provisions, that are readily available and convertible into cash.[48] As described above, the currently proposed credit facility would permit OCC to enter into a single credit facility designed to help ensure that OCC has sufficient, readily-available qualifying liquid resources to meet the cash settlement obligations of its largest family of affiliated members. Therefore, the Commission believes that the proposal is consistent with Rule 17Ad–22(e)(7)(ii).

## VI. Conclusion

*It is therefore noticed,* pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act, that the Commission *does not object* to the advance notice SR–OCC–2018–802 and OCC can and hereby is *authorized* to implement the change as of the date of this notice.

By the Commission.

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2018–14233 Filed 7–2–18; 8:45 am]

**BILLING CODE 8011–01–P**

[47] 17 CFR 240.17Ad–22(e)(7)(ii).

[48] 17 CFR 240.17Ad–22(a)(14).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–83535; File No. SR–BX–2018–024]**

## Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate the Exchange's Rules Pertaining to Co-Location and Direct Connectivity

June 28, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 13, 2018, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to relocate the Exchange's rules pertaining to co-location and direct connectivity, which are presently at Rules 7034 and 7051, to Sections 1 and 2, respectively, under a new General 8 (''Connectivity'') heading within the Exchange's new rulebook shell, entitled ''General Equity and Options Rules.'' The Exchange also proposes to correct an error in Rule 7051(b).

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqbx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to relocate its rules governing co-location and direct connectivity services, which presently comprise Rules 7034 and 7051, respectively. The Exchange proposes to establish, within its new rulebook shell,[3] a new General 8 heading, entitled ''Connectivity,'' to renumber Rule 7034 as Section 1 thereunder, and to renumber Rule 7051 as Section 2 thereunder. The Exchange furthermore proposes to amend Rules 7011, 7025, 7030, and Options Rules Chapter XV to update cross references therein to Rules 7034 and 7051, as applicable. The Exchange also proposes to update internal cross-references in the renumbered Rules.

The Exchange considers it appropriate to relocate these Rules to better organize its Rulebook. The other Affiliated Exchanges intend to propose similar reorganizations of their co-location and direct connectivity rules so that these rules will be harmonized among all of the Affiliated Exchanges.

The relocation of the co-location and direct connectivity rules is part of the Exchange's continued effort to promote efficiency and conformity of its processes with those of its Affiliated Exchanges. The Exchange believes that moving the co-location and direct connectivity rules to their new location will facilitate the use of the Rulebook by Members of the Exchange who are members of other Affiliated Exchanges.

In addition to the above, the Exchange proposes to correct an error in Rule 7051(b), entitled ''Direct Circuit Connection to Third Party Services.'' The Exchange recently amended Rule 7051 in an attempt to harmonize it with the corresponding rules of the other Affiliated Exchanges.[4] However, the Exchange recently discovered one remaining unintended discrepancy that it now proposes to remedy. The other Affiliated Exchanges waive installation and ongoing monthly fees for 10Gb Ultra and 1 GB Ultra direct circuit

[3] Recently, the Exchange added a shell structure to its Rulebook with the purpose of improving efficiency and readability and to align its rules closer to those of its five sister exchanges: The Nasdaq Stock Market, LLC; Nasdaq PHLX LLC; Nasdaq ISE, LLC; Nasdaq GEMX, LLC; and Nasdaq MRX, LLC (together with BX, the ''Affiliated Exchanges''). *See* Securities Exchange Act Release No. 82174 (November 29, 2017), 82 FR 57492 (December 5, 2017) (SR–BX–2017–054).

[4] *See* Securities Exchange Act Release No. 34–82628 (Feb. 5, 2018). 83 FR 5818 (Feb. 9, 2018) (SR–BX–2018–006).

connections to third party services for the first two connections per client to UTP SIP feeds only (UQDF and UTDF).[5] The Exchange's Rule does not presently provide for such waivers; it now proposes to amend the Rule so that it does so. With this amendment, Rule 7051(b) will be substantially the same as the corresponding rules of the other Affiliated Exchanges.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to promote just and equitable principles of trade, 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 improving the way its Rulebook is organized, providing ease of reference in locating co-location and direct connectivity rules, and harmonizing the Exchange's Rules with those of the other Affiliated Exchanges. As previously stated, the proposed Rule relocation is non-substantive.

The Exchange also believes that it is in the interests of investors and the public to remedy unintended errors in the Exchange's rules. Investors and the public have clear interests in the Exchange maintaining an accurate rulebook and schedule of fees.

*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 intermarket or intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes to relocate the Exchange's rules do not impose a burden on competition because, as previously stated, they (i) are of a non-substantive nature, (ii) are intended to harmonize the Exchange's rules with those of its Affiliated Exchanges, and (iii) are intended to organize the Rulebook in a way that it will ease the Members' navigation and reading of the rules across the Affiliated Exchanges. Likewise, the Exchange's proposal to amend Rule 7051(b) will not burden competition because it merely corrects an unintended error and renders the Exchange's fees identical to those that the other Affiliated Exchanges charge.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[10] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The proposed rule change merely relocates the Exchange's co-location and direct connectivity rules, updates rule cross-references, and corrects unintended errors from a previous proposed rule change.[12] Accordingly, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest and hereby waives the operative delay and designates the proposed rule change operative upon filing.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2018–024 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2018–024. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish

[5] *See* Nasdaq Rule 7051(b), Phlx Pricing Schedule Section XI(b), Nasdaq ISE Schedule of Fees Section VI.G, Nasdaq GEMX Schedule of Fees Section IV.D [sic], Nasdaq MRX Schedule of Fees Section VI.C.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] *See supra* notes 4–5 and accompanying text.

[13] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

to make available publicly. All submissions should refer to File Number SR–BX–2018–024, and should be submitted on or before July 24, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–14277 Filed 7–2–18; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–83531; File No. SR–ISE–2018–57]**

## Self-Regulatory Organizations; Nasdaq ISE LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Penny Pilot Program

June 28, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 25, 2018, Nasdaq ISE 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 its rules to extend a pilot program to quote and to trade certain options classes in penny increments (''Penny Pilot Program'').

The text of the proposed rule change is available on the Exchange's website at *http://ise.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Under the Penny Pilot Program, the minimum price variation for all participating options classes, except for the Nasdaq-100 Index Tracking Stock (''QQQQ''), the SPDR S&P 500 Exchange Traded Fund (''SPY'') and the iShares Russell 2000 Index Fund (''IWM''), is $0.01 for all quotations in options series that are quoted at less than $3 per contract and $0.05 for all quotations in options series that are quoted at $3 per contract or greater. QQQQ, SPY and IWM are quoted in $0.01 increments for all options series. The Penny Pilot Program is currently scheduled to expire on June 30, 2018.[3] The Exchange proposes to extend the Penny Pilot Program through December 31, 2018, and to provide a revised date for adding replacement issues to the Penny Pilot Program. The Exchange proposes that any Penny Pilot Program issues that have been delisted may be replaced on the second trading day following July 1, 2018. The replacement issues will be selected based on trading activity for the most recent six month period excluding the month immediately preceding the replacement (*i.e.,* beginning December 1, 2017, and ending May 31, 2018). This filing does not propose any substantive changes to the Penny Pilot Program: All classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh any increase in quote traffic.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[4] Specifically, the proposed rule change is consistent with Section 6(b)(5) of the Act,[5] because it is designed to promote just and equitable principles of trade, 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. In particular, the proposed rule change, which extends the Penny Pilot Program for an additional six months, will enable public customers and other market participants to express their true prices to buy and sell options to the benefit of all market participants.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act,[6] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that, by extending the expiration of the Penny Pilot Program, the proposed rule change will allow for further analysis of the Penny Pilot Program and a determination of how the Penny Pilot Program should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 82357 (December 19, 2017), 82 FR 61065 (December 26, 2017) (SR–ISE–2017–107).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(8).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[9] normally does not become operative prior to 30 days after the date of the filing.[10] However, pursuant to Rule 19b–4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program and will allow the Exchange and the Commission additional time to analyze the impact of the Pilot Program.[12] Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[13]

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–ISE–2018–57 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2018–57. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2018–57 and should be submitted on or before July 24, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–14292 Filed 7–2–18; 8:45 am]

**BILLING CODE 8011–01–P**

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and 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. The Exchange has satisfied this pre-filing requirement.

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] *See* Securities Exchange Act Release No. 61061 (November 24, 2009), 74 FR 62857 (December 1, 2009) (SR–NYSEArca–2009–44).

[13] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78s(b)(2)(B).

[15] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[[Release No. 34–83545; File No. SR–ICC–2018–007]**

## Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice Relating to the Clearance of an Additional Credit Default Swap Contract

June 28, 2018

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) and Rule 19b–4, 17 CFR 240.19b–4, notice is hereby given that on June 13, 2018, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission the proposed rule change, security-based swap submission, or advance notice as described in Items I, II, and III below, which Items have been prepared primarily by ICC. The Commission is publishing this notice to solicit comments on the proposed rule change, security-based swap submission, or advance notice from interested persons.

### I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

The principal purpose of the proposed rule change is to revise the ICC Rulebook (the ''Rules'') to provide for the clearance of an additional Standard Emerging Market Sovereign CDS contract (''EM Contract'').

### II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change, security-based swap submission, or advance notice and discussed any comments it received on the proposed rule change, security-based swap submission, or advance notice. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

*(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice*

(a) Purpose

The purpose of the proposed rule change is to adopt rules that will

provide the basis for ICC to clear an additional credit default swap contract. ICC believes the addition of this contract will benefit the market for credit default swaps by providing market participants the benefits of clearing, including reduction in counterparty risk and safeguarding of margin assets pursuant to clearing house rules. Clearing of the additional EM Contract will not require any changes to ICC's Risk Management Framework or other policies and procedures constituting rules within the meaning of the Securities Exchange Act of 1934 (''Act'').

ICC proposes amending Subchapter 26D of its Rules to provide for the clearance of the additional EM Contract, namely the Lebanese Republic. This additional EM Contract has terms consistent with the other EM Contracts approved for clearing at ICC and governed by Subchapter 26D of the Rules. Minor revisions to Subchapter 26D (Standard Emerging Market Sovereign (''SES'') Single Name) are made to provide for clearing the additional EM Contract. Specifically, in Rule 26D–102 (Definitions), ''Eligible SES Reference Entities'' is modified to include the Lebanese Republic in the list of specific Eligible SES Reference Entities to be cleared by ICC.

(b) Statutory Basis

Section 17A(b)(3)(F) of the Act [1] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions and to comply with the provisions of the Act and the rules and regulations thereunder. The additional EM Contract is similar to the EM Contracts currently cleared by ICC, and will be cleared pursuant to ICC's existing clearing arrangements and related financial safeguards, protections and risk management procedures. Clearing of the additional EM Contract will allow market participants an increased ability to manage risk and ensure the safeguarding of margin assets pursuant to clearing house rules. ICC believes that acceptance of the new EM Contract, on the terms and conditions set out in the Rules, is consistent with the prompt and accurate clearance of and settlement of securities transactions and derivative agreements, contracts and transactions cleared by ICC, the safeguarding of securities and funds in the custody or control of ICC, and the protection of investors and the public interest, within the meaning of Section 17A(b)(3)(F) of the Act.[2]

Clearing of the additional EM Contract will also satisfy the requirements of Rule 17Ad–22.[3] In particular, in terms of financial resources, ICC will apply its existing initial margin methodology to the additional contract. ICC believes that this model will provide sufficient initial margin requirements to cover its credit exposure to its clearing members from clearing such contract, consistent with the requirements of Rule 17Ad–22(b)(2).[4] In addition, ICC believes its Guaranty Fund, under its existing methodology, will, together with the required initial margin, provide sufficient financial resources to support the clearing of the additional contract consistent with the requirements of Rule 17Ad–22(b)(3).[5] ICC also believes that its existing operational and managerial resources will be sufficient for clearing of the additional contract, consistent with the requirements of Rule 17Ad–22(d)(4),[6] as the new contract is substantially the same from an operational perspective as existing contracts. Similarly, ICC will use its existing settlement procedures and account structures for the new contract, consistent with the requirements of Rule 17Ad–22(d)(5), (12) and (15) [7] as to the finality and accuracy of its daily settlement process and avoidance of the risk to ICC of settlement failures. ICC determined to accept the additional EM Contract for clearing in accordance with its governance process, which included review of the contract and related risk management considerations by the ICC Risk Committee and approval by its Board. These governance arrangements are consistent with the requirements of Rule 17Ad–22(d)(8).[8] Finally, ICC will apply its existing default management policies and procedures for the additional EM Contract. ICC believes that these procedures allow for it to take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of clearing member insolvencies or defaults in respect of the additional single names, in accordance with Rule 17Ad–22(d)(11).[9]

*(B) Clearing Agency's Statement on Burden on Competition*

The additional EM Contract will be available to all ICC participants for clearing. The clearing of this additional EM Contract by ICC does not preclude the offering of the additional EM Contract for clearing by other market participants. Accordingly, ICC does not believe that clearance of the additional EM Contract will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*(C) Clearing Agency's Statement on Comments on the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice Received From Members, Participants or Others*

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

## III. Date of Effectiveness of the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, security-based swap submission, or advance notice 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–ICC–2018–007 on the subject line.

*Paper Comments*

Send paper comments in triplicate to Secretary, Securities and Exchange

[1] 15 U.S.C. 78q–1(b)(3)(F).

[2] 15 U.S.C. 78q–1(b)(3)(F).

[3] 17 CFR 240.17Ad–22.

[4] 17 CFR 240.17Ad–22(b)(2).

[5] 17 CFR 240.17Ad–22(b)(3).

[6] 17 CFR 240.17Ad–22(d)(4).

[7] 17 CFR 240.17Ad–22(d)(5), (12) and (15).

[8] 17 CFR 240.17Ad–22(d)(8).

[9] 17 CFR 240.17Ad–22(d)(11).

Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ICC–2018–007. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, security-based swap submission, or advance notice that are filed with the Commission, and all written communications relating to the proposed rule change, security-based swap submission, or advance notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's website at *https://www.theice.com/clear-credit/regulation*.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICC–2018–007 and should be submitted on or before July 24, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–14299 Filed 7–2–18; 8:45 am]

**BILLING CODE 8011–01–P**

[10] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–83548; File No. SR–CboeBZX–2018–001]**

## Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade the Shares of the GraniteShares Bitcoin ETF and the GraniteShares Short Bitcoin ETF Under BZX Rule 14.11(f)(4), Trust Issued Receipts

June 28, 2018.

On January 5, 2018, Cboe BZX Exchange, Inc. (''BZX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade the shares of the GraniteShares Bitcoin ETF and the GraniteShares Short Bitcoin ETF under BZX Rule 14.11(f)(4). The proposed rule change was published for comment in the **Federal Register** on January 18, 2018.[3] On February 22, 2018, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On April 5, 2018, the Commission instituted proceedings under

Section 19(b)(2)(B) of the Act [6] to determine whether to approve or disapprove the proposed rule change.[7] The Commission has received eight comments on the proposed rule change.[8]

Section 19(b)(2) of the Act [9] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on January 18, 2018. July 17, 2018, is 180 days from that date, and September 15, 2018, is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider this proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[10] designates September 15, 2018, as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR–CboeBZX–2018–001).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2018–14302 Filed 7–2–18; 8:45 am]

**BILLING CODE 8011–01–P**

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b 4.

[3] *See* Securities Exchange Act Release No. 82484 (Jan. 11, 2018), 83 FR 2704 (Jan. 18, 2018).

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 82759 (Feb. 22, 2018), 83 FR 8719 (Feb. 28, 2018).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 82995 (Apr. 5, 2018), 83 FR 15425 (Apr. 10, 2018). Specifically, the Commission instituted proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,'' and ''to protect investors and the public interest.'' *See id.* at 15426 (citing 15 U.S.C. 78f(b)(5)).

[8] *See* Letters from Anita Desai (Apr. 6, 2018); Ed Kaleda (Apr. 6, 2018); Don Krohn (Apr. 7, 2018); Adam Malkin (Apr. 8, 2018); Shravan Kumar (Apr. 11, 2018); David Barnwell (Apr. 12, 2018); Louise Fitzgerald (Apr. 18, 2018); and Sharon Brown-Hruska, Managing Director, and Trevor Wagener, Consultant, NERA Economic Consulting (May 18, 2018). All comments on the proposed rule change are available on the Commission's website at: *https://www.sec.gov/comments/sr-cboebzx-2018-001/cboebzx2018001.htm*.

[9] 15 U.S.C. 78s(b)(2).

[10] *Id.*

[11] 17 CFR 200.30–3(a)(57).

## SMALL BUSINESS ADMINISTRATION

### Interest Rates

The Small Business Administration publishes an interest rate called the optional ''peg'' rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 2.875 percent for the July–September quarter of FY 2018.

Pursuant to 13 CFR 120.921(b), the maximum legal interest rate for any third party lender's commercial loan

which funds any portion of the cost of a 504 project (see 13 CFR 120.801) shall be 6% over the New York Prime rate or, if that exceeds the maximum interest rate permitted by the constitution or laws of a given State, the maximum interest rate will be the rate permitted by the constitution or laws of the given State.

**Dianna L. Seaborn,**

*Director, Office of Financial Assistance.*

[FR Doc. 2018–14208 Filed 7–2–18; 8:45 am]

**BILLING CODE P**

## SMALL BUSINESS ADMINISTRATION

### Privacy Act of 1974; System of Records

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice of New Privacy Act System of Records.

**SUMMARY:** The Small Business Administration (SBA) proposes to add a new system of records titled, Insider Threat Program System of Records, to its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. Publication of this notice complies with the Privacy Act and the Office of Management and Budget (OMB) Circular A–130 requirement for agencies to publish a notice in the **Federal Register** whenever the agency establishes a new System of Records.

**DATES:** This action will be effective without further notice on August 17, 2018 unless comments are received that would result in a contrary determination.

**ADDRESSES:** Submit written comments to Joseph P. Loddo, Director, Office of Continuous Operations and Risk Management, U.S. Small Business Administration, 409 3rd Street SW, 5th Floor, Washington, DC 20416.

**FOR FURTHER INFORMATION CONTACT:** Joseph P. Loddo, (202) 205–7014.

**SUPPLEMENTARY INFORMATION:** A System of Records is a group of any records under the control of a Federal agency from which information is retrieved by the name of an individual or by a number, symbol or other identifier assigned to the individual. The Privacy Act, 5 U.S.C. 552a, requires each Federal agency to publish in the **Federal Register** a System of Records notice (SORN) identifying and describing each System of Records the agency maintains, the purposes for which the agency uses the personally identifiable information (PII) in the system, the routine uses for which the agency discloses such information outside the agency, and how individuals can exercise their rights related to their PII information.

The U.S. Small Business Administration has created an Agency-wide repository known as the Insider Threat Program System of Records to manage insider threat matters within the SBA. The Insider Threat Program was mandated by E.O. 13587, Responsible Sharing and Safeguarding of Classified Information,'' issued October 7, 2011, which requires Federal agencies to establish an insider threat detection and prevention program to ensure the security of classified and controlled unclassified information with appropriate protections for privacy and civil liberties. Insider threats include: Attempted or actual espionage, subversion, sabotage, terrorism, or extremist activities: Unauthorized use of or intrusion into automated information systems; unauthorized disclosure of classified, controlled unclassified, sensitive, or proprietary information or technology; and indicators of potential insider threats. The SBA Insider Threat Program repository relies upon existing information from any SBA office, program, record, or source, and may include records from information security, personnel security, and systems security to support insider threat investigations. The SBA is not implementing a new IT system for the insider threat program.

**SYSTEM NAME:**

Insider Threat Program System of Records Notice.

**SYSTEM CLASSIFICATION:**

Unclassified.

**SYSTEM LOCATION:**

SBA headquarters (HQ) and all SBA field offices and centers.

**SYSTEM MANAGER(S):**

Joseph Loddo, Director, Office of Continuous Operations and Risk Management, 409 3rd Street SW, Washington, DC 20416.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108–458; Intelligence Authorization Act for FY 2010, Public Law 111–259; Atomic Energy Act of 1954, 60 Stat. 755, August 1, 1946; Title 6 U.S.C. 341(a)(6), 28 U.S. Code § 535, Investigation of Crimes Involving Government Employees Limitations; Title 40 U.S.C. 1315, Title 50 U.S.C. 3381, Coordination of Counterintelligence Activities; E.O. 10450, Security Requirements for Government Employment, April 17, 1953; E.O. 12333, United States Intelligence Activities (as amended); E.O. 12829, National Industrial Security Program; E.O. 12968, Access to Classified Information, August 2, 1995; E.O. 13467, Reforming Processes Related to Suitability for Government Employment, Fitness for Contractor Employees, and Eligibility for Access to Classified National Security Information, June 30, 2008; E.O. 13488, Granting Reciprocity on Excepted Service and Federal Contractor Employee Fitness and Reinvestigating Individuals in Positions of Public Trust, January 16, 2009; E.O. 13526, Classified National Security Information; E.O. 13587, Structural Reforms to Improve the Security of Classified Networks and the Responsible Sharing and Safeguarding of Classified Information, October 7, 2011; and Presidential Memorandum National Insider Threat Policy and Minimum Standards for Executive Branch Insider Threat Programs, November 21, 2012

**PURPOSE OF THE SYSTEM:**

The purpose of the Insider Threat Program System of Records is to manage insider threat matters; facilitate insider threat investigations and activities associated with counterintelligence and counterespionage complaints, inquiries, and investigations; identify threats to SBA resources and information assets; track referrals of potential insider threats to internal and external partners; and provide statistical reports and meet other insider threat reporting requirements.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM INCLUDE:**

- SBA current or former employees, contractors, or detailed staff who have or had access to classified and sensitive unclassified information or information systems.
- Other individuals, including government personnel and private sector individuals, who are authorized by SBA to access Agency facilities, communications security equipment, and/or information technology systems that process sensitive or classified national security information, and controlled unclassified information.
- Family members, dependents, relatives, and individuals with a personal association to an individual who is the subject of an insider threat investigation; and
- Witnesses and other individuals who provide statements or information to SBA related to an insider threat inquiry.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records will be created and maintained on a limited basis, as a result of a reported issue requiring analysis and consideration by the insider threat HUB.

Categories of Records in the system may include:

- Individual's name;
- Date and place of birth;
- Social Security Number;
- Address;
- Publicly available social media account information;
- Personal and official email address;
- Personal and official phone number;
- Work History;
- Information on family members, dependents, relatives, and other personal associations;
- Passport numbers;
- Gender;
- Hair and eye color;
- Other physical or distinguishing attributes or an individual;
- Medical reports;
- Access control pass, or other identifying number, and
- Photographic images, videotapes, voiceprints, or DVDs;

Reports of investigation regarding security violations, including but not limited to:

- Individual statements or affidavits and correspondence;
- Incident reports;
- Drug test results;
- Investigative records of a criminal, civil, or administrative nature;
- Letters, emails, memoranda, and reports;
- Exhibits, evidence, statements, and affidavits;
- Inquiries relating to suspected security violations; and
- Recommended remedial actions for possible security violations;

Any information related to the management and operation of specific investigations and the overall SBA insider threat program, including but not limited to:

- Documentation pertaining to investigative or analytical efforts by SBA insider threat program personnel to identify threats to SBA personnel, property, facilities, and information;
- Records collated to examine information technology events and other information that could reveal potential insider threat activities;
- Travel records;
- Intelligence reports and database query results relating to individuals covered by this system;
- Information obtained from the Intelligence Community, the Federal Bureau of Investigation (FBI), or from other agencies or organizations about individuals known or suspected of being engaged in conduct constituting, preparing for, aiding, or relating to an insider threat, including but not limited to espionage or unauthorized disclosures of classified national security information;
- Information provided by record subjects and individual members of the public; and
- Information provided by individuals who report known or suspected insider threats.

**RECORD SOURCE CATEGORIES:**

After events are identified for insider threat HUB consideration, relevant records are obtained from Department officials, employees, contractors, and other individuals who are associated with or represent SBA; officials from other foreign, Federal, tribal, State, and local government organizations; non-government, commercial, public, and private agencies and organizations; relevant SBA records, databases, and files, including personnel security files, facility access records, security incidents or violation files, network security records, investigatory records, visitor records, travel records, foreign visitor or contact reports, and financial disclosure reports; media, including periodicals, newspapers, and broadcast transcripts; intelligence source documents; publicly available information, including publicly available social media; and complainants, informants, suspects, and witnesses.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside SBA as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including offices of the U.S. Attorneys, or other Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation or has an interest in such litigation:

1. Any employee or former employee of SBA in his or her official capacity;

2. Any employee or former employee of SBA in his or her individual capacity when DOJ or SBA has agreed to represent the employee; or

3. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration (GSA) pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. SBA suspects or has confirmed that the security or confidentiality of information processed and maintained by the SBA has been compromised.

2. SBA has determined that as a result of the suspected or confirmed compromise, there is a risk of identity theft or fraud, harm to economic or property interests, harm to an individual, or harm to the security or integrity of this system or other systems or programs (whether maintained by SBA or another agency or entity) that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with SBA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contact, service, grant, cooperative agreement, or other assignment for SBA, when necessary to accomplish an agency function related to this System of Records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to SBA employees.

G. To an appropriate Federal, State, tribal, territorial, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To an appropriate Federal, State, local, tribal, territorial, foreign, or international agency, if the information is relevant and necessary to a requesting agency's decision concerning the hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, delegation or designation of authority, or other benefit, or if the information is relevant and necessary to a SBA decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, delegation or designation of authority, or other benefit and disclosure is appropriate to the proper performance of the official duties of the person making the request.

I. To an individual's prospective or current employer to the extent necessary to determine employment eligibility.

J. To third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation, provided disclosure is appropriate to the proper performance of the official duties of the individual making the disclosure.

K. To a public or professional licensing organization when such information indicates, either by itself or in combination with other information, a violation or potential violation of professional standards, or reflects on the moral, educational, or professional qualifications of an individual who is licensed or who is seeking to become licensed.

L. To another Federal agency in order to conduct or support authorized counterintelligence activities, as defined by 50 U.S.C. 3003(3).

M. To any Federal, State, local, tribal, territorial, foreign, or multinational government or agency, or appropriate private sector individuals and organizations lawfully engaged in national security or homeland defense for that entity's official responsibilities, including responsibilities to counter, deter, prevent, prepare for, respond to, threats to national or homeland security, including an act of terrorism or espionage.

N. To a Federal, State, local, tribal, territorial, government or agency lawfully engaged in the collection of intelligence (including national intelligence, foreign intelligence, and counterintelligence), counterterrorism, homeland security, law enforcement or law enforcement intelligence, and other information, when disclosure is undertaken for intelligence, counterterrorism, homeland security, or related law enforcement purposes, as authorized by U.S. law or E.O.

O. To any individual, organization, or entity, as appropriate, to notify them of a serious threat to homeland security for the purpose of guarding them against or responding to such a threat, or when there is a reason to believe that the recipient is or could become the target of a particular threat, to the extent the information is relevant to the protection of life, health, or property.

P. To members of the U.S. House Committee on Oversight and Government Reform and the Senate Homeland Security and Governmental Affairs Committee pursuant to a written request under 5 U.S.C. 2954, after consultation with the Privacy Act Officer and the General Counsel.

Q. To individual members of the Senate Select Committee on Intelligence and the House Permanent Select Committee for Intelligence in connection with the exercise of the Committees' oversight and legislative functions, when such disclosures are necessary to a lawful activity of the United States, after consultation with the Privacy Act Officer and the General Counsel.

R. To a Federal agency or entity that has information relevant to an allegation or investigation regarding an insider threat matter, or to a federal agency or entity that was consulted during the processing of the allegation or investigation but that did not ultimately have relevant information.

S. To a former SBA employee, SBA contractor, or individual sponsored by SBA for a security clearance for purposes of responding to an official inquiry by Federal, State, local, tribal, or territorial government agencies or professional licensing authorities; or facilitating communications with a former employee that may be relevant and necessary for personnel-related or other official purposes when SBA requires information or consultation assistance from the former employees regarding a matter within that person's former area of responsibility.

**POLICIES AND PRACTICES FOR STORAGE OF RECORDS:**

Insider Threat Program stores records for each evaluated event in a central repository within the SBA internal network. The records may be stored on digital media.

**POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:**

SBA may retrieve records by first and last name, Social Security number, date of birth, phone number, other unique individual identifiers, and other types of information by keyword search.

**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

Records are maintained in accordance with SBA SOP 00 41 2. Records maintained as part of the General Records Schedules (GRS) are disposed of accordingly.

**ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:**

SBA safeguards records in this repository according to applicable rules and policies, including all applicable SBA automated systems security and access policies. Access to the repository or other storage systems containing the records in this system is limited to individuals who have the appropriate clearances or permissions and who have a need to know the information in order to perform their official duties. The Agency should consider storing Insider Threat records on a stand-alone computer in order to reduce risk of unauthorized access.

**RECORD ACCESS PROCEDURES:**

Access and use is limited to persons with official need to know; computers are protected by access control mechanisms. Users are evaluated on a recurring basis to ensure need-to-know still exists.

**RECORD ACCESS PROCEDURES:**

Systems Manager will determine procedures.

**CONTESTING RECORD PROCEDURES:**

Notify officials listed above and state reason(s) for contesting any information and provide proposed amendment(s) sought.

**NOTIFICATION PROCEDURE:**

Individuals may make record inquiries in person or in writing to the Systems Manager.

When seeking records about yourself from this System of Records or any other Departmental System of Records, your request must conform with the Privacy Act regulations set forth in 6 CFR part 5; Disclosure of Records and Information. You must first verify your identity, meaning that you must provide your full name, current address, and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization.

- Explain why you believe the Agency would have information on you;
- Specify when you believe the records would have been created; and
- Provide any other information that will help the Agency locate the requested records.

Without the above information, the Agency may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:**

None.

Dated: June 19, 2018.

**Joseph P. Loddo,**

*Director, Office Continuous Operations and Risk Management, Senior Insider Threat Program Official.*

[FR Doc. 2018–14209 Filed 7–2–18; 8:45 am]

**BILLING CODE P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #15578 and #15579; HAWAII Disaster Number HI–00045]**

### Presidential Declaration of a Major Disaster for the State of Hawaii

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for the State of Hawaii (FEMA—4365—DR), dated 06/27/2018.

*Incident:* Severe Storms, Flooding, Landslides, and Mudslides.

*Incident Period:* 04/13/2018 through 04/16/2018.

**DATES:** Issued on 06/27/2018.

*Physical Loan Application Deadline Date:* 08/27/2018.

*Economic Injury (EIDL) Loan Application Deadline Date:* 03/27/2019.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** Alan Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 06/27/2018, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Areas (Physical Damage and Economic Injury Loans):* The City and County of Honolulu and Kaua'i County

*Contiguous Areas (Economic Injury Loans Only):* None.

The Interest Rates are:

| | Percent |
|---|---|
| *For Physical Damage:* | |
| Homeowners With Credit Available Elsewhere | 3.625 |
| Homeowners Without Credit Available Elsewhere | 1.813 |
| Businesses With Credit Available Elsewhere | 7.160 |
| Businesses Without Credit Available Elsewhere | 3.580 |
| Non-Profit Organizations With Credit Available Elsewhere | 2.500 |
| Non-Profit Organizations Without Credit Available Elsewhere | 2.500 |
| *For Economic Injury:* | |
| Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere | 3.580 |
| Non-Profit Organizations Without Credit Available Elsewhere | 2.500 |

The number assigned to this disaster for physical damage is 155786 and for economic injury is 155790.

(Catalog of Federal Domestic Assistance Number 59008)

**James Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2018–14324 Filed 7–2–18; 8:45 am]

**BILLING CODE 8025–01–P**

## SOCIAL SECURITY ADMINISTRATION

**[Docket No. SSA–2018–0039]**

### Privacy Act of 1974; System of Records

**AGENCY:** Office of Retirement and Disability Policy, Office of Income Security Programs, Social Security Administration (SSA).

**ACTION:** Notice of a Modified System of Records.

**SUMMARY:** In accordance with the Privacy Act and our disclosure regulations, we are issuing public notice of our intent to publish two new routine uses applicable to seven of our systems of records. The two routine uses will permit disclosures we intend to make to new entities to support the administration of our representative payee program. The system of records notices (SORN) listed below maintain information used in our representative payee program in addition to a variety of SSA's core mission operations. This notice publishes details of the proposed updates as set forth below under **SUPPLEMENTARY INFORMATION**.

**DATES:** The routine uses are effective August 2, 2018. In accordance with 5 U.S.C. 552a(e)(4) and (e)(11), the public is given a 30-day period in which to submit comments. We invite public comment on the new routine uses; therefore, please submit any comments by August 2, 2018.

**ADDRESSES:** The public, Office of Management and Budget (OMB), and Congress may comment on this publication by writing to the Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, Room G–401 West High Rise, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, or through the Federal e-Rulemaking Portal at *http://www.regulations.gov,* please reference docket number SSA–2018–0039. All comments we receive will be available for public inspection at the above address and we will post them to *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Andrea Huseth, Government Information Specialist, Disclosure and Data Support Division, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, Room G–401 West High Rise, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, telephone: (410) 965–6868, email: *andrea.huseth@ssa.gov* and Tristin Dorsey, Government Information Specialist, Privacy Implementation Division, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, Room G–401 West High Rise, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, telephone: (410) 965–2950, email: *tristin.dorsey@ssa.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Background and Purpose of the Proposed New Routine Uses

Social Security's representative payee program provides financial management for Social Security beneficiaries and Supplemental Security Income (SSI) recipients who are incapable of managing their benefits or payments. The representative payee's primary responsibility is to use the beneficiary's benefits or recipient's payments for current and foreseeable needs. Historically, representative payees have submitted annual accounting forms to account for the Social Security benefits or SSI payments received. In addition to the annual accounting form, we select some representative payees for additional review. This type of oversight provides a more in depth review to ensure that the representative payee is meeting his or her representative payee

obligations and managing the benefits or payments in the best interest of the beneficiary or recipient that he or she is serving.

The Strengthening Protections for Social Security Beneficiaries Act of 2018 (H.R. 4547, Pub. L. 115–165, hereafter referred to as Pub. L. 115–165) directs SSA to make annual grants to the protection and advocacy (P&A) system serving each of the States and the American Indian Consortium, for the purpose of conducting representative payee reviews for SSA. In addition, SSA will make annual grants to an eligible national association for the provision of training and technical assistance, administrative support, and data collection services to those P&A systems. Prior to the enactment of Public Law 115–165, SSA conducted representative payee oversight and monitoring activities with the support of contractors. We are proposing two new routine uses, which will permit SSA to disclose information from the systems of records listed below to additional entities, including the grantees discussed above, for the purpose of conducting representative payee reviews and providing training, administrative oversight, technical assistance, and other support for the representative payee review program.

**II. Proposed New Routine Uses**

The Privacy Act requires that agencies publish a notice in the **Federal Register** of ''each routine use of the records contained in the system, including the categories of users and the purpose of such use.'' 5 U.S.C. 552a(e)(4)(D). We have developed the following new routine uses that will allow us to disclose information to additional entities in support of our representative payee program:

- To agencies or entities who have a written agreement with SSA, to perform representative payee reviews for SSA and to provide training, administrative oversight, technical assistance, and other support for those reviews; and
- To state protection and advocacy systems, that have a written agreement with SSA to conduct reviews of representative payees, for the purpose of conducting additional reviews that the protection and advocacy systems have reason to believe are warranted.

We will include the new routine uses in the following systems of records:

| System No. and name | New routine use | **Federal Register** citation No./publication date |
|---|---|---|
| 60–0058—Master Files of Social Security Number Holders and SSN Applications | No. 47 & 48 | 75 FR 82121, 12/29/10.<br>78 FR 40542, 07/05/13.<br>79 FR 78780, 02/13/14. |
| 60–0089—Claims Folders System | No. 37 & 38 | 68 FR 15784, 04/01/03.<br>72 FR 69723, 12/10/07. |
| 60–0090—Master Beneficiary Record | No. 40 & 41 | 71 FR 1829, 01/11/06.<br>72 FR 69723, 12/10/07.<br>78 FR 40542, 07/05/13. |
| 60–0094—Recovery of Overpayments, Accounting and Reporting | No. 10 & 11 | 70 FR 49354, 08/23/05.<br>72 FR 69723, 12/10/07. |
| 60–0103—Supplemental Security Income Record and Special Veterans Benefits | No. 38 & 39 | 71 FR 1830, 01/11/06.<br>72 FR 69723, 12/10/07. |
| 60–0222—Master Representative Payee File | No. 21 & 22 | 78 FR 23811, 04/22/13. |
| 60–0318—Representative Payee/Misuse Restitution Control System (RP/MRCS) | No. 9 & 10 | 70 FR 29547, 05/23/05.<br>72 FR 69723, 12/10/07. |

We are not republishing in their entirety the SORNs to which we are adding the proposed new routine uses. Instead, we are republishing only the identification number, name of the SORN, the numbers of the new routine uses, and the issue of the **Federal Register** in which the SORN was last published, including the publication date and number.

In accordance with 5 U.S.C. 552a(r), we have provided a report to OMB and Congress on these modified systems of records.

Dated: May 23, 2018.

**Mary Ann Zimmerman,**

*Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.*

[FR Doc. 2018–14246 Filed 7–2–18; 8:45 am]

**BILLING CODE P**

## SOCIAL SECURITY ADMINISTRATION

**[Docket No. SSA–2018–0038]**

### Privacy Act of 1974; System of Records

**AGENCY:** Office of Retirement and Disability Policy, Office of Income Security Programs, Social Security Administration (SSA).

**ACTION:** Notice of a Modified System of Records.

**SUMMARY:** In accordance with the Privacy Act and our disclosure regulations, we are issuing public notice of our intent to publish a new routine use applicable to four of our system of records. The routine use will permit disclosures we intend to make to new entities to support the administration of our representative payee program. The system of records notices (SORN) listed below maintain information used in our representative payee program, in addition to a variety of SSA's core mission operations. This notice publishes details of the proposed updates as set forth below under the caption **SUPPLEMENTARY INFORMATION**.

**DATES:** The routine uses are effective August 2, 2018. In accordance with 5 U.S.C. 552a(e)(4) and (e)(11), the public is given a 30-day period in which to submit comments. We invite public comment on the new routine uses; therefore, please submit any comments by August 2, 2018.

**ADDRESSES:** The public, Office of Management and Budget (OMB), and Congress may comment on this publication by writing to the Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, Room G–401 West High Rise, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, or through the Federal e-Rulemaking Portal at *http://www.regulations.gov,* please reference docket number SSA–2018–0038. All comments we receive will be available for public inspection at the above address and we will post them to *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Andrea Huseth, Government Information Specialist, Disclosure and Data Support Division, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, Room G–401 West High Rise, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, telephone: (410) 965–6868, email: *andrea.huseth@ssa.gov* and Tristin Dorsey, Government Information Specialist, Privacy Implementation Division, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, Room G–401 West High Rise, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, telephone: (410) 965–2950, email: *tristin.dorsey@ssa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background and Purpose of the Proposed New Routine Use

Social Security's representative payee program provides financial management for Social Security beneficiaries and Supplemental Security Income (SSI) recipients (both hereafter referred to as beneficiaries) who are incapable of managing their benefits or payments. The representative payee's primary responsibility is to use the beneficiary's benefits or payments for current and foreseeable needs. Historically, representative payees have submitted annual accounting forms to account for the Social Security benefits or SSI payments received. In addition to the annual accounting form, we select some representative payees for additional review. This type of oversight provides a more in depth review to ensure that the representative payee is meeting his or her representative payee obligations and managing the benefits or payments in the best interest of the beneficiary that he or she is serving.

When conducting the representative payee reviews, which may include beneficiary, legal guardian, or third party interviews, the reviewer may observe a health or safety issue, or any other issue negatively affecting the beneficiary's well-being, that requires a referral to an appropriate local, state, or federal agency or entity with responsibility for investigating or addressing these issues. We are proposing a new routine use to permit us to disclose personal information relevant and necessary to make these referrals to such agencies or entities when the reviewer determines that the beneficiary's safety or well-being may be in jeopardy.

## II. Proposed New Routine Use

The Privacy Act requires that agencies publish a notice in the **Federal Register** of ''each routine use of the records contained in the system, including the categories of users and the purpose of such use.'' 5 U.S.C. 552a(e)(4)(D). We have developed the following new routine use that will allow us to disclose information to a local, state, or federal agency, under the circumstances described above.

- To agencies or entities with responsibility for investigating or addressing possible financial exploitation of, an immediate health or safety threat to, or other serious risk to the well-being of the beneficiary, for referral, when these issues are identified during a representative payee review.

We will include the new routine use in the following systems of records:

| System No. and name | New routine use | **Federal Register** citation No./publication date |
|---|---|---|
| 60–0058—Master Files of Social Security Number Holders and SSN Applications | No. 49 | 75 FR 82121, 12/29/10.<br>78 FR 40542, 07/05/13.<br>79 FR 78780, 02/13/14. |
| 60–0090—Master Beneficiary Record | No. 42 | 71 FR 1829, 01/11/06.<br>72 FR 69723, 12/10/07.<br>78 FR 40542, 07/05/13. |
| 60–0103—Supplemental Security Income Record and Special Veterans Benefits | No. 40 | 71 FR 1830, 01/11/06.<br>72 FR 69723, 12/10/07. |
| 60–0222—Master Representative Payee File | No. 23 | 78 FR 23811, 04/22/13. |

SSA will disclose only those elements from SSA's systems of records that are necessary to make the appropriate referral for services to the appropriate agency or entity.

We are not republishing in their entirety the SORNs to which we are adding the proposed new routine use. Instead, we are republishing only the identification number, name of the systems of records, the numbers of the new routine use, and the issue of the **Federal Register** in which the system of records notice was last published, including the publication date and number.

In accordance with 5 U.S.C. 552a(r), we have provided a report to OMB and Congress on these modified systems of records.

Dated: May 23, 2018.

**Mary Ann Zimmerman,**

*Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.*

[FR Doc. 2018–14247 Filed 7–2–18; 8:45 am]

**BILLING CODE 4191–02–P**

## DEPARTMENT OF STATE

**[Public Notice: 10437]**

## Biodiversity Beyond National Jurisdiction; Notice of Public Meeting

**ACTION:** Notice of public meeting.

**SUMMARY:** The Department of State will hold an information session regarding issues related to upcoming first United Nations Intergovernmental Conference on marine biodiversity in areas beyond national jurisdiction.

**DATES:** The public meeting will be held on July 25, 2018, 1:30 p.m.–3:00 p.m.

**ADDRESSES:** The meeting will be held at the Harry S. Truman Main State Building, Room 1498, 2201 C Street NW, Washington, DC 20520.

**FOR FURTHER INFORMATION CONTACT:** If you would like to participate in this meeting, please send your (1) name, (2) organization/affiliation, and (3) email address and phone number, as well as any requests for reasonable accommodation, to Elana Mendelson at *MendlesonEK@state.gov* or call (202) 647–1073.

**SUPPLEMENTARY INFORMATION:** In September 2018, the United States will participate in the first session of the Intergovernmental Conference established by the United Nations General Assembly (UNGA) to negotiate an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of

marine biological diversity beyond areas of national jurisdiction.

We will provide a brief overview of the issues to be discussed at the upcoming session of the Intergovernmental Conference and would like to invite interested stakeholders to share comments, concerns, and questions about these issues.

The information obtained from this session and any subsequent related meetings will be used to help us prepare for U.S. participation in international meetings and specifically U.S. participation in the Intergovernmental Conference.

*Reasonable Accommodation:* This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other reasonable accommodation should be directed to the point of contact for this event (see **FOR FURTHER INFORMATION CONTACT**) at least 5 days prior to the meeting date. Requests received after that date will be considered, but might not be possible to fulfill. Personal data for entry into the Harry S. Truman building are requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Security Records System of Records Notice (State-36) at *https://www.state.gov/documents/organization/242611.pdf* for additional information.

**Evan T. Bloom,**

*Director, Office of Ocean and Polar Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State.*

[FR Doc. 2018–14221 Filed 7–2–18; 8:45 am]

**BILLING CODE 4710–09–P**

## DEPARTMENT OF STATE

**[Public Notice: 10453]**

### 30-Day Notice of Proposed Information Collection: Statement Regarding a Lost or Stolen U.S. Passport Book and/or Card

**ACTION:** Notice of request for public comment and submission to the Office of Management and Budget (OMB) of proposed collection of information.

**SUMMARY:** The Department of State has submitted the information collection described below to OMB for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

**DATES:** Submit comments directly to the Office of Management and Budget (OMB) up to August 2, 2018.

**ADDRESSES:** Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

**SUPPLEMENTARY INFORMATION:**

- *Title of Information Collection:* Statement Regarding a Lost or Stolen U.S. Passport Book and/or Card
- *OMB Control Number:* 1405–0014.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Passport Services, Office of Legal Affairs (CA/PPT/S/L/LA).
- *Form Number:* DS–64.
- *Respondents:* Individuals or Households.
- *Estimated Number of Respondents:* 643,400.
- *Estimated Number of Responses:* 643,400.
- *Average Time per Response:* 5 minutes.
- *Total Estimated Burden Time:* 53,617 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

**Abstract of Proposed Collection**

The Secretary of State is authorized to issue U.S. passports under 8 U.S.C. 1104, 22 U.S.C. 211a et seq, and Executive Order 11295 (August 5, 1966). Department regulations provide that individuals whose valid or potentially valid U.S. passports were lost or stolen must make a report of the lost or stolen passport to the Department of State before they receive a new passport so that the lost or stolen passport can be invalidated (22 CFR parts 50 and 51). The Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1737) requires the Department of State to collect accurate information on lost or stolen U.S. passports and to enter that information into a data system. Form DS–64 collects information identifying the person who held the lost or stolen passport and describing the circumstances under which the passport was lost or stolen. As required by the cited authorities, we use the information collected to accurately identify the passport that must be invalidated and to make a record of the circumstances surrounding the lost or stolen passport. False statements made knowingly or willfully on passport forms, in affidavits, or other supporting documents, are punishable by fine and/or imprisonment under U.S. law. (18 U.S.C. 1001, 1542–1544).

**Methodology**

Passport applicants can submit their form electronically on *www.travel.state.gov* or call the National Passport Information Center at 1–877–487–2778. Applicants can also download the form from the internet or obtain one at any Passport Agency or Acceptance Facility.

**Barry J. Conway,**

*Managing Director for Passport Services, Bureau of Consular Affairs, Department of State.*

[FR Doc. 2018–14219 Filed 7–2–18; 8:45 am]

**BILLING CODE 4710–06–P**

## SURFACE TRANSPORTATION BOARD

### Release of Waybill Data

The Surface Transportation Board has received a request from the Port Authority of New York and New Jersey (WB18–19—6/20/18) for permission to use data from the Board's 2016 and 2017 Masked Carload Waybill Samples. A

copy of this request may be obtained from the Board's website under Docket No. WB 18–19.

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.

**Jeffrey Herzig,**

*Clearance Clerk.*

[FR Doc. 2018–14278 Filed 7–2–18; 8:45 am]

**BILLING CODE 4915–01–P**

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Determination Under the African Growth and Opportunity Act

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice.

**SUMMARY:** The United States Trade Representative (USTR) has determined that Eswatini (formerly known as Swaziland) has adopted an effective visa system and related procedures to prevent the unlawful transshipment of textile and apparel articles and the use of counterfeit documents in connection with the shipment of such articles, and has implemented and follows, or is making substantial progress towards implementing and following, the custom procedures required by the African Growth and Opportunity Act (AGOA). Therefore, imports of eligible products from Eswatini qualify for the textile and apparel benefits provided under the AGOA. The notice also makes conforming changes to the Harmonized Tariff Schedule of the United States to reflect the recent change in name of the Kingdom of Swaziland (Swaziland) to Eswatini.

**DATES:** This notice is applicable on July 3, 2018.

**FOR FURTHER INFORMATION CONTACT:** Constance Hamilton, Assistant United States Trade Representative for African Affairs at (202) 395–9514 or *Constance_Hamilton@ustr.eop.gov.*

**SUPPLEMENTARY INFORMATION:**

The AGOA (Title I of the Trade and Development Act of 2000, Public Law 106–200, as amended) provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan African countries. The textile and apparel trade benefits under AGOA are available to imports of eligible products from countries that the President designates as ''beneficiary sub-Saharan African countries,'' provided that these countries: (1) Have adopted an effective visa system and related procedures to prevent the unlawful transshipment of textile and apparel articles and the use of counterfeit documents in connection with shipment of such articles; and (2) have implemented and follow, or are making substantial progress towards implementing and following, certain customs procedures that assist the U.S. Customs and Border Protection in verifying the origin of the products.

In Proclamation 9687 dated December 22, 2017 (82 FR 61414), the President designated Swaziland (now known as Eswatini) as a ''beneficiary sub-Saharan African country'' and proclaimed, for the purposes of section 112(c) of AGOA, that Swaziland (now known as Eswatini) should be considered a lesser developed beneficiary sub-Saharan African country. Based on the actions Eswatini has taken, the United States Trade Representative has determined that Eswatini has satisfied the two requirements for eligibility for textile and apparel benefits under AGOA. In Proclamation 7350 of October 2, 2000, the President authorized the United States Trade Representative to perform the function of determining whether eligible sub-Saharan countries have met the two requirements described above. The President directed the United States Trade Representative to announce any such determinations in the **Federal Register** and to implement them through modifications in the Harmonized Tariff Schedule of the United States (HTS).

Accordingly, pursuant to the authority vested in the United States Trade Representative in Proclamation 7350, U.S. note 7(a) to subchapter II of chapter 98 of the HTS, is modified by inserting ''Eswatini'' in alphabetical sequence in the list of countries, and U.S. notes 1 and 2(d) to subchapter XIX of chapter 98 of the HTS are modified to add in numerical sequence, in the list of designated sub-Saharan African countries, the name ''Eswatini,'' in alphabetical sequence and to delete therefrom ''Kingdom of Swaziland''. The foregoing modifications to the HTS are effective with respect to articles entered for consumption, or withdrawn from warehouse for consumption, on or after the effective date of this notice. Imports claiming preferential tariff treatment under the AGOA for entries of textile and apparel articles should ensure that those entries meet the applicable visa requirements. *See* 66 FR 7837 (January 25, 2001).

Presidential Proclamation 6969 of January 27, 1997 (62 FR 4415), authorizes the United States Trade Representative to exercise the authority provided to the President under section 604 of the Trade Act (19 U.S.C. 2483) to embody rectifications, technical or conforming changes, or similar modifications in the HTS. Pursuant to the delegated authority vested in the United States Trade Representative in Proclamation 6969, general notes 4(a) and 16(a) to the HTS are each modified by deleting ''Swaziland'' and by inserting in alphabetical sequence in such notes ''Eswatini'', in order to reflect the recent change in name of Swaziland to Eswatini.

**Robert Lighthizer,**

*United States Trade Representative.*

[FR Doc. 2018–14230 Filed 7–2–18; 8:45 am]

**BILLING CODE 3290–F8–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### July 17, 2018 Drone Advisory Committee (DAC) Meeting

**AGENCY:** Federal Aviation Administration (FAA), U.S. Department of Transportation.

**ACTION:** July 17, 2018 DAC Meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of the July 17, 2018 DAC Meeting.

**DATES:** The meeting will be held on July 17, 2018, 9:00 a.m.–4:00 p.m. Pacific Time.

**ADDRESSES:** The meeting will be held at the Santa Clara Convention Center, Grand Ballroom, Sections G and H, 5001 Great American Parkway, Santa Clara, CA 95054.

**FOR FURTHER INFORMATION CONTACT:** Members of the public may RSVP for this meeting at *DACmeetingRSVP@faa.gov.* For other questions about the DAC, please visit *www.faa.gov/uas/programs_partnerships/dac/* or contact Chris Harm, Unmanned Aircraft Systems (UAS) Stakeholder and Committee Liaison, at *chris.harm@faa.gov* or 202–267–5401.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given of the July 17, 2018 DAC Meeting. The DAC is a Federal Advisory Committee managed by the FAA. The agenda will likely include, but may not be limited to, the following:

**Tuesday, July 17, 2018**

- Official Statement of the Designated Federal Officer (DFO)
- Approval of the Agenda
- Chairman's Opening Remarks
- DFO's Opening Remarks
- FAA Update
- Unmanned Aircraft Safety Team Briefing on Safety Data
- Remote Identification
- FAA's UAS Implementation Plan and UAS Integration Research Plan
- New Business/Agenda Topics
- Closing Remarks
- Adjourn

Attendance is open to the interested public. Registration is required and space is limited. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC.

**Christopher W. Harm,**

*Unmanned Aircraft Systems (UAS) Stakeholder and Committee Liaison, AUS–10, UAS Integration Office, FAA.*

[FR Doc. 2018–14394 Filed 6–29–18; 11:15 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. 2018–0107]**

### Petition for Exemption; Summary of Petition Received; HessJet, LLC

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number and must be received on or before July 23, 2018.

**ADDRESSES:** Send comments identified by docket number FAA–2018–0107 using any of the following methods:

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

*Privacy:* 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 *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

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

**FOR FURTHER INFORMATION CONTACT:** Keira Jones (202) 267–6109, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on June 22, 2018.

**Lirio Liu,**

*Executive Director, Office of Rulemaking.*

**Petition for Exemption**

*Docket No.:* FAA–2018–0107.

*Petitioner:* HessJet, LLC.

*Section(s) of 14 CFR Affected:* § 135.225(a).

*Description of Relief Sought:* The petitioner seeks an exemption from § 135.225(a) to allow HessJet to conduct IFR approach procedures in fixed wing aircraft at airports that do not have an approved weather reporting source. The petitioner proposes to use the safety procedures of part 97, Instrument Approach Procedures, to airports not equipped with weather reporting facilities.

[FR Doc. 2018–14271 Filed 7–2–18; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900—NEW]**

### Agency Information Collection Activity: Accelerated Aging Among Vietnam-Era Veterans Survey

**AGENCY:** Veterans Health Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** Veterans Health Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each new collection, and allow 60 days for public comment in response to the notice.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before September 4, 2018.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Brian McCarthy, Office of Regulatory and Administrative Affairs (10B4), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *Brian.McCarthy4@va.gov.* Please refer to ''OMB Control No. 2900—NEW'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:** Brian McCarthy at (202) 615–9241.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the

information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

**Authority:** 38 U.S.C. 527.

*Title:* Accelerated Aging among Vietnam-Era Veterans Survey.

*OMB Control Number:* 2900—NEW.

*Type of Review:* New collection.

*Abstract:* The National Center for PTSD (NCPTSD) was recently allocated funds by Congress to be used for research to advance the prevention and treatment of PTSD. The original language of the legislation states the following: ''The committee recognizes the importance of the VA National Center for PTSD in promoting better prevention, diagnoses, and treatment of PTSD.'' In response to this, we have developed a study that aims to understand how and the degree to which warzone deployment is associated with increased morbidity and mortality, with particular attention to potential differences among white, black, and Hispanic Veterans, as well as male and female Veterans. To this end, we will consider multiple aspects of military service, deployment experiences, and current stressors of Vietnam-era Veterans in relation to current physical and mental health outcomes. This information will directly inform intervention efforts aimed at prevention or treatment of chronic disorders such as PTSD, depression, and substance/alcohol use disorders, as well as comorbid physical health conditions, particularly in underserved portions of our Veteran population. This type of information can inform system-wide interventions that can maximize Veterans' likelihood of receiving timely and evidence-based healthcare, thereby preventing long-term health problems.

*Affected Public:* Individuals and households.

*Estimated Annual Burden:* Mail Survey: 3,420 hours. Telephone Survey: 2,738 hours.

*Estimated Average Burden per Respondent:* Mail Survey: 45 minutes. Telephone Survey: 45 minutes.

*Frequency of Response:* Annually.

*Estimated Number of Respondents:* Mail Survey: 4,560. Telephone Survey: 3,650.

By direction of the Secretary:

**Cynthia D. Harvey-Pryor,**

*Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.*

[FR Doc. 2018–14319 Filed 7–2–18; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–NEW]**

## Agency Information Collection Activity Under OMB Review: Federal Medical Care Recovery Act Bill Requests

**AGENCY:** Veterans Health Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Health Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before August 2, 2018.

**ADDRESSES:** Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW, Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–NEW'' in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Harvey-Pryor, Office of Quality, Privacy and Risk (OQPR), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–NEW'' in any correspondence.

**SUPPLEMENTARY INFORMATION:**

**Authority:** 38 U.S.C. 501, 38 CFR 1.900 et. Seq.; 42 U.S.C. 2651–2653; 38 U.S.C. 1729; 28 CFR 43.2; and E.O. 9397.

*Title:* Federal Medical Care Recovery Act Bill Requests; Request for VA Billing, CHAMPVA Request for Billing.

*OMB Control Number:* 2900–NEW.

*Type of Review:* New collection.

*Abstract:* The purpose of collecting this information is to provide basic information from which potential liability can be assessed for VA to recover the cost of care from the liable party instead of the American taxpayer and Veteran paying for the care. Failure to provide any or all of the requested information may delay or result in VA's inability to create accident-related billing, assert a claim for reimbursement, and assist the Veteran in their personal injury or workers compensation claim. Without a third party paying for the care, the Veteran may owe VA copayments. With regards to the CHAMPVA form alone: Failure to provide any or all of the requested information may delay or result in VA's inability to provide CHAMPVA benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 83 FR 16922 on April 17, 2018, pages 16922 and 16923.

*Affected Public:* Individuals and households.

*Estimated Annual Burden:* Request for VA Billing—385 hours. CHAMPVA Request for Billing—303 hours.

*Estimated Average Burden per Respondent:* Request for VA Billing—7 minutes. CHAMPVA Request for Billing—7 minutes.

*Frequency of Response:* Annually.

*Estimated Number of Respondents:* Request for VA Billing—3,300. CHAMPVA Request for Billing—2,600.

By direction of the Secretary:

**Cynthia D. Harvey-Pryor,**

*Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.*

[FR Doc. 2018–14335 Filed 7–2–18; 8:45 am]

**BILLING CODE 8320–01–P**

# FEDERAL REGISTER

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Part II

## Postal Regulatory Commission

39 CFR Parts 3001, 3004, and 3007
Non-Public Information; Final Rule

## POSTAL REGULATORY COMMISSION

### 39 CFR Parts 3001, 3004, and 3007

**[Docket No. RM2018–3; Order No. 4679]**

### Non-Public Information

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is adopting final rules relating to non-public materials. The final rules ensure appropriate transmission and protection of non-public materials, maintain appropriate transparency, and modernize practice before the Commission.

**DATES:** *Effective* August 2, 2018.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

**Regulatory History**

83 FR 7338 (Feb. 20, 2018)

**Table of Contents**

I. Introduction
II. Procedural History
III. Response to Significant Comments and Explanation of Changes
IV. Section-by-Section Analysis of the Final Changes to 39 CFR part 3001
V. Section-by-Section Analysis of the Final Changes to 39 CFR part 3004
VI. Section-by-Section Analysis of the Final Changes to 39 CFR part 3007
VII. Regulatory Flexibility Act Analysis
VIII. Ordering Paragraphs

## I. Introduction

In this Order, the Commission adopts final rules relating to non-public information. The final rules adopted by this Order replace, in their entirety, the existing rules appearing in 39 CFR part 3007. Additionally, the final rules amend and move the existing rules regarding information requests to 39 CFR part 3001, subpart E. Further, the final rules update two rules appearing in existing 39 CFR part 3004 concerning the application of the Freedom of Information Act (FOIA) [1] to materials that are provided to the Commission with the reasonable belief that the materials are exempt from public disclosure. The final rules appear after the signature of this Order in Attachment A.

## II. Procedural History

On February 13, 2018, the Commission issued the notice of proposed rulemaking (NPR), setting forth a proposed revision and reorganization of its rules relating to non-public information.[2] The NPR also appointed an officer of the Commission to represent the interests of the general public (Public Representative) and provided an opportunity for public comment. Order No. 4403 at 36–37. On March 23, 2018, the Commission received comments from the Postal Service, the Public Representative, and United Parcel Service, Inc. (UPS).[3]

## III. Response to Significant Comments and Explanation of Changes

### *A. Overview*

The Commission has carefully considered all comments that it received. Generally, the three commenters express support for the Commission's efforts to streamline and simplify procedures as well as to reorganize and update the existing rules. *See* Postal Service Comments at 1; PR Comments at 1–2, UPS Comments at 8–9. The Commission appreciates these remarks.

Additionally, the commenters provide instructive perspectives on specific proposed rules. Notably, the commenters alert the Commission to areas that would benefit from additional clarification. All three commenters provide comments regarding the expiration of non-public treatment appearing in proposed § 3007.401. *See* Postal Service Comments at 8–11; PR Comments at 2, 4–6; UPS Comments at 1–7, 9–10. The Postal Service and the Public Representative also suggest rule changes affecting other issues.[4] Aside from the issues related to the expiration of non-public treatment, the issues raised by the Public Representative do not overlap with the issues raised by the Postal Service. Both the Postal Service and the Public Representative provide ''redline'' revisions to the NPR's proposed rules. Postal Service Comments, Appendix (Postal Service Appendix); PR Comments at 17–49.

The Commission appreciates the time and effort of the commenters in preparing their filings, and their comments have contributed to an improved set of final rules. The final rules appearing after the signature of this Order incorporate suggestions offered by commenters, particularly with respect to improving precision and clarity; however, the substance of the rules and their effect on interested persons remains the same as the rules proposed in the NPR.

Accordingly, section III.B. reviews all issues raised by the three commenters related to the expiration of non-public treatment, provides analysis, and describes the resulting changes made to the proposed rules. Section III.C. reviews all other changes proposed by the Postal Service, provides analysis, and describes the resulting changes made to the proposed rules. Section III.D. reviews all other changes proposed by the Public Representative, provides analysis, and describes the resulting changes made to the proposed rules. Sections IV–VI provide the line-by-line discussion of the changes between the existing rules and the final rules (as adopted) for each affected part of the Code of Federal Regulations. Section VII provides the analysis required under the Regulatory Flexibility Act. The final rules appear after the signature of this Order in Attachment A.

### *B. Review of Comments Concerning the Expiration of Non-Public Treatment (Proposed § 3007.401)*

The following discussion summarizes all changes proposed by the Postal Service, the Public Representative, and UPS concerning the expiration of non-public treatment, provides analysis, and describes the resulting changes made to the proposed rules.

#### 1. Comments

Generally, the Postal Service supports the procedure set forth in proposed § 3007.401(b)–(f). Postal Service Comments at 8–9. The Postal Service observes that many of the persons other than the Postal Service that have a proprietary interest in non-public information submitted by the Postal Service ''lack familiarity with the Commission's regulations as well as the resources to vigilantly watch for and react to upcoming deadlines that would place their commercially sensitive data at risk.'' *Id.* at 9. The Postal Service asserts that this observation is appropriately addressed by proposed § 3007.401(b), which requires the person seeking public disclosure of the materials at issue to take the first step in the process for the Commission to determine whether to disclose the materials to the public. *Id.*

[1] 5 U.S.C. 552.

[2] Notice of Proposed Rulemaking Relating to Non-Public Information, February 13, 2018 (Order No. 4403). The Notice of Proposed Rulemaking Relating to Non-Public Information was published in the **Federal Register**; *see* 83 FR 7338 (February 20, 2018).

[3] Initial Comments of the United States Postal Service, March 23, 2018 (Postal Service Comments); Public Representative Comments in Response to Notice of Proposed Rulemaking Concerning Non-Public Information, March 23, 2018 (PR Comments); Comments of United Parcel Service, Inc. on Notice of Proposed Rulemaking Relating to Non-Public Information, March 23, 2018 (UPS Comments).

[4] Aside from the issues related to the expiration of non-public treatment, UPS did not recommend any other changes to the proposed rules. *See generally* UPS Comments.

Referring to its 2008 comments in the initial rulemaking promulgating existing 39 CFR part 3007, the Postal Service renews its objection to the default expiration period being set at 10 years.[5] Noting that many of its customers have remained the same over the years, the Postal Service asserts that the non-public status of customer-specific information should not expire after 10 years. Postal Service Comments at 10. The Postal Service asserts ''this 10-year period is significantly shorter than the appropriate period for protection of nonpublic materials recognized in other contexts.'' *Id.* The Postal Service contends that this is exemplified by the FOIA's provision of a time limit for only one of its nine exemptions (the 25-year time limit on the deliberative process privilege). *Id.* (quoting 5 U.S.C. 552(b)(5)). The Postal Service recommends changing the proposed rules to permit a longer initial period of time for which non-public status generally applies (such as 25 years) and to exempt the non-public status of customer-specific information from expiration. Postal Service Comments at 10. The Postal Service suggests changes to proposed §§ 3007.400(a) and 3007.401(a) in accordance with this recommendation. *Id.* at 10–11; Postal Service Appendix at xxiii–xxiv.

The Postal Service also suggests a procedural change to the response deadline appearing in proposed § 3007.401(c). Postal Service Comments at 11. The Postal Service asks to dispense with the expedited response deadline (3 business days rather than 7 calendar days) proposed for instances in which actual notice is given. *Id.* Stating that ''[b]ecause it is unlikely that there would be great urgency to obtain materials that were filed at least 10 years before the request,'' the Postal Service recommends that the response deadline be set at 7 calendar days, regardless whether actual notice is given. *Id.* The Postal Service suggests deleting text appearing in proposed § 3007.401(c) in accordance with its recommendation. Postal Service Appendix at xxv–xxvi.

The Public Representative objects that the procedure set forth in proposed § 3007.401(b)–(f), requiring a motion and continuing non-public treatment pending its resolution, effectively negates the provision that non-public materials shall lose their non-public status 10 years after submission. PR Comments at 5. He asserts that proposed § 3007.401(b)–(f) unfairly shifts the burden to the person seeking the materials. *Id.* He characterizes proposed § 3007.401(b)–(f) as an unexplained and major policy shift. *Id.* at 6. He contends that a motion should not be necessary and that the burden should remain with the submitter to request that non-public status be extended. *Id.* at 5. He questions whether it may be more effective and less administratively burdensome to review a limited number of requests for extension versus a potentially unlimited number of requests for disclosure that may lack a real interest in the materials at issue. *Id.* at 5, n.8. He suggests that the Commission can post materials to its website upon the expiration of protective conditions, on its own or upon receiving an informal request. *Id.* at 6. He provides sample language to make materials for which non-public treatment has expired available to the public through a written request to the Secretary of the Commission. *Id.* at 47.

UPS similarly objects to proposed § 3007.401(b)–(f), asserting that the proposed rule creates a default condition of maintaining non-disclosure, even after 10 years. UPS Comments at 5. UPS characterizes proposed § 3007.401(b)–(f) as preventing disclosure unless the person seeking disclosure meets the burden to affirmatively seek disclosure and obtains Commission approval. *Id.* at 4. UPS cautions that this procedure may incentivize excessive redaction so as to hinder the success of a motion for disclosure of materials for which non-public treatment has expired. *Id.* at 5. Acknowledging that it does not disagree that certain information (such as customer-specific data) should remain sealed for an extended period, UPS suggests that after 10 years, disclosure of other data should be either automatic or place the burden of justification on the person seeking extended non-public status. *Id.* UPS suggests that the Commission promulgate a rule setting forth a framework including the timing of disclosure for different types of non-public information and the level of disclosure. *Id.* at 5–6.

UPS objects to the mechanism contained in proposed § 3007.401(b) as excessively burdensome stating that the proposed rule requires the movant to specify whether notice was provided to persons with a potential proprietary interest (including the dates, times, and methods of notice) and to provide detailed justifications for disclosure. *Id.* at 6. UPS further characterizes this mechanism related to actual notice as burdensome if multiple persons with proprietary interests are implicated, noting that Universal Postal Union (UPU) data covers over 190 countries. *Id.*

UPS also objects to proposed § 3007.401(f)'s use of the applicable standard appearing in proposed § 3007.104 (balancing test), which UPS characterizes as negating the purpose of the 10-year expiration period. *Id.* Instead, UPS recommends that non-public materials generally be disclosed to the public after 10 years and be published on a regular schedule, unless it is demonstrated that such publication will result in material harm. *Id.* UPS asserts that material harm is the appropriate burden of proof to justify extension of non-public treatment ''as a regulated entity with monopoly powers competing with the private sector should be held to transparency standards beyond those imposed on third parties and outside organizations.'' *Id.* at 7.

2. Commission Analysis

The comments reflect a number of concerns with respect to proposed § 3007.401, which pertains to materials for which non-public treatment has expired. For the reasons discussed below, the Commission retains the basic process in final § 3007.401: The default expiration period remains 10 years; the person seeking the materials for which non-public treatment has expired triggers the process by filing a formal document in a Commission docket; there is an opportunity for response and reply filings by any interested person; and the Commission uses the applicable standard appearing in final § 3007.104 to determine whether to publicly disclose the materials at issue. The Commission restates that it is maintaining the 10-year default period for protecting non-public materials, and that these regulation changes are not intended to extend or expand that default period of protection. As discussed below, the Commission makes minor modifications in order to simplify the procedure and better distinguish this process to seek public disclosure of materials for which non-public treatment has expired from the process to seek public disclosure of materials for which non-public treatment remains active under final § 3007.400. The changes include a terminology change from ''motion'' to ''request,'' the inclusion of a template request form in final Appendix A to subpart D of 39 CFR part 3007, and the deletion of all provisions related to the giving of actual notice.

All three commenters express their views on whether the person seeking the materials for which non-public

[5] *Id.* at 9–10 (quoting Docket No. RM2008–1, Initial Comments of the United States Postal Service, September 25, 2008, at 18 (Docket No. RM2008–1 Initial Postal Service Comments)).

treatment has expired or the person seeking extended non-public treatment should take the first step in the Commission's process of determining whether to publicly disclose such materials. The process appearing in proposed § 3007.401 begins with the person seeking public disclosure formally identifying the materials sought, provides an opportunity for response and reply by any interested person, and concludes with a Commission order determining the non-public status of the materials. Generally, the Postal Service supports the process appearing in proposed § 3007.401. Postal Service Comments at 8–9. On the other hand, both the Public Representative and UPS favor an automatic disclosure approach. PR Comments at 5–6; UPS Comments at 3–4. The Public Representative observes that the Commission can adopt a default procedure of automatic disclosure after 10 years (such as through posting to the Commission's public website), unless a person obtains extended non-public treatment in advance. PR Comments at 6. Similarly, UPS indicates that it assumed that the Commission would automatically disclose non-public materials after the passage of 10 years. UPS Comments at 3–4.

The existing rules were silent on the mechanism for administration of materials for which non-public treatment had expired. Broadly, the Commission considered two default approaches: (1) Automatic disclosure (posting to the Commission's public website, unless a person obtains extended non-public treatment in advance); or (2) making materials available upon request (with an opportunity for interested persons to object and seek extended non-public treatment). The difference between the two approaches comes down to whether the person taking the first step in the Commission's process of determining whether to publicly disclose the materials should be the person seeking public disclosure or the person seeking extended non-public treatment.

The Commission agrees with the Postal Service that the proposed rule ''appropriately requir[es] the parties who seek public disclosure, not the parties with a proprietary interest in the information, to take the first step in the Commission's process of determining whether to publicly disclose materials.'' Postal Service Comments at 9. The key issue is the level of attention to the expiration of non-public status in Commission dockets. As the Postal Service observes, many of the persons other than the Postal Service that have a proprietary interest in non-public information submitted by the Postal Service may lack the resources to affirmatively monitor and timely respond to automated deadlines that would expose their proprietary information to public view. *See id.* Affected persons that may have a proprietary interest include customers, suppliers, PC postage providers, and foreign postal operators. *Id.* at 12–13. As the Postal Service further explains, it has engaged in the practice of providing one-time notice (rather than for each submission) using standard language contained in a contract, letter, or UPU circular. *Id.* at 13. Under these circumstances, a process that would require affected persons with a proprietary interest to seek extended non-public treatment in advance of the 10-year expiration, without any pending request for the materials at issue, may not adequately protect the substantive rights of such affected persons. Accordingly, the Commission maintains its conclusion that the first step in the process should be taken by the person seeking the materials. This conclusion, and the final rules adopted in this Order, take into account the need for transparency, sound records management practices, and according adequate protection to the commercial interests of affected persons, including the Postal Service. *See* Order No. 4403 at 32.

The process and content requirements are designed to mitigate against the Public Representative's concerns regarding a potentially unlimited number of requests for disclosure that may lack a real interest in the materials at issue. *See* PR Comments at 5, n.8. The process requires the person seeking the materials to take the first step: Formally file a document that identifies the materials sought and the date(s) of the original sealed submission. To better aid compliance with this content requirement, a template form is provided in final Appendix A to subpart D of 39 CFR part 3007 for use and modification. The additional steps in the process—the opportunity (but not a requirement) to file a response and a reply—may be indicative of the level of interest in the materials. Moreover, the Postal Service has sought indefinite protection of non-public materials in its initial application for non-public treatment in many dockets. *See* Order No. 4403 at 32 n.16. Accordingly, a procedure involving automatic disclosure after 10 years (unless an extended non-public treatment is sought and granted in advance) may result in a potentially large number of requests for extension (and potentially premature ones).

UPS raises a concern about excessive redactions. The Commission acknowledges that excessive redactions are improper and negatively affect the public interest in transparency. UPS expresses concern that the process appearing in proposed § 3007.401 may incentivize excessive redactions to obscure the non-public information and reduce the likelihood that a person seeking public disclosure after the passage of 10 years will be successful. However, the Commission observes that an automatic disclosure policy may also negatively affect the public interest in transparency by chilling the voluntary submission of non-public information.

Moreover, adequate procedural mechanisms exist in the final rules to address excessive redactions. Final § 3007.202 expressly provides that only the information that is claimed to be non-public shall be blacked out. It is also important to observe that members of the general public have the ability to request access to the materials under final § 3007.301 and that Public Representatives are granted access under final § 3007.300(a)(2). Further, any person may challenge the level of redaction earlier than 10 years through a motion for public disclosure under final § 3007.400.

While the Commission maintains the requirement that the person seeking the materials take the first step, the Commission adopts minor changes in final § 3007.401 to clarify that the intended content requirements associated with filing a formal document to seek materials for which non-public treatment has expired are lower than that requirements associated with filing a motion under final § 3007.400 to seek the public disclosure of materials for which non-public status remains active. UPS and the Public Representative appear to interpret the proposed rule as unfairly shifting the burden to the person seeking the materials. *See* UPS Comments at 5; PR Comments at 5. Part of this misunderstanding appears to lie within a misinterpretation of the content requirements pertaining to what the person seeking materials for which non-public treatment has expired must file with the Commission. To clarify this issue, the Commission provides a discussion of the distinction between the rules applicable to materials for which the non-public status remains active versus materials for which non-public treatment has expired. Based on its review of the comments, the Commission also adopts revisions to the

final rule to make these distinctions more clear.

By way of background, under proposed § 3007.200(a), whenever non-public materials are provided to the Commission, an application for non-public treatment must also be submitted that clearly identifies all non-public materials and describes the circumstances causing them to be submitted to the Commission.[6] Moreover, under proposed § 3007.201(a), the application, in addition to demonstrating that the materials at issue are of a type and nature eligible for non-public treatment, must contain all of the information and arguments to fulfill the burden of persuasion that the materials designated as non-public should be withheld from the public.[7] Under proposed § 3007.201(b), the application must include a ''specific and detailed statement'' containing (among other things) particular identification of the nature and extent of harm alleged and the likelihood of such harm.[8] Under proposed § 3007.102(a), the Commission preliminarily treats those materials as non-public.[9]

The Commission's long-standing practice, retained under proposed § 3007.103, is that it does not *accept* any rationale for non-public treatment given in the application for non-public treatment unless the Commission makes a determination of non-public status, which may occur in response to a motion by an interested person or *sua sponte. See* Order No. 4403 at 7. Either procedure concludes with the issuance of a Commission order determining the non-public treatment to be accorded (if any) under the applicable standard described in proposed § 3007.104.

For materials for which the non-public status remains active (either because the non-public status has not expired or has been extended by order of the Commission), proposed § 3007.400(b) presents the requirements that must be met by those seeking public disclosure. By contrast, the burden to seek the public disclosure of materials for which non-public treatment has expired is lower. UPS characterizes proposed § 3007.401(b) as requiring that the person seeking the materials ''provide detailed justifications for why the materials should be made public.'' UPS Comments at 6. Proposed § 3007.400(b), the rule applicable to materials for which the non-public status remains active, does require the filing of justification for why the materials should be made public, which must specifically address any pertinent rationale(s) provided in the application for non-public treatment. *See* Order No. 4403 at 29–30. However, proposed § 3007.401(b), the rule applicable to materials for which non-public status has expired, does not impose such a content requirement. *See id.* at 32–33.

Similarly, the Public Representative focuses on the usage of the term ''motion'' in objecting to proposed § 3007.401(b). PR Comments at 5–6. He suggests that instead ''an informal request (something short of a motion)'' be required. *Id.* at 6. These comments indicate that the final rules would benefit from more clear distinctions between the content requirements applicable under §§ 3007.400(b) and 3007.401(b). The Commission had intended that the formal filing of a motion for public disclosure under proposed § 3007.401(b) would be the procedural trigger for determining whether to publicly disclose materials for which non-public treatment has expired. The word ''motion'' was used in proposed § 3007.401(b)–(f) to correspond with the Commission's practice that a motion (either by an interested person or by the Commission acting on its own) would trigger the process for the Commission to determine non-public status. The Commission acknowledges that the use of parallel language between §§ 3007.400(b) and 3007.401(b) may have resulted in confusion regarding the substantive contents of that triggering filing under proposed § 3007.401(b). To minimize confusion, the Commission adopts a change in terminology from ''motion,'' to ''request'' in final § 3007.401(b)–(f). To further clarify the Commission's intent of minimal content requirements for such a request, a template request form is provided in final Appendix A to subpart D of 39 CFR part 3007 for use and modification.

Notably, in expressing their opposition to proposed § 3007.401, UPS and the Public Representative do not appear to consider the content requirements imposed on the filing of a response opposing public disclosure under proposed § 3007.401(c). *See* UPS Comments at 3–7; PR Comments at 4–6. UPS characterizes proposed § 3007.401(f)'s use of the balancing test standard as negating the purpose of having a 10-year expiration provision. UPS Comments at 6. The Commission disagrees with this characterization. Proposed § 3007.401(c) provides that any response opposing public disclosure shall seek an extension of non-public status by including an application for non-public treatment compliant with proposed § 3007.201. Order No. 4403 at 33–34. In addition to meeting the requirements imposed by proposed § 3007.201 (including the burden of persuasion that the materials should be withheld from the public), proposed § 3007.401(c) requires this extension application to include specific facts supporting any assertion of commercial injury after the passage of 10 years. *Id.* at 34. This requirement is the very purpose of having the 10-year default period—the setting of a point in time to evaluate if the facts underlying the initial application's claim for non-public treatment have become stale. Further, a proponent of disclosure will have the opportunity to reply to any new arguments raised under proposed § 3007.401(d). Such a procedure allows any updates pertinent to the balancing test to be evaluated. The formal request filed under final § 3007.401(b) will trigger that process.

With respect to that process, all three commenters express views in favor of simplifying the process appearing in proposed § 3007.401. Therefore, the Commission maintains that process generally, with some changes aimed to streamline the procedure.

The Commission generally agrees with the suggestion by the Public Representative to reduce the procedural complexity involved in the proposed procedure related to seeking materials for which non-public treatment has expired. *See* PR Comments at 6. Ultimately, a change in terminology throughout final § 3007.401(b)–(f) from ''motion,'' to ''request'' minimizes complexity. Also, to better convey the exact content requirements of a request, a template form is provided in final Appendix A to subpart D of 39 CFR part 3007 for use and modification to comply with final § 3007.401(b). It is useful to have such requests formally filed in dockets so as to provide near immediate notice of the request to the Postal Service and make the request (and any responses and replies filed) available to the public for viewing. Therefore, the requirement to formally file the request in a docket and the associated docketing

[6] Proposed § 3007.200(a) expanded on existing § 3007.21(a), which applied only to Postal Service filings, to all submissions of non-public materials. *See* Order No. 4403 at 14–15.

[7] Proposed § 3007.201(a) expanded on existing § 3007.21(b), which applied only to Postal Service filings, to all submissions of non-public materials. *See* Order No. 4403 at 15.

[8] Proposed § 3007.201(b) expanded on existing § 3007.21(c), which applied only to Postal Service filings, to all submissions of non-public materials. *See* Order No. 4403 at 15–16.

[9] This is consistent with the Commission's long-standing practice under existing § 3007.23. *See* Order No. 4403 at 12; *see also* Docket No. RM2008–1, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, March 20, 2009, at 17 (Order No. 194).

instructions are retained in final § 3007.401(b).

Based on review of the comments received relating to instances of actual notice and a potential expedited response deadline, the Commission deletes such procedural requirements in the final rule in the interest of simplicity.

The Commission acknowledges the Postal Service's observation that ''it is unlikely that there would be great urgency to obtain materials that were filed at least 10 years before the request.'' Postal Service Comments at 11. After the passage of 10 years, the difference between 3 business days versus 7 calendars is less significant to the requestor (in contrast to examples when the information at issue is more recent and its usefulness to participants is more time-sensitive). Also, the additional response time may be beneficial to the submitter and any person with a proprietary interest, given the need to re-familiarize themselves with the materials 10 years later. Further, having a single response deadline is simpler for participants. Therefore, the Commission dispenses with the expedited response deadline appearing in proposed § 3007.401(c).

Given this determination, there is no compelling reason to keep the related proposed requirements appearing in proposed § 3007.401(b) (requiring specification if actual notice was given, and if so stated, requiring additional information) and proposed § 3007.401(f) (stating that the Commission may grant public disclosure any time after receiving a request representing that actual notice was given and the request was uncontested). The deletions simplify the procedural requirements relating to the disclosure of materials for which non-public treatment has expired. UPS also objected to the provisions appearing in proposed § 3007.401(b) for other reasons.[10]

UPS suggests using a different substantive standard to determine whether to publicly disclose materials for which non-public treatment has expired. UPS suggests that the Commission adopt a policy of automatic disclosure at the 10-year mark absent a showing that public disclosure will result in ''material harm.'' UPS Comments at 6–7. The Commission appreciates UPS's comment as an effort to convey that any rationale for extended non-public treatment provided in an extension application that lacks adequate factual support should not be accepted. However, the applicable balancing test under final § 3007.104, taking into account the passage of time (which may render the harms alleged in the original application stale), adequately encompasses this concern.

The comments from the Postal Service and UPS also suggest changes to the proposed rules relating to the retention of the 10-year timeframe. The Commission declines to adopt changes to the proposed rules for the following reasons.

The Commission rejects the Postal Service's suggestion to set 25 years as the new default timeframe for expiration of non-public status. The Postal Service's observation that the FOIA sets a time limit of 25 years pertaining to information protectable under the deliberative process privilege is not persuasive. Generally in practice before the Commission, the types of information for which non-public treatment is sought involve issues pertaining to commercial injury, as contemplated by 39 U.S.C. 504(g)(3)(A). It is important to reconfirm that the final rules adopted in this Order do not alter the Commission's long-standing practice that it does not interpret ''likely commercial injury'' so narrowly as to exclude harm associated with other interests, such as the deliberative process. Order No. 194 at 11. In any event, the 10-year default period does not prejudice the ability of the Postal Service to seek extended protection, if circumstances warrant. The 10-year default period was set to ''serve administrative convenience and sound records management practices while adequately protecting the commercial interest of the Postal Service.'' [11] The Commission has not been presented with a rationale to disturb this earlier informed judgment.

The Commission also rejects the suggestion by the Postal Service to codify a rule providing for indefinite non-public treatment of customer-specific information. *See* Postal Service Comments at 10. Multiple orders state that ''[t]he Commission has consistently denied requests for indefinite protection.'' Order No. 4403 at 32 n.16. In any event, the 10-year default period does not prejudice the ability of the Postal Service to seek extended protection, if circumstances warrant.

Finally, the Commission rejects the alternative suggested by UPS to set forth the timing and level of disclosure for different types of non-public information. *See* UPS Comments at 5–6. The Commission appreciates the effort by UPS to try to develop an advance framework for evaluating these issues. In promulgating proposed § 3007.401(b)–(f), the Commission does not prejudge whether any information categorically would (or would not) require extended non-public status. The suggestion by UPS to consider setting forth different timing requirements based on whether the data was related to the Annual Compliance Report (ACR) or a negotiated service agreement (NSA) is not particularly useful to evaluating whether harm is still likely to occur. Data provided in connection with the ACR encompasses many forms, including NSA data. The suggestion by UPS to take into account distinctions based on level of granularity of the disclosure (such as whether the information at issue is specific to a customer, product, or class) may be relevant to the fact-specific analysis of the particular information at issue.

Therefore, the Commission does not find that a persuasive rationale has been provided to depart from its general premise that non-public status shall expire after the passage of 10 years, unless otherwise provided by the Commission. However, the Commission adopts changes to facilitate procedures for publically disclosing such material that are more clear and simple.

3. Changes to the Proposed Rules

Each line-by-line change to the proposed rules made in response to the comments related to the expiration of non-public treatment is reviewed below. Editorial changes made solely to improve global consistency, clarity, or precision are also reviewed below where applicable to final § 3007.401(b)–(f). The following changes to the proposed rules appear in the final rules.

*Final § 3007.401(b).* All references to ''motion'' are replaced with ''request.'' Usage of the word ''materials'' is replaced with ''information'' for precision in the second sentence. A sentence is added to notify the reader that completing and filing the template form appearing in final Appendix A to subpart D of 39 CFR part 3007 will satisfy the content requirements appearing in paragraph (b). The content requirements pertaining to whether or

[10] The Commission disagrees with UPS's characterization of proposed § 3007.401(b) as excessively burdensome. *See* UPS Comments at 6. Proposed § 3007.401(b) did not require that actual notice be *given* (or attempted); it provided a mechanism to better isolate those instances in which the expedited response deadline appearing in proposed § 3007.401(c) would apply. Order No. 4403 at 32. The related proposed requirement appearing in proposed § 3007.401(b), to provide additional information, would apply only if it was stated that actual notice was given. *See id.* at 33. The deletion of the expedited response appearing in proposed § 3007.401(c) renders these requirements unnecessary.

[11] Order No. 194 at 24–25; Docket No. RM2008–1, Final Rule Establishing Appropriate Confidentiality Procedures, June 19, 2009, at 13 (Order No. 225).

not actual notice has been given are deleted.

*Final § 3007.401(c).* The expedited response deadline applicable to instances when actual notice has been given is deleted. All references to ''motion'' are replaced with ''request.'' In one instance, the word ''request'' as used as a verb is replaced with ''seek'' to better distinguish between the usage of ''request'' as a noun to refer to the formal filing made under paragraph (b). In the last sentence, the word ''exists'' is replaced with ''is likely to occur if the information contained in the materials is publicly disclosed'' for precision because no injury would exist until the information contained in the materials is publicly disclosed. Also, in the last sentence, both cross-references are deleted because they are unnecessary.

*Final § 3007.401(d).* The word ''movant'' is replaced with ''requestor.''

*Final § 3007.401(e).* The word ''motion'' is replaced with ''request.''

*Final § 3007.401(f).* All references to ''motion'' are replaced with ''request.'' The references to the expedited response deadline are deleted. In the last sentence, the phrase ''balance the interests of the parties as'' is replaced with ''follow the applicable standard'' to more precisely encompass both standards (whichever may be applicable) appearing in paragraphs (a) and (b) of final § 3007.104.

*Final Appendix A to subpart D of 39 CFR part 3007—Template Request Form.* To aid compliance with final § 3007.401(b), which requires a requestor to identify the materials requested and date(s) that materials were originally submitted under seal, a template request form is created. Final Appendix A is added to subpart D of 39 CFR part 3007 contains a template form for requestors to use and modify.

*C. Review of Other Changes Proposed by the Postal Service*

The following discussion summarizes all changes proposed by the Postal Service (other than issues related to the expiration of non-public treatment), provides analysis, and describes the resulting changes made to the proposed rules.

1. Postal Service Comments

Aside from the issues related to the expiration of non-public treatment, the Postal Service proposes changes to proposed §§ 3007.101(a), 3007.103, 3007.200, 3007.300, 3007.301, and Appendix A of subpart C of 39 CFR part 3007. Postal Service Comments at 2–8, 11–14; Postal Service Appendix at iii–vi, xi–xiii, xix.

With respect to proposed § 3007.101(a), which defines non-public material, the Postal Service suggests two changes. First, the Postal Service requests to add text stating that inadvertent disclosure does not waive privilege or FOIA exemption status. Postal Service Comments at 7. Second, the Postal Service requests to add text stating that loss of non-public status applies only to the particular materials at issue, not to similar materials. *Id.* at 7–8.

With respect to proposed § 3007.103, the Postal Service requests to add text to ensure that notice and due process would occur in the event that the Commission issues an order to amend non-public status *sua sponte. Id.* at 8.

With respect to proposed § 3007.200, the Postal Service objects to the inclusion of existing § 3007.20, which requires that before submitting non-public materials to the Commission, each submitter contact any affected person who may have a proprietary interest in the non-public information contained therein. *Id.* at 11. The Postal Service asserts that this advance notice provision imposes a large and impracticable burden on persons that submit large amounts of third-party non-public information on a regular basis such as the Postal Service's NSA filings. *Id.* at 12. In particular, the Postal Service observes that the requirement to provide notice of docket numbers is impracticable because docket numbers are usually reserved on the day of filing. *Id.* The Postal Service states that it notifies NSA customers through template contract language, foreign postal operators through a UPU circular, and regularly involved third parties such as PC postage providers or suppliers through a general letter rather than through particular notification for each filing. *Id.* at 13. The Postal Service asserts that the Commission should recognize these methods of addressing third party notification. *Id.* at 14.

As an alternative, the Postal Service proposes that the Commission adopt an exception ''that limits the individualized notice requirement to situations where a third party has requested the individualized notice or the submitter has determined that any blanket notification is not sufficient.'' *Id.* The Postal Service suggests adding text to proposed § 3007.200(b) that would allow the submitter to provide annual notice, without identification of particular docket number designations, if the information is filed in multiple dockets. *Id.* The Postal Service suggests adding text to proposed § 3007.200(b) that would waive the identification of docket number designations if the person with a proprietary interest has executed a contract or similar instrument providing notice. *Id.*

With respect to proposed §§ 3007.300, 3007.301, and Appendix A to subpart C of 39 CFR part 3007, the proposed rules and template forms relating to access to non-public material, the Postal Service raises three issues. *Id.* at 2–6.

First, the Postal Service contends that proposed § 3007.300(a)(3)'s insertion of the term ''non-employee'' before the term ''subject matter experts'' creates uncertainty as to whether such persons would be held to the similar requirements and conditions for contractors and attorneys described in that same subsection. *Id.* at 2. The Postal Service asserts that this uncertainty creates a risk that an individual may access non-public materials without being bound by a contract or code of conduct that would prevent dissemination of the materials at will. *Id.* The Postal Service further states that although such behavior is prohibited under proposed § 3007.302, there are no apparent sanctions for such violations. *Id.* at 2–3. The Postal Service suggests that this can be remedied by inserting text in proposed § 3007.300(a)(3) stating that such persons have executed non-disclosure agreements. *Id.* at 3.

Second, the Postal Service requests that the Commission delete text appearing in proposed § 3007.300(b) and the corresponding template form in Appendix A to subpart C of 39 CFR part 3007 concerning ''involved in competitive decision making.'' *Id.* at 3–4. The Postal Service asserts that an attorney with access to non-public materials then would be able to use the knowledge gained through access (consciously or unconsciously) in formulating legal or business advice. *Id.* at 4. The Postal Service asserts that codifying the text appearing in the existing sample protective conditions ''creates a risk of non-public materials being used in ways that could be competitively harmful.'' *Id.*

Third, the Postal Service requests that the Commission delete text appearing in proposed § 3007.300(c) and the corresponding proposed § 3007.301(b)(2), which would permit persons to seek access solely for the purpose of aiding the initiation of a proceeding before the Commission. *Id.* at 5. The Postal Service objects that this proposed rule could enable persons to obtain access to non-public materials by providing only limited justification relating to a vague, undeveloped proposal to initiate a proceeding before the Commission. *Id.* at 6. The Postal Service asserts that the proposed rules impose no consequences if the person

granted access under this provision does not ultimately initiate the proceeding. *Id.* The Postal Service notes that an example referenced in the NPR was based on a request for continued access in the ACR proceeding after the issuance of the ACD. *Id.* at 5.

2. Commission Analysis

Based on the following analysis, the Commission adopts changes to proposed §§ 3007.101(a), 3007.103, 3007.200(b), 3007.205, and 3007.300(a)(3). Also, as discussed below, the Commission declines to make the Postal Service's suggested changes to proposed §§ 3007.300(b), 3007.300(c) and 3007.301(b)(2), and the template form in Appendix A to subpart C of 39 CFR part 3007.

*Proposed § 3007.101(a).* The Postal Service proposes that the definition of non-public materials in proposed § 3007.101(a) should state that inadvertent public disclosure does not constitute waiver of privilege or FOIA exemption status. *Id.* at 7. To support this proposal, the Postal Service quotes the Department of Justice Guide to the Freedom of Information Act (FOIA), in part. *Id.* The full sentence is reproduced, omitting the footnotes, using italics to display the text that was omitted from the Postal Service Comments: ''[*w*]*hile* it is generally found that agency carelessness or mistake in permitting access to certain information is not equivalent to waiver, *on occasion courts have found waiver in such releases*'' (emphasis added) (footnotes omitted).[12] As the full statement indicates, numerous cases support this general principle, with certain boundaries and nuances.[13] The Commission appreciates the Postal Service's aim to develop a rule that would provide certainty concerning recognition of this general principle. *See* Postal Service Comments at 7. However, the text suggested by the Postal Service would add no greater clarity or certainty than the line of cases referenced in its comments. Incorporating the suggested text into the definition of non-public materials used in the Commission's procedural rules is unnecessary and imprecise.[14] Accordingly, this suggested revision is not adopted in final § 3007.101(a).

The Postal Service does not give a reason for suggesting to add a sentence to the definition of non-public materials in proposed § 3007.101(a) regarding the loss of non-public status for any reason. Postal Service Comments at 7–8; Postal Service Appendix at iii. The Commission interprets the intent of this suggestion to be an effort to seek clarification of the scope and operation of the loss of non-public status as a matter of procedure. Therefore, the Commission adds one sentence to final § 3007.101(a) stating that the cessation of non-public status applies to the particular document or thing and the particular information contained therein (in whole or in part, as applicable). This additional sentence provides sufficient clarification regarding the procedural question regarding the application of the loss of non-public status.

*Proposed § 3007.103.* The NPR proposed to dispense with a codified process and timeframes (as set forth in existing § 3007.32(b)-(d)) following the issuance of a notice of preliminary determination. Order No. 4403 at 13. The reason for the deletion was that the notice of preliminary determination would set forth the specific time allotted for the response and reply (if any). *Id.* The Postal Service asks to reincorporate these codified procedures and asks to codify the standard that would apply. Postal Service Comments at 8. The Commission agrees that it would be helpful to the public to codify additional detail regarding the conduct of proceedings after a preliminary determination has issued. Consistent with the NPR's intent, the final rule regarding response and reply a notice of preliminary determination allows the Commission flexibility to set the specific time allotted for the response and reply (if any). Therefore, the Commission adopts the Postal Service's suggestions with textual edits to correspond with the terminology and flow of final § 3007.400 (relating to the procedure for motions by any interested person). Accordingly, final § 3007.103 reincorporates much of the content of existing § 3007.32.

*Proposed § 3007.200(b).* The Postal Service objects to proposed § 3007.200(b), which retains the existing requirement of § 3007.20(b), to provide advance notice to any other person who has a proprietary interest in the non-public material. Postal Service Comments at 11. The Postal Service's concerns appear to focus on the inclusion of the term ''docket designation.'' [15] The Postal Service observes that when initiating a new docket, the unique number following the hyphen is usually not reserved or assigned until shortly before the actual filing. Postal Service Comments at 12. The Postal Service also complains that interpreting the rule to require advance individualized notice for each filing would substantially burden the Postal Service. *Id.* The Postal Service describes its practice of providing one-time notice (rather than for each filing) using standard language contained in a contract, letter, or UPU circular. *Id.* at 12–13.

The Commission acknowledges the business and practical difficulties for not providing individualized advance notice of each submission and of the complete unique docket number(s) and does not interpret the existing requirement, nor the final rule, to prohibit the approaches described by the Postal Service. While it may not always be possible to provide advance notice of the full unique docket number, it should be possible to inform affected persons of the nature of proceeding in which the information may be used (such as by using the Postal Service's approach of listing the applicable docket designation letter code(s) and the fiscal year). To minimize confusion, the Commission adds a parenthetical ''to the extent practicable'' to the requirement that notice include ''the

[12] Department of Justice Guide to the Freedom of Information Act, Discretionary Disclosure and Waiver, at 703–704; *see* n. 82 (*available at https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/disclosure-waiver.pdf).*

[13] Moreover, in accordance with Fed. R. Evid. 502(b), which applies to a disclosure to a federal office or agency, inadvertent disclosure does not waive the attorney-client privilege or work-product protection in a federal or state proceeding if: ''the holder of the privilege or protection took reasonable steps to prevent disclosure; and [] the holder promptly took reasonable steps to rectify the error. . . .'' Fed. R. Evid. 502(b)(2)(3). Generally, federal courts consider a multi-factor test, which varies from case to case, in applying this rule. Fed. R. Evid. 502 advisory committee note (2008) (noting that Fed. R. Evid. 502 ''does not explicitly codify that test, because it is really a set of non-determinative guidelines that vary from case to case''); *see Eden Isle Marina, Inc.* v. *United States,* 89 Fed. Cl. 480, 506–08 (2009) (quoting) (finding that the government waived work-product protection for a memorandum, via an inadvertent disclosure in response to a FOIA request, where the government failed to take prompt, affirmative, curative action); *Goodrich Corp.* v. *E.P.A.,* 593 F. Supp. 2d 184, 192–93 (D.D.C. 2009) (finding that agency's failure to exercise ''zealous stewardship'' of its work-product protection to prevent inadvertent disclosure of the results of its model operated as subject-matter waiver with respect to the model itself).

[14] Substantive regulatory provisions should not be included in a definition. Nat'l Archives and Records Admin., Office of the Fed. Register, Document Drafting Handbook, Update May 2017, (Revision 6, dated May 1, 2018) at 2–28.

[15] *Id.* By way of background, when establishing a docket, the Commission assigns the docket a unique identification tag that contains three components. First, a letter code indicates the nature of the proceeding. Second, four digits identify the fiscal year in which the docket was established. Third, a hyphen and a unique number are assigned to indicate the number of that type of proceeding for that fiscal year. For instance, the tag assigned to this proceeding indicates that it is a rulemaking (''RM''), established in FY 2018 (''2018''), and that it is the 3rd rulemaking docket of FY 2018 (''-3'').

pertinent docket designation(s)'' in final § 3007.200(b).

*Proposed § 3007.205.* With respect to the Postal Service's concern regarding what happens in the event that non-public materials are inadvertently released to the public, the Commission finds there is a benefit to providing additional procedural detail. *See* Postal Service Comments at 6–8. The NPR included proposed § 3007.205, which ''outlines a process to minimize exposure of sensitive information that may occur due to a filer's error.'' Order No. 4403 at 21. Although the Postal Service did not suggest changes to proposed § 3007.205, the Commission has determined to require that the application for non-public treatment concerning such inadvertently submitted materials shall also clearly indicate any special relief that is requested. This additional procedural detail provides better instruction to the person seeking to protect the interests of the submitter or other person(s) with a proprietary interest in the materials that is claimed to have been inadvertently submitted.

Such special relief may be sought to address a situation in which a person who has not obtained access under proposed §§ 3007.300 or 3007.301 has preserved, viewed, or disseminated the materials (and the information contained therein that is later claimed to be non-public) while they were still publicly available (due to the submitter's error). If a person who has not obtained access under proposed §§ 3007.300 or 3007.301 has preserved, viewed, or disseminated the materials at issue while they were still publicly available (through no fault of his or her own), this provision better ensures that person is aware if any special relief sought. The Commission notes that this a procedural issue (and more specifically, a notice issue). It does not prejudice the ability of any person to seek access or to challenge the filer's claim that the materials should be accorded non-public treatment. Nor does this provision prejudge how the Commission would adjudicate such fact-specific issues.

*Proposed § 3007.300(a)(3).* The Postal Service focuses on the concern that non-employee subject matter experts may access non-public materials without an appropriate non-disclosure agreement in place. *See* Postal Service Comments at 2–3. The Postal Service asks to codify that all non-employees assisting the Commission execute appropriate non-disclosure agreements before accessing non-public materials. *See id.* The Commission adopts the Postal Service's suggestion in final § 3007.300(a)(3), with linguistic edits for clarity and simplicity. Final § 3007.300(a)(3) provides that access may be granted without issuance of an order to ''[n]on-employees who have executed appropriate non-disclosure agreements (such as contractors, attorneys, or subject matter experts), assisting the Commission in carrying out its duties.''

*Proposed § 3007.300(b) and Appendix A to subpart C of 39 CFR part 3007.* Proposed § 3007.300(b) prohibits granting access to persons involved in competitive decision-making for any entity or individual that might gain a competitive advantage from using the materials at issue. The Postal Service does not object to this exclusion. The Postal Service suggests deleting two sentences appearing in proposed § 3007.300(b) and the corresponding template form in Appendix A to subpart C of 39 CFR part 3007 that provides a non-exhaustive list of the types of persons included and not included in the exclusion. *Id.* at 3–4.

The Commission disagrees with the Postal Service's assertion that codifying the text at issue, which appears in the existing sample protective conditions ''creates a risk of non-public materials being used in ways that could be competitively harmful.'' *Id.* at 4. This language has been used in the protective conditions governing access in standard practice for many years.[16] Moreover, the Postal Service did not object to its inclusion in existing Appendix A to 39 CFR part 3007.[17] The Postal Service does not explain how adding this language in paragraph (b), and retaining it in the template form, would *create* a risk of misuse. *See* Postal Service Comments at 4. Moreover, the Postal Service's suggested approach, to retain the categorical prohibition on access for any person involved in competitive decision-making, but exclude any sort of explanation of what type of persons would be included, would render the final rule (and the corresponding template form) vague, overbroad, and unhelpful.

The Commission acknowledges the Postal Service's concern regarding individuals serving in dual capacities.[18] The Commission does not interpret the final rule (nor the corresponding template form) from preventing these concerns from being addressed when the Commission is balancing the interests of the parties consistent with the analysis undertaken by a federal court when applying the protective conditions appearing in Federal Rule of Civil Procedure 26(c).[19] Paragraph (b) categorically excludes certain persons from access to non-public materials. Paragraph (b) does not restrict a submitter or a person with a proprietary interest from seeking to exclude additional persons from access on an *ad hoc* basis or opposing a request for access for a particular individual.[20] Similarly, inclusion of this language in the proposed template form also does not restrict participants from seeking or negotiating stricter protections. Therefore, the Commission does not adopt the Postal Service's suggested deletions.

*Proposed §§ 3007.300(c) and 3007.301(b)(2).* Finally, the Commission declines to adopt the Postal Service's suggestion to delete the provisions appearing in proposed §§ 3007.300(c) and 3007.301(b)(2) that would permit persons to seek access to non-public materials solely for the purpose of aiding the initiation of a proceeding before the Commission. *See* Postal Service Comments at 5. The Postal Service misinterprets proposed

[16] *See, e.g.,* Docket No. RM2017–3, Motion of the National Postal Policy Council, the Major Mailers Association, and the National Association of Presort Mailers for Access to Nonpublic Document, Statement of Compliance with Protective Conditions, March 21, 2018, at 1.

[17] *See generally* Docket No. RM2008–1, Initial Postal Service Comments; Docket No. RM2008–1, Reply Comments of the United States Postal Service, October 10, 2008; Docket No. RM2008–1, Comments of the United States Postal Service in Response to Second Notice of Proposed Rulemaking, April 27, 2009; Docket No. RM2008–1, Reply Comments of the United States Postal Service in Response to Second Notice of Proposed Rulemaking, May 11, 2009.

[18] *See, e.g., Seal Shield, LLC* v. *Otter Prod., LLC,* No. 13–CV–2736 CAB (NLS), 2014 WL 12160746, at *2–3 (S.D. Cal. Feb. 7, 2014) (entering protective order denying access to plaintiff's in-house counsel based on finding that the attorneys had prior and current involvement in business and product decisions such as to qualify them as competitive decision-makers and there was no record evidence that plaintiff could not retain outside counsel).

[19] For example, federal courts may restrict access to highly confidential information to independent outside counsel. *See, e.g.,* W. *Conv. Stores, Inc.* v. *Suncor Energy (U.S.A.) Inc.,* No. 11–CV–01611, 2014 WL 561850, at *1 (D. Colo. Feb. 13, 2014) (''During discovery, [the non-party competitor's] interest was addressed by a protective order that entitled Western's counsel and retained experts to view [the non-party competitor's] wholesale purchase and retail sales information, but forbade the recipients of the information from sharing it with [the plaintiff's owner] . . . .''); *Norbrook Laboratories LTD.* v. *G.C. Hanford Mfg. Co.,* No. 5:03–CV–165, at 10, 2003 U.S. Dist. LEXIS 6851, *15–17 (N.D. N.Y. Apr. 24, 2003) (denying outside counsel, who also served as corporate secretary and a board member, access to discovery materials containing trade secrets because the situation would place his fiduciary duties in conflict with his ethical obligations as an attorney and the restriction would not unduly prejudice his client).

[20] *See, e.g.,* Docket No. RM2017–3, Notice of the United States Postal Service of Filing Non-Public Materials, Attachment to Notice of Non-Public Filing, March 16, 2018, at 8–9 (requesting that certain persons not be granted access to the non-public materials or only be granted access subject to more stringent protective conditions).

§ 3007.301(b)(2) as enabling persons to obtain access to non-public materials by providing only limited justification relating to a vague, undeveloped proposal to initiate a proceeding before the Commission. *Id.* at 6. Proposed § 3007.301(b)(2) requires that a motion for access include a detailed statement justifying the request for access. Also, proposed § 3007.301(b)(2)(ii) requires that a motion for access to aid initiation of a proceeding before the Commission shall describe the subject of the proposed proceeding, how the materials sought are relevant to that proposed proceeding, and when the movant anticipates initiating the proposed proceeding. These requirements ensure that the request for access is made in good faith, but are not so strict as to require that the planned proceeding is fully ready. Further, final § 3007.301(c) permits the filing of a response to a motion for access. Therefore, there are sufficient procedural mechanisms to ensure that the justification given is adequate. Ultimately, the standard to grant access balances the interests of the parties, which takes into account the interests of the person seeking access and the interests of any person opposing access.

The Postal Service also objects that the proposed rules impose no consequences if the person granted access under this provision does not ultimately initiate the proceeding. *Id.* This corresponds with the existing practice, which does not impose consequences against a person who obtains access but then opts not to file a document with the Commission. Because the person requesting access has no opportunity to review the sealed materials *in camera* prior to obtaining access, it is possible that the person will opt against filing with the Commission after obtaining access. The underlying concern expressed by the Postal Service is not a failure to move forward with the planned proceeding; rather, the Postal Service is raising a concern of misuse, dissemination, or lack of care of the materials. The final rules prohibit such practices. Persons who obtain access are subject to protective conditions imposed by order and the rules, which limit use and dissemination of the non-public materials and the information contained therein. Final § 3007.303(a) provides for sanctions for violation of protective conditions. Final § 3007.303(b) reserves the right of any person, including the Postal Service, to pursue other remedies.

The Postal Service reviews the potential to use indirect procedural mechanisms to aid persons to initiate a proceeding before the Commission, such as requesting that the Commission initiate a public inquiry docket and then seeking access, or seeking access in (and continuing access) in the ACR proceeding. *Id.* at 5–6. The Postal Service asserts that such indirect options undermine the necessity of the proposed rule. *Id.* at 6. Final §§ 3007.300(c) and 3007.301(b)(2) provide a direct mechanism. This makes the rules plain and more accessible to the public. Further, it facilitates the design and enforcement of protective conditions that will ensure the non-public material, and the non-public information contained therein, are used only for the purposes supplied. Therefore, the Commission does not adopt the Postal Service's suggested deletions.

3. Changes to the Proposed Rules

Each line-by-line change to the proposed rules made in response to the Postal Service's comments is reviewed below. Editorial changes made solely to improve global consistency, clarity, or precision are also reviewed below where applicable to the final rule at issue. The following changes to the proposed rules appear in the final rules.

*Final §* 3007.*101(a).* A sentence is added to the end of this paragraph to reflect that the cessation of non-public status applies to the particular document or thing and the particular information contained therein (in whole or in part, as applicable).

*Final §* 3007.*103.* This rule is divided into three paragraphs.

*Final § 3007.103(a).* This paragraph contains the first sentence of proposed § 3007.103, informing the reader of examples of the types of action by which the Commission may seek additional information to determine the non-public treatment, if any, to be accorded. For global consistency, the word ''given'' is replaced with ''accorded.'' Clarifying text is also added to reflect that the materials at issue are those that are claimed by any person to be non-public.

*Final § 3007.103(b).* This paragraph contains the second sentence of proposed § 3007.103, but deletes the reference to *sua sponte* amendment and instead focuses on amendment prompted by motions practice. For global consistency, the word ''given'' is replaced with ''accorded.''

*Final § 3007.103(c).* This paragraph codifies the specific procedure relating to instances in which the Commission, on its own motion, issues notice of a preliminary determination. The first sentence of final § 3007.103(c), which outlines the first step of this process—the issuance of notice of a preliminary determination, is based on existing § 3007.32(a) and the Postal Service's suggested language. *See* Postal Service Appendix at iv. The second sentence of final § 3007.103(c), which sets forth the response timeframe, is based on existing § 3007.32(b) and the Postal Service's suggested language, with edits to correspond with final § 3007.400(c). *See id.* The third sentence of final § 3007.103(c), which sets forth the general rule regarding reply, is based on existing § 3007.32(c), with edits to correspond with final § 3007.400(d). The fourth sentence of final § 3007.103(c), which reflects that the Commission will continue to accord non-public treatment to the materials while the issue is pending, incorporates the Postal Service's suggested text and corresponds with final § 3007.400(e). *See id.* The fifth sentence of final § 3007.103(c) which explains the timing for the Commission ruling, is based on existing § 3007.32(d) and the Postal Service's suggested language, with edits to correspond with final § 3007.400(f). *See id.* at iv-v.

The sixth sentence of final § 3007.103(c), which explains the standards for the Commission ruling, is based on the Postal Service's suggested text. *See id.* at v. Specifically, the sixth sentence of final § 3007.103(c) replaces the Postal Service's suggested phrase ''balance the interests of the parties as'' with ''follow the applicable standard.'' This revision is made to more precisely encompass both standards (whichever may be applicable) appearing in paragraphs (a) and (b) of final § 3007.104. This modified phrasing of the sixth sentence also corresponds with final § 3007.400(f).

*Final §* 3007.*200(b).* The parenthetical ''if applicable'' is replaced with ''to the extent practicable.''

*Final §* 3007.*205(c).* An additional paragraph is added to provide additional instruction for an application for non-public treatment regarding materials that are claimed to have been inadvertently submitted publicly. If special relief is sought, the application for non-public treatment must clearly request it. Such special relief may include that any person not granted access to the materials in accordance with the Commission's rules immediately destroy or return all versions of such material; refrain from disclosing or using such materials (and the information contained therein); and, if applicable, take reasonable steps to retrieve such materials (and the information contained therein) that were disclosed to any person not granted access to the materials in accordance with the Commission's rules

prior to the filing of the application for non-public treatment.

*Final § 3007.300(a)(3).* The text is clarified to reflect that access may be granted without issuance of an order to non-employees who have executed appropriate non-disclosure agreements (such as contractors, attorneys, or subject matter experts), assisting the Commission in carrying out its duties.

*D. Review of Other Changes Proposed by the Public Representative*

The following discussion summarizes all changes proposed by the Public Representative (other than issues related to the expiration of non-public treatment), provides analysis, and describes the resulting changes made to the proposed rules.

1. Public Representative Comments

Aside from the issues related to the expiration of non-public treatment, the Public Representative discusses seven major issue areas. *See generally* PR Comments. First, he asserts that a framework should be adopted for the consistent usage of terminology throughout the proposed rules. *Id.* at 2–4. To illustrate this suggestion, the Public Representative proposes a framework for how to describe the manifestations of information, which he categorizes into documents, things, and communications similar to Federal Rule of Civil Procedure 26(b)(5). *Id.* at 3. As an alternative, he suggests adopting the ''documents or other matter'' terminology based on 39 U.S.C. 504(g). *Id.* at 3, n.5. He acknowledges that fully consistent usage may not be possible in all instances, specifically with respect to the FOIA rules appearing in part 3004 of this chapter. *Id.* n.3.

Second, he contends that proposed § 3007.100(a) omits a reference to the ability to claim protection for materials provided by the Postal Service of its own volition. *Id.* at 7. Therefore, he suggests omitting the reference to materials being provided in response to a subpoena or request of the Commission. *Id.*

Third, he suggests the term ''other person'' as used is unclear and that in each instance the Commission should specify ''person other than the Postal Service'' or ''person other than the submitter.'' *Id.*

Fourth, he suggests that the Commission consider expansion of the proposed rules to apply to information exchanged by oral communications (meetings or consultations between the Commission and the Postal Service and users of the mail). *Id.* at 8. He describes past experience in which persons attending closed hearings involving the discussion of non-public information signed non-disclosure agreements prior to entry and suggests formalization of such procedure would be beneficial. *Id.*

Fifth, he notes that filing materials in closed dockets is administratively inconvenient under the existing Filing Online interface—closed dockets are not displayed in the menu and Dockets personnel typically seek internal approval before posting materials in closed dockets. *Id.* He also observes that the proposed G docket is not currently accessible under the existing Filing Online interface. *Id.* He suggests the Commission update its Filing Online interface and Dockets procedures to accommodate such filings. *Id.* at 9.

Sixth, he requests additional explanation for the conforming changes to proposed § 3004.30. *Id.* at 11. He believes that the proposal ''would appear to require the Postal Service to concomitantly file a Protective Conditions Statement on every occasion that non-public information or materials are revealed in any discussions or consultations with the Commission (or an individual Commissioner, or Commission staff).'' *Id.* He states that he does not oppose such a requirement. *Id.* He does not suggest any edits to proposed §§ 3004.30 or 3004.70. *See id.* at 10–11.

Seventh, the Public Representative offers specific line-by-line editorial revisions to proposed subpart E of 39 CFR part 3001 and 39 CFR part 3007. *See id.* at 9–10, 11–16.

2. Commission Analysis

The following discussion addresses the first six major issue areas raised by the Public Representative, and then addresses the seventh major issue through a more detailed discussion of the specific line-by-line editorial revisions he suggests.

First, with respect to the Public Representative's suggested framework, the Commission clarifies the distinction between ''information'' (the substance, such as explanations, confirmations, factual descriptions, and data) and its manifestations into ''materials'' (tangible matter that conveys information). With respect to ''materials,'' the Commission distinguishes between ''documents'' and ''things.'' This framework parallels the ''documents or other matter'' framework of 39 U.S.C. 504(g). ''Documents'' convey information in hard copy (paper) or electronic forms. All other matter that conveys information are referred to as ''things.'' Generally, nearly all materials submitted to the Commission are ''documents;'' ''things'' is a catch-all category for all other matter. Changes to implement this framework are made throughout the final rules appearing in subpart E of 39 CFR part 3001 and 39 CFR part 3007.

Second, the Commission agrees that deleting proposed § 3007.100(a)'s reference to materials being provided under a subpoena or in response to a Commission request would better describe the applicability of protection for materials that the Postal Service submits to the Commission. The Postal Service may seek non-public treatment for materials that are submitted to the Commission voluntarily. This is consistent with existing practice for any person (including the Postal Service) and the Commission is authorized to provide for such procedural mechanisms consistent with its general rulemaking authority. *See* 39 U.S.C. 503.

Third, the Commission agrees that use of the phrases ''person other than the submitter'' or ''person other than the Postal Service,'' whichever is applicable, would improve clarity. This suggestion is adopted globally throughout the final rules.

Fourth, at this time, the Commission declines to codify specific rules relating to non-public information conveyed through oral communications during consultations and meetings.[21] The Commission believes that addressing this issue *ad hoc* is sufficient. With respect to communications during Commission meetings, hearings, and other widely publicized Commission events existing Commission policy confirms, ''[f]or events that include presentation of non-public materials, interested persons may be limited to persons complying with provisions intended to protect non-public materials.'' *Ex Parte* Communications Policy at 8. This policy similarly addresses technical conferences ''[i]n dockets that include non-public materials, interested persons may be limited to persons complying with provisions intended to protect non-public materials.'' *Id.* at 15.

[21] By way of background, the Commission's *ex parte* rules and policy provide that *ex parte* communications do not include: (1) Documents filed using the Commission's docketing system; (2) communications during the course of public Commission meetings, hearings, and other widely publicized Commission events; (3) communications during the course of a public off-the-record technical conference associated with a matter before the Commission or the pre-filing conference required for a nature of service case; (4) questions regarding procedures, status, or scheduling; and (5) communications unrelated to the matter before the Commission. *See* 39 CFR 3008.2; *see also Ex Parte* Communications Policy, Policy # OGC–16–1, June 30, 2016, at 7, (*Ex Parte* Communications Policy) *available at prc.gov*, hover over ''References'' and follow ''*Ex Parte* Policy'' hyperlink.

By way of additional background, two types of informal consultations and briefings occur subject to the Commission's *ex parte* policy that are not open to the public. *Id.* at 13–14. First, the Commission and the Postal Service regularly consult (at the highest organizational levels) to share operational information. *Id.* at 13. Second, the Postal Service periodically briefs the Commission (at all organizational levels) on matters of interest. *Id.* at 14. The communications made during these consultations and briefings are subject to the *ex parte* policy—discussion of pending or anticipated matters before the Commission, deliberations, and decisional discussions are prohibited. *Id.* at 13–14. Because these consultations and briefings are attended by officers and employees of the federal government (including the Postal Service and the Commission), protections are already in place under the law.[22] Moreover, the Commission has internal policies and procedures that train employees not to disclose non-public information, provide procedures to immediately report and remediate potential exposure in the event of breach, and for employee discipline (if applicable). Also, as part of its standard contracting practice, contractors assisting the Commission have non-disclosure provisions in their contracts and, as suggested by the Postal Service, this practice has been formally codified in final § 3007.300(a)(3). Therefore, the existing safeguards applicable to non-public information conveyed through oral communications render the suggested changes unnecessary. Further, the existing rules appearing in 39 CFR part 3007 are focused on materials that are submitted to the Commission in a tangible fashion.

Fifth, the Commission acknowledges the administrative issues noted by the Public Representative with respect to filing in closed dockets and G dockets. The Commission will make the necessary technical updates to allow for filings in Docket No. G2018–1 by the time these final rules will go into effect.

The existing interface permits filings to be made in closed dockets. The interface to create a new filing record instructs the filer to type remarks into a designated box, if the drop-down menu does not list the docket number in which the filing should be posted. The interface explains that any text typed into this designated box is viewed only by Dockets personnel. Therefore, any filer that intends to file in a closed docket may use this feature in the existing interface to type in the closed docket number, consistent with exiting practice.

Sixth, the Commission provides the following explanation with respect to the requirements applicable to the Postal Service's submitting non-public materials outside of a filing (*e.g.,* not in the context of docketed proceedings or periodic reporting requirements). As stated in the NPR, the proposed rules ''reflect that *in all instances in which the Postal Service submits materials to the Commission* that it reasonably believes to be exempt from public disclosure, the Postal Service shall follow the submission procedures appearing in subpart B of 39 CFR part 3007.'' Order No. 4403 at 36 (emphasis added); *see also* UPS Comments at 8.

As the NPR discussed, the existing rules do not clearly address the applicable procedural requirements if the Postal Service submits non-public materials to the Commission outside of a filing. Order No. 4403 at 14. As the NPR explained such submissions may occur in accordance with the Commission's *ex parte* policy. *Id.*

The NPR aimed to better address the procedural requirements that would be applicable if the Postal Service submits non-public materials to the Commission outside of a filing. *Id.* This would include situations involving the submission of materials claimed by the Postal Service to contain non-public information during the course of consultations and briefings that occur in accordance with the *ex parte* policy. *See id.* Accordingly, if the Postal Service submits materials to the Commission that the Postal Service believes to contain non-public information (including related to consultations or briefings), the Postal Service must submit an application for non-public treatment, a redacted version of the non-public materials, and an unredacted version of the non-public materials. *See id.* As the NPR explained, the final rules are designed to facilitate the Commission's determination of non-public treatment (if any) that should be accorded to materials that are submitted outside of a docketed proceeding or periodic reporting, better ensure that confidential treatment is properly accorded, and facilitate the Commission's resolution of motions practice. *See id.*

As applied to the specific procedural question presented by the Public Representative, if the Commission (including an individual Commissioner or employee) takes custody of an unredacted version of a document during a consultation or briefing (*e.g.,* the Postal Service employee hand delivers or electronically transmits a document to a member of the Commission or Commission staff) and the Postal Service claims that the document contains non-public information, there must be a concomitant submission of the application for non-public treatment and a redacted version of the document in accordance with final §§ 3004.30(d) and 3007.200(a).

This situation, which permissibly may occur subject to the *ex parte* rules outside of a docketed proceeding or a periodic reporting requirement, does not require the use of the Filing Online system to submit the application for non-public treatment and a redacted version of the document. Therefore, in the example at issue, it would be permissible for the Postal Service employee to provide the application for non-public treatment and a redacted version of the document (concomitantly with the unredacted version of the document) to a member of the Commission or Commission staff. Final §§ 3007.201 and 3007.202 impose requirements for the *contents* of the application for non-public treatment and the redacted version of the document claimed to contain non-public information. The same content requirements apply to persons other than the Postal Service that submit non-public materials under final § 3004.70(a). *See* Order No. 4403 at 15, 36.

The unredacted version of the non-public document (displaying the information that is claimed to be non-public) must be appropriately marked in accordance with final § 3007.203(a). In accordance with final § 3007.203(b), the Filing Online interface that results in the posting of a document on the Commission's public website may not be used to submit the unredacted version of a non-public document. If the non-public document is a spreadsheet, more specific form requirements apply to the unredacted version under final § 3007.203(d). Submission of the unredacted version of the non-public document that is made during a consultation or briefing is not required to be made using sealed envelopes or the alternative system approved by the Secretary under final § 3007.203(c)). Because the issues discussed during such consultation or briefing do not involve discussion of pending or anticipated matters before the

[22] *See, e.g.,* 18 U.S.C. 1905 (prohibiting an officer or employee of the United States, or of any department or agency thereof, from disclosing confidential information except as authorized by law; prohibited disclosure shall result in removal from office or employment as well as monetary fines, imprisonment of not more than one year, or both).

Commission, deliberations, or decisional discussions, the Commission does not interpret its final rules to require use of either filing method. However, a person making such submission should use care to ensure that he or she does not waive any applicable protection; using sealed envelopes for hard copy materials or a secure transmission method for electronic submissions would be prudent. The same requirements apply to persons other than the Postal Service that submit non-public materials under final § 3004.70(a). *See id.*

With respect to the Public Representative's inquiry regarding non-public information conveyed through oral communications at consultations and briefings (in accordance with the *ex parte* rules), as stated above, the Commission does not adopt a specific procedural rule. The final rules apply to materials—documents and things—not oral communications. The protection of non-public information exchanged orally will continue to be handled through the existing safeguards.

Seventh, generally the Public Representative's editorial revisions (with some variations) are adopted to improve the clarity and precision of the final rules. Additional explanation follows.

*Proposed § 3001.100.* The Commission generally adopts the proposed editorial changes to improve readability and conform to the distinction between information and the materials used to convey information. *See* PR Comments at 9, 17–18.

With respect to the distinctions between types of materials, the final rule varies slightly from the Public Representative's proposal. The Public Representative proposes to categorize materials into documents, things, and communications similar to Federal Rule of Civil Procedure 26(b)(5). *Id.* at 3. As an alternative, he suggests categorizing materials into ''documents or other matter'' based on 39 U.S.C. 504(g). *Id.* at 3, n.5. As discussed above, the Commission uses the terms documents and things as its framework for describing the types of materials that may be provided to the Commission. The final rule informs the reader that the information request may seek information that already exists in some tangible form as well as the creation of a tangible document or thing that describes the information sought. Whether the response might involve the creation of a tangible document or thing or the identification of an existing document or thing depends on the situation. The final rule is intended to be construed broadly to encompass whichever would be applicable and appropriately responsive to the information request. This is consistent with existing practice before the Commission.

To the extent that information that was orally communicated is sought, the information request would typically seek the underlying substance of the oral communication through tangible matter (*e.g.,* explanations, confirmations, factual descriptions, and data). Generally, the person responding to the information request would create document(s) or thing(s) to convey the underlying substance of the communication or identify existing responsive document(s), whichever may be applicable and appropriately responsive. As an example, a response to an information request may involve creating a narrative response containing the requested explanations, confirmations, factual descriptions; creating workpapers or tables containing the requested data; or identifying responsive document(s) or thing(s) that already exist.

Practice before the Commission differs from practice before federal courts in that *occurrence* of oral communications are rarely at issue in information requests.[23] In the unlikely instance that the *occurrence* of the oral communication itself was at issue in an information request, then the information request would likely seek a document or thing memorializing the occurrence of such oral communication. As an example, a response to such an information request may involve creating a narrative response containing confirmation that the oral communication at issue occurred (or did not occur), a description of the facts surrounding the occurrence (or non-occurrence) of the oral communication, or identification of an existing responsive document or thing relating to the occurrence (or non-occurrence) of the oral communication.

*Proposed § 3001.101.* The Commission generally adopts the proposed editorial changes to improve readability and conform to the framework of information, documents, and things. *See id.* at 10, 19–20. The Commission also adopts the proposed change of the second sentence of paragraph (b) to the passive voice to minimize confusion regarding the ability of the Chairman of the Commission or the presiding officer to make a judgment independent of the full Commission.

The references to ''filing'' a motion are deleted in paragraph (b) to reduce unnecessary text. The Commission does not interpret paragraph (b) to prohibit a motion from being stated orally on the record; these references to ''filing'' a motion appear in existing § 3007.3(c). However, the movant may be instructed to reduce his or her oral motion to a writing and file it under § 3001.30(g) of this chapter. The proposed change to abbreviate the end of the third sentence of paragraph (b) is not adopted; the additional text is retained in the final version of the rule to better inform the reader of what an information request based on a motion may include.

*Proposed § 3007.100.* The Commission generally agrees with the issues raised by the Public Representative. *See id.* at 11. With respect to applicability, the text of proposed § 3007.100 is redesignated as final § 3007.100(a) with four subparagraphs (1)–(4). Because the rules appearing in 39 CFR part 3007 are derived not only from the Commission's specific authority in 39 U.S.C. 504(g), but also the Commission's general rulemaking authority (*see* Order No. 4403 at 6), the specific cross-reference is deleted to minimize confusion. Therefore, the final rule abbreviates the Public Representative's suggested text. Similarly, the text quoted directly from section 504(g)(1) of title 39 relating to materials provided by the Postal Service in response to a subpoena or otherwise at the request of the Commission is deleted to minimize confusion. The Postal Service may provide materials to the Commission in the absence of a subpoena or a direct Commission request and apply for non-public treatment, if circumstances warrant.

Generally, the other clarifying language suggested by the Public Representative is adopted throughout final § 3007.100(a). *See* PR Comments at 11. In final § 3007.100(a)(3) and (4), a simpler phrase, ''any person,'' is adopted in lieu of the suggested phrase, ''the Postal Service or any person other than the Postal Service.''

Throughout final § 3007.100(a)(1)–(4), edits are made to conform to the distinction between information and the materials used to convey information. Final § 3007.100(b), which replicates the scope text appearing in final § 3001.100(b), is added to assist readers.

*Proposed § 3007.101(a).* The Commission generally adopts the proposed edits to the first sentence, to better distinguish between information and the means of conveying information, with minor variations to fit

[23] It is also important to recognize that information requests serve as a Commission procedure separate and distinct from the discovery mechanisms appearing in existing 39 CFR part 3001 such as depositions, requests for admissions, interrogatories, and requests for production.

the selection of the documents or things framework. *See id.* at 24. The Commission also adopts the Public Representative's suggestion to divide the text into more sentences. *See id.* at 11–12. Accordingly, three revised sentences explain the applicable bases for the Postal Service, any person other than the Postal Service, and any person to claim that information is non-public. The final rule varies slightly from the Public Representative's suggestion to reflect the potential that any person (including the Postal Service) may cite to 5 U.S.C. 552(b) as a basis to claim that information is non-public. Potential examples involving a person other than the Postal Service may involve another government agency subject to FOIA or a business providing information in accordance with 5 U.S.C. 552(b)(4).

The Commission declines to adopt the Public Representative's suggestion to replace the proposed terminology ''publicly discloses'' with ''publicly provides access to'' the materials to avoid potential confusion with access granted subject to protective conditions. *See id.* at 24.

*Proposed § 3007.102.* In response to the Public Representative's concern, edits are adopted to more explicitly convey that disclosure of or access to the non-public information contained within non-public materials is prohibited, except in accordance with final 39 CFR part 3004 or final 39 CFR part 3007. *See id.* at 12.

*Proposed § 3007.104.* The Commission adopts the Public Representative's suggestion to clarify the distinction between materials and the information conveyed therein in the heading and in paragraph (a). *See id.* at 12, 26. The Commission declines to adopt the suggestion to replace the proposed terminology ''publicly disclose'' and ''public disclosure of'' in the heading and in paragraph (a) with ''publicly allow access to'' and ''public access to'' materials to avoid potential confusion with access granted subject to protective conditions. *See id.* at 26.

The Commission agrees with the Public Representative that the description of the standard in paragraph (b) should be amplified and adopts his suggestion. *See id.* at 12–13.

*Proposed § 3007.200.* The Commission adopts the Public Representative's proposed edit in paragraph (a) to use the word ''concomitantly'' rather than ''on the same business day'' to emphasize that the submissions shall occur as closely in time as practicable on the same business day. *See id.* at 13, 26.

The Commission adopts the Public Representative's proposed clarifying edits in paragraph (b). *See id.* at 13, 27.

*Proposed § 3007.201(b).* The Commission adopts the Public Representative's proposed clarifying edits in paragraph (b), with one exception. *See id.* at 13, 27–28. The phrase ''or both'' is retained in subparagraph (b)(2) to emphasize that the submitter must either identify multiple individuals or ensure that a single designated individual will provide notice to the affected person.

*Proposed § 3007.202.* Taking the view that this proposed rule only applies to documents, not all materials, the Public Representative suggests limiting its applicability accordingly in the heading and in paragraph (a). *See id.* at 14, 29. Generally, the Commission's rules focus on documents (either hard copy or electronic). Although the category of ''things'' is simply a catch-all, that is unlikely to be used, paragraphs (b) and (c) allow sufficient flexibility to account for the practical difficulty in redacting a thing. Therefore, the Commission declines to adopt this suggestion. The Commission adopts the Public Representative's other proposed clarifying edits in paragraph (a) to more precisely refer to the information that is claimed to be non-public. *See id.* at 29.

The two line edits suggested for the first sentence of paragraph (b) are not adopted because they are not necessary. *See id.* First, using ''shall'' is sufficient to convey that it is mandatory to justify using a method other than blackout to redact non-public information appearing in the materials. Second, replacing ''using'' with ''the use of'' does not produce an appreciable improvement in clarity.

*Proposed § 3007.203.* The Commission adopts the suggestions to re-divide the paragraphs, with some variations. *See id.* at 30–31. Final paragraph (a) pertains solely to the marking requirement; final paragraph (b) pertains to the prohibition on using the Filing Online interface that results in the public posting of a document; final paragraph (c) pertains to the method to file non-public materials; and final paragraph (d) pertains to requirements specific to non-public spreadsheets.

The Commission generally adopts the suggested edits to final paragraph (a) with minor variations due to the selection of the documents or things framework. *See id.* at 14, 30.

The Commission adds an additional phrase to the first sentence of final paragraph (b) to accommodate the potential that the existing Filing Online interface may be modified to accept non-public documents in a secure manner. *See id.* at 14. The existing Filing Online interface causes a public filing to be made, leading to the posting of a document to the Commission's public-facing website. Filers may not submit the unredacted version of the non-public materials (the version that displays the non-public information) using the existing Filing Online interface.

In final paragraph (c), the suggestion to replace ''materials'' with ''documents'' is adopted in part. *See id.* at 14, 30–31. This change is not adopted in the introductory text of final paragraph (c); instead, other text is deleted so that the sentence is more generally applicable. In final subparagraph (c)(1), text pertaining to materials, as a broad category, is confined to the first two sentences. The suggestion to refer specifically to a document is adopted in the third and fourth sentences of final subparagraph (c)(1). This change is also not adopted in final subparagraph (c)(2); the Secretary's authority to approve and administer an alternative filing system includes all materials.

The suggestion to reword final subparagraph (c)(2)'s reference to the Secretary is adopted. *See id.* at 31. The suggested additional description is adopted in the third sentence of final subparagraph (c)(1) to reflect that ''DVDs'' may be digital video discs or digital versatile discs. *See id.* at 14, 31.

The Commission agrees with the Public Representative's observation that the requirements relating to spreadsheets appearing in proposed subparagraph (b)(1) are off-topic. *See id.* at 14. The Commission appreciates his suggestion to address certain requirements for spreadsheets in a different part of the Commission's regulations and may consider it in future rulemaking. Moving these two sentences to final paragraph (d) minimizes the diversion. The reason that the sentences are not deleted from final § 3007.203 is to convey that there are certain minimal form and content requirements associated with the unredacted version of a spreadsheet, a matter that is entirely within the scope of 39 CFR part 3007. This is necessary to include because in some instances the formulas and links to related spreadsheets contain non-public information and, therefore, are masked in the redacted version of the spreadsheet.

*Proposed § 3007.204.* The clarifying language suggested by the Public Representative is adopted in the header and text. *See id.* at 14, 31.

*Proposed § 3007.205.* With respect to the suggestion to replace ''could'' with ''should'' in the first sentence, the Commission instead rephrases to better focus the issue not on the technical capability of making a sealed filing but rather on having a cognizable legal basis to assert a claim that the materials could have been subject to a claim for non-public treatment. *See id.* at 14–15, 32. The Commission declines to use ''should'' to avoid a potential interpretation that the final rule prejudges whether the materials at issue actually should (ought to) be withheld from the public.

With respect to the suggestion to strike the last sentence pertaining to repeated mistakes, the Commission declines to adopt the suggestion. *See id.* at 15, 32. This sentence is retained to notify the reader that any reoccurring problems may be addressed by the Secretary administratively. It is also retained to emphasize that this procedure to minimize the potential exposure from an error made by a filer is meant to be rarely invoked.

With respect to the suggestion to strike text to broaden the rule's applicability to materials submitted outside the context of a formal filing, the Commission instead incorporates this suggestion in a separate final paragraph (b). *See id.* Because such submissions related to consultations and briefings would most likely not be directed to Dockets personnel, the person making the request should contact the Commission personnel to whom the submission was directed. The heading of the final rule is changed to accommodate the addition of final paragraph (b).

*Proposed § 3007.301.* The Commission adopts the Public Representative's proposed clarifying edits in paragraphs (a), (b)(1), and (e). *See id.* at 15, 34, 36. The Commission agrees with the Public Representative that the description of the standard in paragraph (e) should be amplified and adopts his suggestion. *See id.* at 15.

*Proposed § 3007.302.* The Commission adopts the Public Representative's proposed clarifying edit in paragraph (a). *See id.* at 15, 36.

*Proposed § 3007.303.* The Commission adopts the Public Representative's proposal to replace ''shall'' with ''may'' in paragraph (a) to acknowledge that a sanction may not be applied in *every* instance of an infraction. *See id.* at 15, 37. This change is consistent with the practice employed by federal courts and is equivalent to retaining the word ''shall'' and applying a nominal sanction.[24] The Commission adopts his suggestions to provide two additional illustrative types of sanctions in final paragraphs (a)(3)–(4). *See* PR Comments at 16, 37.

The Commission declines to adopt the proposed edit in paragraph (b). *See id.* at 16, 38. The phrase ''or both'' is retained to emphasize precisely who may face sanctions.[25]

*Proposed § 3007.304.* The Commission agrees with the Public Representative's observation that it would be beneficial to convey that if judicial review occurs, access may continue through the duration of the review and any Commission response thereto. *See* PR Comments at 16. Final paragraph (a)(1) varies slightly from the suggested edit because if judicial review does occur, the final event triggering termination of access would be when judicial review expires for that decision or the Commission's actions in response to that decision. *See id.* at 38.

*Proposed § 3007.400.* The Public Representative suggests changing terminology from ''public disclosure'' or ''publicly disclosed'' to using ''public availability'' or ''made publicly available'' in the heading of Subpart D, the heading of proposed § 3007.400, and the text of proposed § 3007.400(b). *See id.* at 45. The suggested changes are not adopted because they are unnecessary. Using terminology based on the phrase ''publicly disclose'' appears in existing § 3007.33(a) and (b) (describing the applicable standard for the Commission ruling) to refer to unsealing materials filed as non-public (and the information therein claimed to be non-public). This terminology has been retained in final § 3007.104(a) and (b) and it has been used globally throughout the final rules. Using terminology based on the term ''disclose'' is sufficient to refer to unsealing materials filed as non-public (and the information therein claimed to be non-public).[26] The Public Representative's proposed clarifying edit to replace ''materials'' with ''information'' in the second sentence of paragraph (b) is adopted. *See* PR Comments at 45.

[24] In federal practice, sanctions are mandatory ''[i]f a certification violates this rule without substantial justification.'' Fed. R. Civ. P. 26(g)(3).

[25] *See* Fed. R. Civ. P. 26(g)(3) (''If a certification violates this rule without substantial justification, the court, on motion or on its own, must impose an appropriate sanction on *the signer, the party on whose behalf the signer was acting, or both.*'') (emphasis added).

[26] *See* Merriam-Webster Dictionary, *available at http://www.merriam-webster.com/dictionary/disclose* (''disclose'' defined as ''to expose to view'' and ''to make known or public'').

3. Changes to the Proposed Rules

Each line-by-line change to the proposed rules made in response to the Public Representative's comments is reviewed below. Editorial changes made solely to improve global consistency, clarity, or precision are also reviewed below where applicable to the final rule at issue. The following changes to the proposed rules appear in the final rules.

*Final § 3001.100(a).* This paragraph is divided into subparagraphs (1) and (2) to improve readability. The phrase ''other person'' in final § 3007.100(a)(2) is clarified to refer to ''person other than the Postal Service.'' Editorial changes are made throughout final § 3007.100(a)(1)–(a)(2) to clarify that information, and any associated documents or things, may be sought.

*Final § 3001.100(b).* This paragraph is clarified to better illustrate the distinctions between information (substantive knowledge) and materials (the means of conveyance of information). A non-exhaustive list of examples of documents is provided. Things is a catch-all category for materials that are not documents.

*Final § 3001.101(a).* This paragraph is clarified to conform to the framework of information, documents, and things. The phrase ''the Postal Service or any other person'' is simplified to ''any person.''

*Final § 3001.101(b).* This paragraph is edited to conform to the framework of information, documents, and things. The references to ''filing'' of a motion are deleted to simplify the text. The second sentence is changed to the passive voice is made to minimize confusion regarding the ability of the Chairman of the Commission or the presiding officer to make a judgment on a pending motion for issuance of an information request independent of the full Commission.

*Final § 3004.70.* The Commission replaces the word ''nonpublic'' with ''non-public'' in paragraphs (b) and (c) for consistent usage of terminology throughout this rule.

*Final § 3007.100.* Text is added to the heading to refer to scope. The text of the final rule is reorganized into paragraphs (a) and (b) to address applicability and scope. Descriptive headings are added at the paragraph-level.

*Final § 3007.100(a).* A descriptive paragraph-level heading is added. The first sentence is abbreviated to remove the statutory cross-reference. Each of the described situations of applicability are reorganized into four subparagraphs (1) through (4). Throughout subparagraphs (1) through (4), text is conformed to the distinction between materials and the

information contained in materials. In subparagraph (1), the phrase ''under a subpoena issued under 39 U.S.C. 504(f), or otherwise at the request of the Commission'' is deleted to more precisely reflect that the Postal Service may seek protection for materials that it submits to the Commission voluntarily. In subparagraph (2), the phrase ''other person'' is clarified to refer to ''person other than the Postal Service.'' In subparagraphs (3) and (4), the phrase ''the Postal Service or any other person'' is simplified to ''any person.'' In subparagraphs (3) and (4), the phrase ''in the process of'' is added for clarification.

*Final § 3007.100(b).* A descriptive paragraph-level heading is added. New text is added to illustrate the distinctions between information, documents, things, and materials.

*Final § 3007.101(a).* This paragraph is edited to conform to the framework of information, documents, and things. The various bases for seeking non-public treatment are subdivided into multiple sentences to clarify which basis is applicable to the Postal Service, persons other than the Postal Service, or both.

*Final § 3007.102.* Textual references to non-public information are added to clarify that the final rules apply to the non-public information contained within non-public materials.

*Final § 3007.104.* The heading and text of paragraph (a) are edited to reflect that materials contain information. Additional clarifying text is added to paragraph (b) to better explain that the Commission will use an analytical framework consistent with that of a federal court when applying the protective conditions appearing in Federal Rule of Civil Procedure 26(c).

*Final § 3007.200(a).* To convey that the submissions shall be made as closely in time as practicable on the same business day, the phrase ''on the same business day'' is replaced with ''concomitantly.''

*Final § 3007.200(b).* Text is conformed to the distinction between materials and the information contained therein. For clarity, the phrase ''other person'' is replaced with ''person other than the submitter.''

*Final § 3007.201(a).* For global consistency, the word ''material'' is replaced with ''materials.''

*Final § 3007.201(b)(2)–(3).* Text is conformed to the distinction between materials and the information contained therein. For clarity, the phrase ''other person'' is replaced with ''person other than the submitter.''

*Final § 3007.202(a).* Text is conformed to the distinction between materials and the information contained therein.

*Final § 3007.203(a).* This paragraph is edited to more plainly emphasize that the materials must be appropriately marked on each page or portion thereof.

*Final § 3007.203(b).* In the first sentence, text is added to emphasize that the prohibition applies to using the Filing Online interface that results in posting a document that is available to the public.

*Final § 3007.203(c).* The requirements specific to filing methods are redesignated as a separate paragraph with editorial revisions. The cross-reference and the descriptive text concerning the requirements are deleted to reduce unnecessary text. Organization and textual edits are made to subparagraph (c)(1) to reflect requirements applicable to materials versus requirements that only apply to documents. A second description of DVD is added in subparagraph (c)(1). Subparagraph (c)(2) has been reworded to refer to ''[t]he secretary of the Commission.''

*Final § 3007.203(d).* The requirements specific to spreadsheets are redesignated as a separate paragraph with editorial revisions.

*Final § 3007.204.* For clarity, the phrase ''other person'' is replaced with ''person other than the submitter'' in the heading and text of the final rule.

*Final § 3007.205.* The heading is changed to accommodate the addition of final paragraph (b).

*Final § 3007.205(a).* For clarity, the phrase ''filed non-publicly'' is changed to ''subject to a claim for non-public treatment is contained.'' For global consistency, the word ''material'' is replaced with ''materials.'' The tenses of the associated verbs are conformed to reflect the changes from singular to plural nouns.

*Final § 3007.205(b).* This paragraph is added to provide a procedure to address inadvertent submissions that may occur outside the context of public filings.

*Final § 3007.301.* Paragraph (a) and subparagraph (b)(1) are edited to conform to the distinctions between information and materials. For clarity in paragraph (e), the phrase ''other person'' is replaced with ''person other than the submitter.'' Additional clarifying text is added to the fourth sentence in paragraph (e) to better explain that the Commission will use an analytical framework consistent with that of a federal court when applying the protective conditions appearing in Federal Rule of Civil Procedure 26(c). Also, the inadvertent repetition of the words ''balance the'' is corrected in the fourth sentence in paragraph (e).

*Final § 3007.302(a).* Explicit reference to the non-public information contained within non-public materials is added. Commas are added for clarity.

*Final § 3007.303(a).* The word ''shall'' is changed to ''may'' for precision. Two types of illustrative sanctions are added in final § 3007.303(a)(3) and (4). To accommodate the new text, the catch-all content appearing in proposed § 3007.303(a)(3) is redesignated as final § 3007.303(a)(5).

The phrase ''any or all of the following'' is added to the introductory text of paragraph (a) to better convey that the sanctions appearing in subparagraphs (1)–(5) are illustrative, and that the Commission may determine to apply any or all of them. Corresponding with this change, the word ''or'' is used in subparagraph (4).

*Final § 3007.304(a)(1).* Text is added to reflect that access may continue throughout the duration of the Commission's response to judicial review (if applicable).

*Final § 3007.400(a).* For global consistency, the word ''material'' is replaced with ''materials.''

*Final § 3007.400(b).* For precision, the word ''materials'' is replaced with ''information''.

*Final § 3007.400(f).* For global consistency, the word ''given'' is replaced with ''accorded'' in the second sentence. In the last sentence, the phrase ''balance the interests of the parties as'' is replaced with ''follow the applicable standard'' to more precisely encompass both standards (whichever may be applicable) appearing in paragraphs (a) and (b) of final § 3007.104. This modified phrasing of this last sentence also corresponds with final § 3007.103(c).

## IV. Section-by-Section Analysis of the Final Changes to 39 CFR Part 3001

*Final subpart E of 39 CFR part 3001.* The Commission adds subpart E to existing 39 CFR part 3001.

Existing §§ 3007.2 and 3007.3, which relate to information requests, are included in existing 39 CFR part 3007, which relates to non-public information. Information requests are not limited to situations involving non-public materials. Therefore, the Commission moves the procedural requirements relating to information requests to the Commission's rules of practice and procedure under existing 39 CFR part 3001. To minimize disruption associated with moving these rules to existing 39 CFR part 3001, the Commission adds proposed subpart E to 39 CFR part 3001. Final subpart E to 39

CFR part 3001 contains two rules applicable to information requests.

*Final § 3001.100 Applicability and scope.* The first sentence of final § 3001.100(a) mirrors the first sentence of existing § 3007.2, which informs the reader that the Commission may require that the Postal Service provide certain information that is likely to materially assist the Commission in fulfilling its statutory responsibilities. Consistent with existing § 3007.3(b), the second sentence of final § 3001.100(a) informs the reader that the Commission may request that persons other than the Postal Service provide certain information that is likely to materially assist the Commission in fulfilling its statutory responsibilities.

Final § 3001.100(b) is based on the second sentence of existing § 3007.2 and includes a non-exhaustive list of the types of information that may be sought in an information request. Final § 3001.100(b) is intended to encompass information, documents, and things in whatever form that is likely to materially assist the Commission in fulfilling its statutory responsibilities.

*Final § 3001.101 Information request.* Final § 3001.101(a) combines existing § 3007.3(a) and (b). Final § 3001.101(a) provides that an information request may be directed to any person (including the Postal Service) and describes the contents of an information request. Final § 3001.101(a) dispenses with the defined term ''authorized representative'' and instead specifies that an information request may be issued by the Commission, the Chairman of the Commission, or the presiding officer, consistent with existing practice and 39 U.S.C. 504(f)(2). Consistent with existing practice, final § 3001.101(a) provides that the issuance of an information request is discretionary.

Final § 3001.101(b) is based on existing § 3007.3(c). Final § 3001.101(b) provides that a request to issue an information request shall be via a motion listing the proposed questions and justifying the request. Final § 3001.101(b) codifies that the Commission, the Chairman of the Commission, or the presiding officer may issue an information request at any time after the motion. Any or all of the proposed questions may be included or modified in the information request.

## V. Section-by-Section Analysis of the Final Changes to 39 CFR Part 3004

*Final § 3004.30 Relationship among the Freedom of Information Act, the Privacy Act, and the Commission's procedures for according appropriate confidentiality.* The Commission amends the introductory text to paragraph (d) of the existing rule to reflect that in all instances in which the Postal Service submits materials to the Commission that it reasonably believes to be exempt from public disclosure, the Postal Service shall follow the submission procedures appearing in final subpart B of 39 CFR part 3007. The Commission also amends paragraph (e) of the existing rule to dispense with the use of the term ''third party'' to refer to a person other than the Postal Service.

*Final § 3004.70 Submission of non-public materials by a person other than the Postal Service.* The Commission amends the heading identified in the existing rule to dispense with the use of the term ''third party'' to refer to a person other than the Postal Service. The Commission amends paragraph (a) of the existing rule to reflect that any other person providing materials to the Commission that it reasonably believes to be exempt from public disclosure shall follow the submission procedures appearing in final subpart B of 39 CFR part 3007. The Commission also amends paragraph (b) of the existing rule to dispense with the use of the term ''third party'' to refer to a person other than the Postal Service. The Commission also amends paragraph (c) of the existing rule so as to update the cross-reference to the provision containing the requirements for an application for non-public treatment from existing § 3007.10 to final § 3007.201. Finally, the Commission replaces the word ''nonpublic'' with ''non-public'' in paragraphs (b) and (c) for consistent usage of terminology throughout this final rule.

## VI. Section-by-Section Analysis of the Final Changes to 39 CFR Part 3007

As described below, the Commission amends 39 CFR part 3007 by replacing the existing heading and text of the rules.

*Final heading identified in 39 CFR part 3007.* The Commission revises the heading to reflect that 39 CFR part 3007 applies to non-public materials provided to the Commission rather than merely the treatment of non-public materials filed by the Postal Service.

### *A. Final Subpart A of 39 CFR Part 3007—General Provisions*

*Final subpart A of 39 CFR part 3007.* The Commission adds subpart A to 39 CFR part 3007 containing general provisions.

*Final § 3007.100 Applicability and Scope.* Final § 3007.100(a) identifies that final 39 CFR part 3007 applies when: (1) The Postal Service claims that any materials it provides to the Commission contain non-public information; (2) any person other than the Postal Service claims that any materials provided to the Commission contain non-public information; (3) the Commission is determining what type and degree of confidential treatment should be accorded to the materials claimed by any person (including the Postal Service) to contain non-public information; or (4) the Commission is determining what protective conditions should apply to any person (including the Postal Service) that is accessing non-public materials. Final § 3007.100(b) sets forth the scope by distinguishing between information (the substance) and materials (tangible matter that conveys information). Materials refers to documents and things. Examples of documents are provided. Things refers to a catch-all category for tangible matter used to convey information that is not a document.

*Final § 3007.101 Definitions.* Final § 3007.101(a) is based on the definition of non-public materials appearing in existing § 3007.1(b).

Final § 3007.101(a) modifies the existing definition of non-public materials to reflect the inclusion of materials that are claimed to contain information that is described in 39 U.S.C. 410(c) or exempt from public disclosure under 5 U.S.C. 552(b). Such information is protectable if provided by the Postal Service to the Commission pursuant to 39 U.S.C. 504(g)(1), 3652(f)(1), or 3654(f)(1). Such information is defined as non-public materials under existing § 3007.1(b) if the claim for non-public treatment is made by the Postal Service. This final rule reflects the Commission's practice to treat such information as non-public materials regardless of who submits the materials and regardless of who makes the claim for non-public treatment. This final rule clarifies that non-public information includes commercially sensitive information, whether it belongs to the Postal Service or any other person.[27]

[27] Such information is protectable under 5 U.S.C. 552(b)(4), which exempts from public disclosure ''trade secrets and commercial or financial information obtained from a person and privileged or confidential.''

Further, if the information is provided by the Postal Service, then the information is also protectable under 5 U.S.C. 552(b)(3) and 39 U.S.C. 410(c)(2). Section 552(b)(3) of title 5 exempts from public disclosure information that is specifically exempted by another statutory provision, such as 39 U.S.C. 410(c)(2). Section 410(c)(2) of title 39 provides that the Postal Service shall not be required to disclose ''information of a commercial nature, including trade secrets, whether or not obtained from a person outside the Postal Service,

Continued

Final § 3007.101(a) adds that materials cease to be non-public (except for inadvertent public submissions corrected in accordance with final § 3007.205) if the person making the submission publicly discloses the materials, subject to the consent of each affected person with a proprietary interest in the materials (if applicable). This final rule reflects that consensual voluntary public disclosure of materials that were initially claimed to be non-public has been used to resolve issues of whether public or non-public treatment should apply in some instances. This final rule also protects the interests of a person other than the submitter that has a proprietary interest in the materials in those instances where the interests of the person making the submission may not be the same as the interests of a person other than the submitter that has a proprietary interest in the materials. This final rule clarifies that the cessation of non-public status applies to the particular document or thing and the particular information contained therein.

Final § 3007.101(b) defines the term submitter. The usage of this term helps to unify several procedural rules that apply to the Postal Service and any other person that provides non-public materials to the Commission. Consistent with § 3001.5(f) of this chapter, this final rule uses person to include both a natural person (individual) and a legal person (entity).[28]

*Final § 3007.102 Treatment of non-public materials.* Final § 3007.102(a) incorporates existing § 3007.23, which informs the reader that the Commission will not disclose or allow access to non-public materials, except as provided by 39 CFR part 3007. Final § 3007.102(a) adds a cross-reference to the Commission's FOIA regulations in 39 CFR part 3004 and adds a parenthetical to refer to the non-public information appearing in non-public materials.

Final § 3007.102(b) retains the content of existing § 3007.60. Final § 3007.102(b) adds references to non-public information so as to clearly encompass the non-public information appearing in non-public materials.

*Final § 3007.103 Commission action to determine non-public treatment.* Final § 3007.103 informs the reader about the types of action that the Commission may take after receiving non-public materials. Final § 3007.103 is divided into three paragraphs.

Final § 3007.103(a) informs the reader that the Commission may seek additional information to determine the non-public treatment, if any, to be accorded to materials claimed be non-public. Consistent with practice, final § 3007.103(a) identifies examples such as the issuance of information requests, preliminary notices, or interim orders.

Final § 3007.103(b) states that upon a motion by any person, the Commission may issue an order containing a description of the non-public treatment accorded (if any) and the timeframe for which non-public treatment is accorded.

Final § 3007.103(c) is based on the procedure appearing in existing § 3007.32, which provides the specific procedure relating to instances in which the Commission, on its own motion, issues notice of a preliminary determination of non-public treatment. Final § 3007.103(c) sets forth the response timeframe, the general rule regarding reply, and the timing and standards for the Commission ruling.

*Final § 3007.104 Standard for public disclosure of materials claimed to contain non-public information.* Final § 3007.104 incorporates the content appearing in existing § 3007.33. Final § 3007.104(a) modifies the language appearing in existing § 3007.33(a) because the existing rule did not appear to contemplate situations where materials containing Postal Service non-public information were submitted by another person (such as a person granted access to non-public Postal Service materials) or were provided by the Postal Service outside of a filing. Final § 3007.104(b) modifies the content of existing § 3007.33(b) by replacing the reference to ''a third party'' to more precisely reflect that this final rule applies to materials that are claimed to be non-public because the materials contain the proprietary information of any person other than the Postal Service. Final § 3007.104(b) amplifies the explanation of the standard appearing in existing § 3007.33(b) by stating that the Commission will use an analytical framework consistent with that of a federal court when applying the protective conditions appearing in Federal Rule of Civil Procedure 26(c).

### *B. Final Subpart B of 39 CFR Part 3007—Submitting Non-Public Materials and Seeking Non-Public Treatment*

*Final subpart B of 39 CFR part 3007.* The Commission adds subpart B to 39 CFR part 3007 containing rules applicable to submitting non-public materials to the Commission and seeking non-public treatment of those materials.

*Final § 3007.200 General requirements for submitting non-public materials and seeking non-public treatment.* Final § 3007.200 explains the process to provide non-public materials to the Commission applicable to all submitters. Final § 3007.200(a) requires the provision of three things as closely in time as practicable on the same business day—an application for non-public treatment, a redacted version of the non-public materials, and an unredacted version of the non-public materials. Consistent with existing practice, the application for non-public treatment and the redacted version of the non-public materials are public documents. Consistent with existing practice, the unredacted version of the non-public materials shall be submitted under seal. Final § 3007.200(a) unifies aspects of the content of existing §§ 3007.10, 3007.20(a), 3007.21(a), and 3007.22(a).

Final § 3007.200(a) also addresses situations that are not adequately addressed in the existing rules. Existing §§ 3007.20(a) and 3007.21(a) require the Postal Service to file an application whenever it files non-public material. However, the existing rules do not clearly address the procedural requirements applicable if the Postal Service submits non-public materials to the Commission outside of a filing made in accordance with §§ 3001.9 and 3001.10 of this chapter. Such submissions are permissible, subject to the Commission's *ex parte* policy appearing in 39 CFR part 3008. Requiring that the Postal Service submit an application for non-public treatment, a redacted version of the non-public materials, and an unredacted version of the non-public materials will facilitate the Commission's determination of non-public treatment (if any) that should be accorded to those materials and would better ensure that confidential treatment is properly accorded to those non-public materials. Moreover, these requirements will facilitate the Commission's resolution of motions practice related to those materials.

Moreover, although existing § 3007.22(a) sets forth the requirements of an application made by a third party, that existing rule appears to contemplate situations where a person other than the Postal Service files an application for non-public treatment of a Postal Service filing that contains the person's non-public information. This option is preserved under final § 3007.204. However, the existing rules are silent regarding whether a person other than the Postal Service that submits non-public materials (either by formal filing or by informal submission)

which under good business practice would not be publicly disclosed.''

[28] 39 CFR 3001.5(f) provides ''[p]erson means an individual, a partnership, corporation, trust, unincorporated association, public or private organization, or governmental agency.''

must include an application. Existing § 3004.70(a) reflects that a third party submitting materials claimed to be non-public to the Commission ''may'' lodge an application for non-public treatment. Requiring the submission of an application by any submitter of non-public materials will promote fairness and will facilitate the Commission's determination of the type and degree of non-public treatment (if any) that should be accorded to those materials.

Final § 3007.200(b) requires that before submitting non-public materials to the Commission, each submitter contact any affected person who may have a proprietary interest in the information contained in the non-public materials. This final rule expands the application of existing § 3007.20(b) to Postal Service submissions made outside formal filings and to submissions made by persons other than the Postal Service. The final rule will better ensure the protection of an affected person's proprietary information contained in the materials by giving the affected person an opportunity to file an application for non-public treatment and address its confidentiality concerns directly with the Commission.

*Final § 3007.201 Application for non-public treatment.* Final § 3007.201(a) retains the same burden of persuasion appearing in existing § 3007.21(b) and expands it to apply to all submitters.

Final § 3007.201(b) sets forth the required contents of an application. Existing §§ 3007.21 and 3007.22 require slightly different content requirements based on whether the application is made by the Postal Service or any other person. Final § 3007.201(b) makes the requirements uniform. In addition to simplifying the procedural rules, this better ensures that the Commission will receive adequate justification of an application. These requirements will aid the Commission's determination of the non-public treatment, if any, to be accorded to the materials.

The uniform content requirements appearing in final § 3007.201(b)(1), (3)–(8) remains substantially the same as existing § 3007.21(c)(1), (3)–(8). Final § 3007.201(b)(1), (3)–(8) contain changes to improve clarity and update cross-references.

Final § 3007.201(b)(2) is based on existing § 3007.21(c)(2), which requires the Postal Service to identify any third party known to have a proprietary interest in the information contained in the materials or a designated Postal Service employee to notify each affected third party (if identification of the third party is sensitive). Final § 3007.201(b)(2) applies this requirement to all applications (even if made by a person other than the Postal Service) and modifies this requirement as follows.

Final § 3007.201(b)(2) requires the application to identify a foundational fact—whether the submitter, any person other than the submitter, or both have an interest in the information contained in the non-public materials. This final rule will improve transparency, especially for persons seeking access or public disclosure of the non-public materials. This final rule reflects the growing complexity related to the non-public materials submitted to the Commission. In simple scenarios, the information in the non-public materials belongs solely to the submitter. In more complex instances, the information in the non-public materials is a reproduction of the proprietary information of a business partner of the submitter or non-public materials to which the submitter has been granted access. Scenarios that are even more complex exist when the submitter manipulates the proprietary information of another person and comingles it with the submitter's own proprietary information.

Depending on whether the proprietary interest of the submitter, any person other than the submitter, or both is implicated, the application must provide contact information for an individual designee of the submitter pursuant to final § 3007.201(b)(2)(i), each person other than the submitter pursuant to final § 3007.201(b)(2)(ii), or both pursuant to final § 3007.201(b)(2)(iii).

If the submitter's interest is implicated, final § 3007.201(b)(2)(i) requires that the application identify an individual (such as an employee, executive, or attorney) designated by the submitter to accept actual notice of a motion related to the non-public materials or notice of the pendency of a subpoena or order requiring production of the materials.

If the proprietary interest of any person other than the submitter is implicated, final § 3007.201(b)(2)(ii) requires that the application identify each affected person. Consistent with existing § 3007.21(c)(2), the application need not identify each affected person (other than the submitter) if identification would be sensitive. The application also need not identify each affected person (other than the submitter) if identification would be impracticable. This final rule reflects situations not contemplated by existing § 3007.21(c)(2), such as if multiple persons speaking multiple languages were affected. Consistent with existing § 3007.21(c)(2), if each affected person is not identified, the submitter shall identify an individual designated by the submitter to provide notice to each affected person. Moreover, if the submitter does not identify each affected person, whether that identification were asserted to be sensitive or impractical, final § 3007.201(b)(2)(ii) requires that the application provide an explanation. This final rule will better ensure that the sensitivity or impracticability exceptions to identifying each affected person would not be overused and would be consistent with the past instances of when impracticability was asserted as a basis not to identify each affected person.

If the proprietary interest of both the submitter and another person are implicated, final § 3007.201(b)(2)(iii) requires the application to comply with the requirements of both final § 3007.201(b)(2)(i) and (ii). Final § 3007.201(b)(2)(iii) permits the submitter to designate the same individual to serve as the designated point of contact on behalf of the submitter and any other affected person whose identification is asserted to be sensitive or impracticable. Designating the same individual would likely reduce the burden on the submitter and any person attempting to contact the designee.

Final § 3007.201(c) allows incorporation by reference to streamline applications that support the submission of non-public materials that have previously been claimed to be non-public by a prior application. Incorporation by reference may be particularly appropriate if a person granted access to non-public materials submitted by another person reproduces or otherwise uses those non-public materials in a submission to the Commission. In such instances, referring back to the original application would likely be sufficient to meet the requirements of § 3007.201(b) and reduce the burden involved in drafting the application. Final § 3007.201(c) imposes requirements to ensure that the prior application is clearly identified, which facilitates evaluation of the prior application by the members of the public and the Commission. Any application that incorporates by reference a prior application that is accessible through the Commission's website (*http://www.prc.gov*) must provide the date, docket number, and name of the filer of the prior application. In all other circumstances, the application must attach the document that is being incorporated by reference.

*Final § 3007.202 Redacted version of the non-public materials.* Final § 3007.202 provides the requirements applicable to the submission of the redacted (public) version of the non-public materials.

Consistent with existing § 3007.10(c), final § 3007.202(a) explains that submitters must graphically redact (blackout) the information that is claimed to be non-public from the materials. Final § 3007.202(a) also incorporates the prohibition on excessive redactions (blacking out information that is not non-public), which appears in existing § 3007.10(b), and expands its applicability to all submitters. This final rule will promote fairness and improve transparency.

Final § 3007.202(b) incorporates the requirement that the Postal Service justify the use of any other redaction method and specifically identify the alterations made to the materials, which appears in existing § 3007.10(c), and expands its applicability to all submitters so as to promote fairness and improve transparency. Final § 3007.202(b) modifies existing § 3007.10(c)'s requirement to justify the use of another redaction method, stating with particularity the competitive harm associated with using the blackout method, to also allow the application to state with particularity the practical difficulty associated with using the blackout method. Based on experience under the existing rules, the Commission expects that the use of a redaction method other than the blackout method will continue to be rare.

Consistent with existing § 3007.10(b), final § 3007.202(c) provides that electronic versions of redacted materials must be filed in a searchable format. Final § 3007.202(c) permits the use of a non-searchable format only if accompanied by a certification that providing a searchable format would be impracticable. Based on experience under the existing rules, the Commission expects that such an occasion would occur rarely as most non-public materials are filed in .doc, .pdf, .xls, or similar formats.

*Final § 3007.203 Unredacted version of the materials.* Final § 3007.203 sets forth the manner for submission of the unredacted version of the non-public materials.

Consistent with existing § 3007.10(d), final § 3007.203(a) requires that upon submitting the unredacted version of the non-public materials, each page or portion (whichever is applicable) of the materials be marked in a manner reasonably calculated to alert custodians to its confidential nature.

Consistent with existing § 3007.10(a), final § 3007.203(b) reflects that non-public materials may not be submitted through the Filing Online method that results in the posting of a document that is available to the public, which is accessible through the Commission's public website (*http://www.prc.gov*). This is a public website and does not presently allow for the submission of non-public documents to the Commission.

Final § 3007.203(c) sets forth additional requirements pertaining to the filing of the unredacted version of the non-public materials. Final § 3007.203(c) sets forth how filings shall be performed for the unredacted versions of the non-public materials.

Final § 3007.203(c)(1) requires filing of the unredacted version of the non-public materials in sealed envelopes marked ''Confidential. Do Not Post on Web,'' consistent with existing § 3007.10(a). Existing § 3007.10(a) requires filing of both electronic (via compact disc (CD) or DVD and hard copy (paper) versions of the non-public materials. To reduce the burden, final § 3007.203(c)(1) allows the filer to provide only the electronic version of a non-public document. If it is impracticable to submit the electronic version, final § 3007.203(c)(1) permits the filer to provide the paper version of a non-public document instead.

The Commission is exploring the use of an alternative system to allow secure online transmission of non-public materials. This alternative system would significantly increase speed and reduce the overall burden, especially for submissions that are frequent, voluminous, or both. Therefore, final § 3007.203(c)(2) sets forth the requirements associated with use of any alternative system. Final § 3007.203(c)(2) provides that the Secretary has the authority to approve the use of a secure alternative system to file non-public materials online. It also states that no other system may be used to file non-public materials online. It also provides the Secretary with authority to set forth any minimum requirements associated with using an alternative system. If a filer fails to comply with any of the Secretary's requirements, the Secretary would have discretion to impose requirements specific to a particular filer. The Secretary may also revoke a filer's eligibility to use the alternative system and to require the filer to provide non-public materials in accordance with final § 3007.203(c)(1).

Final § 3007.203(d) sets forth the requirements for the unredacted versions of spreadsheets.

*Final § 3007.204 Protections for any person other than the submitter with a proprietary interest.* Final § 3007.204 incorporates existing § 3007.20(c), which allows any person other than the submitter with a proprietary interest in non-public materials filed with the Commission to lodge an application for non-public treatment. Final § 3007.204 expands the applicability of this requirement to involve submissions made outside of filings and illustrates the procedural mechanisms by which an affected person may raise confidentiality concerns with the Commission.

*Final § 3007.205 Non-public materials inadvertently submitted publicly.* Final § 3007.205(a) pertains to instances in which a person discovers that information that could have been subject to a claim for non-public treatment is contained within a public filing made in accordance with §§ 3001.9 and 3001.10 of this chapter. Final § 3007.205(a) instructs the person to notify Dockets by telephone to remove the non-public materials from the publicly available material. The person must file an application for non-public treatment and the non-public materials within 1 business day of this request to Dockets. Final § 3007.205(a) states that the Secretary has the discretion to impose additional filing requirements on any filer that repeatedly invokes this rule. The Commission expects this proposed rule will be invoked rarely. The Commission website is public and the Commission expects that filers will transmit documents using a reasonable degree of care for any non-public information. This final rule outlines a process to minimize exposure of sensitive information that may occur due to a filer's error.

Final § 3007.205(b) pertains to instances in which a person discovers that information that could have been subject to a claim for non-public treatment is contained within a publicly available submission (other than a public filing made in accordance with §§ 3001.9 and 3001.10 of this chapter). Final § 3007.205(b) instructs the person to telephone the Commission personnel receiving the submission with the request to segregate the materials claimed to be non-public. The person must submit an application for non-public treatment and the non-public materials within 1 business day of this request. Final § 3007.205(b) states that the Secretary has the discretion to impose additional filing requirements on any submitter that repeatedly invokes this rule. This final rule outlines a process to minimize exposure

of sensitive information that may occur due to a submitter error. The Commission expects this final rule will be invoked rarely because persons submitting materials to the Commission are incentivized to avoid errors.

Final § 3007.205(c) provides additional procedural instruction for a person making an application pursuant to final § 3007.205(a) or (b). Final § 3007.205(c) requires any special relief sought to be clearly indicated in the application. Final § 3007.205(c) provides three non-exhaustive examples to illustrate types of special relief. The three examples focus on minimizing exposure of information claimed to be non-public that has already been preserved, viewed, or disseminated prior to the submitter taking action under final § 3007.205(a) or (b).

*C. Final Subpart C of 39 CFR Part 3007—Seeking Access to Non-Public Materials*

*Final subpart C of 39 CFR part 3007.* The Commission adds subpart C to 39 CFR part 3007 containing rules applicable to seeking access to non-public materials. These rules allow non-public materials to remain under seal and allow specific persons to access the materials subject to protective conditions.

*Final § 3007.300 Eligibility for access to non-public materials.* Final § 3007.300(a) incorporates existing § 3007.24(a), which provides that non-public materials may be disclosed to Commission and reviewing court personnel. Final § 3007.300(a) adds clarifying language to indicate that such disclosure may be made without the need for issuance of an order.

Final § 3007.300(b) codifies the standard of ineligibility for access that was included in the sample Statement of Protective Conditions provided in existing Appendix A to 39 CFR part 3007. Final § 3007.300(b) provides that persons involved in competitive decision-making shall not be granted access to non-public materials and defines the terms consistent with the language appearing in existing Appendix A to 39 CFR part 3007. Codifying this standard in the final rules, rather than only in the Statement of Protective Conditions, will enhance uniformity and protection against competitive harm without impeding the ability to participate in Commission proceedings.

Final § 3007.300(c) mirrors existing § 3007.24(b) by explaining the circumstances and cross-referencing the relevant provision for other persons to obtain access (via proposed § 3007.301). Final § 3007.300(c) unifies existing §§ 3007.40(a) and 3007.50(a) to apply to an access request made for the purpose of aiding participation in a pending Commission proceeding (including a compliance proceeding). Final § 3007.300(c) also expands the scope to allow a person to seek access for the purpose of aiding the initiation of a proceeding before the Commission. Any person seeking to view non-public materials for other purposes may file a motion for disclosure pursuant to final § 3007.400 or a FOIA request under 39 CFR part 3004. Any person seeking to view materials for which non-public treatment has expired may file a request pursuant to final § 3007.401.

*Final § 3007.301 Motion for access to non-public materials.* Final § 3007.301 concerns requests for access to non-public materials. This final rule combines the text of existing §§ 3007.40, 3007.42, 3007.50, and 3007.52, which have separate access rules for non-public materials based on whether or not the person seeking access seeks to use the materials in a compliance proceeding or other type of proceeding. Because this distinction does not produce a material difference in procedures, the Commission unifies this content for simplicity.

Final § 3007.301(a) combines language appearing in existing §§ 3007.40 and 3007.50, which instruct the person seeking access to file a motion. Final § 3007.301(a) also adds an instruction that any part of the motion revealing non-public information must be filed under seal.

Final § 3007.301(a) also adds instructions pertaining to the docket in which the motion must be filed. The motion must be filed in the docket in which the non-public materials sought were filed or are intended to be used, if such a docket (open or closed) exists. The Commission expects that an existing docket (open or closed) would accommodate most, and quite likely all, motions for access filed. However, if no docket (open or closed) meeting either of those conditions exists, then the motion shall be filed in the G docket for the applicable fiscal year.

The Commission creates the G docket designation to serve as the administrative default designation. If the Commission determines that it is more convenient, expeditious, or otherwise appropriate to resolve any issue arising in a G docket in a different docket(s), the Commission may consolidate or sever proceedings in accordance with § 3001.14 of this chapter.

The Commission expects that the filing of a motion for access in a G docket would be rare—limited to situations in which the materials sought were not filed in an existing docket (open or closed) and the movant proposes to use the materials to initiate a Commission proceeding. Any movant considering filing in a G docket should telephone Dockets personnel to discuss whether a more appropriate docket exists.

Final § 3007.301(b) sets forth the content requirements for the motion based on the text appearing in existing §§ 3007.40(a) and 3007.50(a). Final § 3007.301(b)(1) requires identification of the non-public materials for which access is sought. Consistent with existing §§ 3007.40(a)(1) and 3007.50(a)(1), final § 3007.301(b)(2) requires a detailed statement justifying the access request.

Final § 3007.301(b)(2) also specifies the minimum information necessary to justify the request, which may vary if the movant proposes to use the materials in a pending Commission proceeding or to initiate a Commission proceeding.

Final § 3007.301(b)(2)(i) pertains to using the materials in a pending Commission proceeding. In this instance, the motion must identify all proceedings in which the movant proposes to use the materials and how those materials are relevant to those proceedings. This final rule will provide additional guidance to movants regarding the justification required for access requests. Also, because in past practice, persons have sought to use non-public materials in multiple dockets, this final rule will ensure that adequate justification is provided relating to each docket at issue.

Final § 3007.301(b)(2)(ii) pertains to using the materials to aid initiation of a proceeding before the Commission. In that instance, the justification required must describe the subject of the proposed proceeding, how the materials sought are relevant to that proceeding, and the expected timeframe to initiate that proceeding. This final rule will provide additional guidance to movants regarding the justification required in these instances.

Final § 3007.301(b)(3) remains consistent with existing §§ 3007.40(a)(2) and 3007.50(a)(2)'s requirements to list relevant affiliations.

Final § 3007.301(b)(4) requires the movant to indicate whether actual notice has been provided to each person identified in the application under § 3007.201(b)(2). This final rule will make it clear whether the expedited deadline for a response under proposed § 3007.301(c) applies.

If the motion states that actual notice has been provided to any person, the

motion should identify the individual receiving actual notice, the date and approximate time, and the method of notification. This identification requirement will help to protect the interests of the submitter and any person with a proprietary interest. Moreover, this identification requirement will help to resolve motions seeking non-public materials that were submitted years ago—for instance, if there is a successor to the individual designated in the application.

If the motion states that actual notice has been provided to any person, the motion should also state whether the movant is authorized to represent that the motion (in whole or in part) has been resolved or is contested by such person. This final rule will expedite the resolution of motions where it is represented that motion is uncontested (in whole or in part).

Final § 3007.301(b)(5) requires attachment of a description of protective conditions executed by the movant's attorney or non-attorney representative. Final § 3007.301(b)(6) requires attachment of an executed certification to comply with protective conditions from each person (and any individual working on behalf of that person) for whom access is sought. Both of these requirements may be satisfied by using the final template Protective Conditions Statement and Certification to Comply with Protective Conditions included in Final Appendix A to subpart C of 39 CFR part 3007.

Final § 3007.301(c) sets the response period at 3 business days if there has been actual notice. In all other circumstances, the response period remains 7 calendar days. These response timeframes remains consistent with existing §§ 3007.40(b) and 3007.50(b).

Final § 3007.301(d) remains consistent with existing §§ 3007.40(c) and 3007.50(c) regarding reply.

Final § 3007.301(e) sets forth information related to the Commission's ruling. Consistent with past practice, final § 3007.301(e) explains that the Commission may rule on an uncontested access motion at any time after receiving the motion. Consistent with past practice, final § 3007.301(e) provides that the Commission may rule on an unresolved access motion at any time after the response period has expired. Final § 3007.301(e) sets forth the standard for the Commission ruling, which remains consistent with the standard appearing in existing §§ 3007.42 and 3007.52. Final § 3007.301(e) states that access shall begin after issuance of the order setting forth all protective conditions.

*Final § 3007.302 Non-dissemination, use, and care of non-public materials.* Final § 3007.302 sets forth the duties of persons granted access to non-public materials in Commission proceedings. Final § 3007.302(a) remains consistent with existing § 3007.62(a) by prohibiting dissemination of non-public materials to any person not granted access by the Commission under proposed §§ 3007.300 (Commission and reviewing court personnel) or 3007.301 (persons granted access by order of the Commission). Final § 3007.302(b) remains consistent with existing § 3007.25(a) by limiting the use of non-public materials to only the purpose for which the non-public materials are supplied. Final § 3007.302(c) is based on the prohibition on allowing unauthorized persons to have access to the materials, which appears in existing § 3007.25(b). Final § 3007.302(c) also incorporates the standard of care appearing in existing Appendix A to 39 CFR part 3007, which requires a person granted access to non-public materials to use reasonable care to prevent the unauthorized disclosure of non-public materials.

*Final § 3007.303 Sanctions for violating protective conditions.* Final § 3007.303(a) remains consistent with existing § 3007.62(a) relating to the sanctions for violations of the order granting access subject to protective conditions. Final § 3007.303(a) provides examples of the types of sanctions that may be applied.

Final § 3007.303(b) adapts the language of existing § 3007.62(b). Existing § 3007.62(b) refers only to the Postal Service. To reflect that persons other than the Postal Service may be adversely affected by violations of protective conditions, final § 3007.303(b) states that the Commission's rules do not impair the ability of any person, including the Postal Service, to pursue other remedies available under the law related to violations of an order granting access subject to protective conditions.

*Final § 3007.304 Termination and amendment of access to non-public materials.* Final § 3007.304(a) combines the text appearing in existing §§ 3007.41 and 3007.51, which relate to the termination of access to non-public materials. Existing §§ 3007.41 and 3007.51 divide the rules applicable to termination of access depending on whether the non-public materials at issue are relevant to general proceedings or compliance proceedings. Final § 3007.304(a) treats termination procedures consistently in both instances.

Final § 3007.304(a)(1) remains consistent with the timeframes for the termination of access described in existing §§ 3007.41(a)(1) and 3007.51(a)(1).

Final § 3007.304(a)(2) remains consistent with the procedural requirements upon termination described in existing §§ 3007.41(c) and 3007.51(c). Final § 3007.304(a)(2) provides that the applicable non-public materials must be destroyed or returned to the Commission and notification of compliance must be filed with the Commission. As described below, the Commission revises the applicable template form to be filed with the Commission upon termination of access in final Appendix A to subpart C of 39 CFR part 3007.

Final § 3007.304(b) sets forth the procedure for a person to seek amendment of any protective conditions. This final rule will facilitate prompt resolution of common issues such as seeking access for additional time (as encompassed under existing §§ 3007.41(b) and 3007.51(b)) or for an additional employee or consultant.

*Final § 3007.305 Producing non-public materials in non-Commission proceedings.* Final § 3007.305 clarifies existing § 3007.61.

Final § 3007.305(a) retains the existing § 3007.61(a)'s 2-day notification requirement imposed upon any person who is the target of a subpoena or order to produce non-public materials that were obtained in a Commission proceeding. Existing § 3007.61(a) requires the target to notify the Postal Service and does not adequately address situations in which the materials were submitted by or claimed to be non-public by a person other than the Postal Service. Therefore, final § 3007.305(a) requires the target to notify all persons identified in the underlying application for non-public treatment pursuant to proposed § 3007.201(b)(2). The final rule better serves its purpose, which is to give the affected person the opportunity to object to the production or to seek a protective order or other relief.

Final § 3007.305(b) clarifies the language of existing § 3007.61(b). Final § 3007.305(b) requires a good faith effort to obtain protective conditions at least as effective as those ordered by the Commission regarding the disclosure of non-public materials in non-Commission proceedings.

Final § 3007.305(c) clarifies the language of existing § 3007.61(c). Final § 3007.305(c) provides that unless overridden in a non-Commission

proceeding, the protective conditions ordered by the Commission will remain in effect.

*Final Appendix A to subpart C of 39 CFR part 3007—Template Forms.* Existing Appendix A to 39 CFR part 3007 contains three template forms relating to seeking or terminating access to non-public materials. The Commission moves this content to subpart C of 39 CFR part 3007, which pertains to access to non-public materials. To better reflect its content, the Commission updates the heading identified in existing Appendix A to 39 CFR part 3007, ''Statement of Compliance with Protective Conditions,'' to ''Template Forms.''

The content of each proposed template form is revised to conform with the changes to the rules appearing in final 39 CFR part 3007 and to improve readability. The first template form is a Protective Conditions Statement to aid compliance with final § 3007.301(b)(5), which requires attachment of a description of protective conditions to a motion for access to non-public materials. The second template form is a Certification to Comply with Protective Conditions to aid compliance with final § 3007.301(b)(6), which requires attachment of a certification to comply with protective conditions executed by each person (and any individual working on behalf of that person) seeking access to non-public materials. The third template form is a Certification of Compliance with Protective Conditions and Termination of Access to aid compliance with final § 3007.304(a)(2), which requires the filing of certifications executed by each person (and any individual working on behalf of that person) granted access to non-public materials upon the termination of access.

*D. Final Subpart D of 39 CFR Part 3007—Seeking Public Disclosure of Non-Public Materials*

*Final subpart D of 39 CFR part 3007.* The Commission adds subpart D to 39 CFR part 3007 containing rules applicable to seeking public disclosure of non-public materials.

*Final § 3007.400 Motion for disclosure of non-public materials.* Final § 3007.400 applies to situations when a person seeks to challenge the non-public treatment claimed for materials—that is, to have the materials disclosed to the public, also known as ''unsealed.''

Final § 3007.400(a) specifies that this rule applies to materials for which the non-public status remains active—either because the non-public status has not expired or has been extended by order of the Commission.

Final § 3007.400(b) explains that a request to have non-public materials unsealed shall be made by motion and sets forth the contents of a motion. Consistent with existing § 3007.31(a), the motion must explain why the materials should be made public and address any pertinent rationale(s) provided in the application for non-public treatment. Also, consistent with existing § 3007.31(a), the motion may not publicly disclose the information that is designated as non-public pending resolution of the motion.

Final § 3007.400(b) requires the movant to indicate whether actual notice has been provided to all persons identified in the application under final § 3007.201(b)(2). This final rule will make it clear whether the expedited deadline for a response under final § 3007.400(c) applies.

If the motion states that actual notice has been provided to any person, the motion should identify the individual receiving actual notice, the date and approximate time, and the method of notification. This identification requirement will help to protect the interests of the submitter and any person with a proprietary interest. Moreover, this identification requirement will help to resolve motions seeking non-public materials that were submitted years ago—for instance, if there is a successor to the individual designated in the application.

If the motion states that actual notice has been provided to all identified persons, the motion should also state whether the movant is authorized to represent that the motion (in whole or in part) has been resolved or is contested by such persons. This final rule will facilitate expedited resolution of motions where it is represented that motion is uncontested (in whole or in part) and particularly when a person other than the submitter has a proprietary interest in the non-public materials. The Commission observes that in accordance with final § 3007.101(a), a motion for public disclosure can be avoided if all persons identified pursuant to final § 3007.201(b)(2) consent to allowing the submitter to file the materials at issue publicly.

Final § 3007.400(b) also adds instructions pertaining to the docket in which the motion must be filed. The motion must be filed in the docket in which the non-public materials sought were filed or are intended to be used, if such a docket (open or closed) exists. However, if no docket (open or closed) meeting either of those conditions exists, then the motion shall be filed in the G docket for the applicable fiscal year. Any movant considering filing in a G docket should telephone Dockets personnel to discuss whether a more appropriate docket exists.

Final § 3007.400(c) imposes an expedited response deadline for motions if there has been actual notice. If there has been actual notice, proposed § 3007.400(c) sets the response period at 3 business days. In all other circumstances, the response period remains 7 calendar days, consistent with existing §§ 3007.40(b) and 3007.50(b). This final rule will encourage movants to provide actual notice and thereby streamline motions practice.

Final § 3007.400(d) remains consistent with existing §§ 3007.40(c) and 3007.50(c) regarding reply.

Final § 3007.400(e) reflects that the Commission will continue to accord non-public treatment to the materials while the motion is pending.

Final § 3007.400(f) sets forth information related to the Commission's ruling. Final § 3007.400(f) remains consistent with existing § 3007.31(d), which explains the timing for the Commission ruling. Final § 3007.400(f) adds that if there has been actual notice and the motion is uncontested, the Commission may rule before the response period expires. Final § 3007.400(f) remains consistent with existing § 3007.33, which explains the standards for the Commission ruling.

*Final § 3007.401 Materials for which non-public treatment has expired.* Final § 3007.401 applies to materials for which non-public treatment has expired. Consistent with existing § 3007.30, final § 3007.401(a) provides that non-public status shall expire after the passage of 10 years, unless otherwise provided by the Commission.

The existing rules do not set forth the mechanism for the handling of materials when non-public treatment has expired. Final § 3007.401(b)–(f) provide the procedural mechanisms to take effect after 10 years have passed. Final § 3007.401(b)–(f) take into account the need for transparency, sound records management practices, and adequate protection of the commercial interests of affected persons, including the Postal Service.

Final § 3007.401(b) provides that any person may request the disclosure of materials for which non-public treatment has expired. Final § 3007.401(b) explains the content of such a request. This request must identify the materials requested and date(s) that the materials sought were originally submitted under seal. Final § 3007.401(b) notifies the reader that

completing and filing the template form appearing in final Appendix A to subpart D of 39 CFR part 3007 will satisfy these content requirements. Final § 3007.401(b) informs the reader that all documents are treated in accordance with the Commission's record retention schedule, which may reduce the availability of some non-public information.

Final § 3007.401(b) also adds instructions pertaining to the docket in which the request must be filed. The request must be filed in the docket in which the non-public materials sought were filed or are intended to be used, if such a docket (open or closed) exists. However, if no docket (open or closed) meeting either of those conditions exists, then the request shall be filed in the G docket for the applicable fiscal year. Any requestor considering filing in a G docket should telephone Dockets personnel to discuss whether a more appropriate docket exists.

Final § 3007.401(c) sets forth the timing and content requirements pertaining to any response opposing the request. Final § 3007.401(c) sets the response period at 7 calendar days. A response opposing the request must ask for an extension of non-public status by including an application for non-public treatment compliant with final § 3007.201 and include specific facts supporting any assertion that commercial injury is likely to occur if the information contained in the materials is publicly disclosed 10 years after the original sealed submission.

Final § 3007.401(d) permits a reply to be filed within 7 calendar days of the response.

Final § 3007.401(e) states that the information designated as non-public will be accorded non-public treatment pending resolution of the request.

Final § 3007.401(f) sets forth the timing and standard of the ruling. The request may be granted any time after the response period described in proposed § 3007.401(c) expires. A request may be denied any time after the reply period described in final § 3007.401(d) expires. The Commission ruling shall follow the applicable standard described in final § 3007.104.

*Final Appendix A to subpart D of 39 CFR part 3007—Template Request Form.* To aid compliance with final § 3007.401(b), which requires a requestor to identify the materials requested and date(s) that materials were originally submitted under seal, final Appendix A to subpart D of 39 CFR part 3007 contains a template form Request for Materials for Which Non-Public Treatment Has Expired.

## VII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities. *See* 5 U.S.C. 601, *et seq.* (1980). If the proposed or final rules will not, if promulgated, have a significant economic impact on a substantial number of small entities, the head of the agency may certify that the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply. *See* 5 U.S.C. 605(b).

The Commission's primary responsibility is in the regulatory oversight of the United States Postal Service. The rules that are the subject of this rulemaking have an impact on participation in Commission proceedings, but impose no further financial obligation upon any entity. For entities other than the United Stated Postal Service, participation is strictly voluntary. Based on these findings, the Chairman of the Commission certifies that the rules that are the subject of this rulemaking will not have a significant economic impact on a substantial number of small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

## VIII. Ordering Paragraphs

*It is ordered:*

1. Parts 3001, 3004, and 3007 of title 39, Code of Federal Regulations, are revised as set forth below the signature of this Order, effective 30 days after publication in the **Federal Register**.

2. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

**Stacy L. Ruble,**

*Secretary.*

## List of Subjects

*39 CFR Part 3001*

Administrative practice and procedure, Confidential business information, Freedom of information, Sunshine Act.

*39 CFR Part 3004*

Administrative practice and procedure, Freedom of information, Reporting and recordkeeping requirements.

*39 CFR Part 3007*

Administrative practice and procedure, Confidential business information.

For the reasons stated in the preamble, the Commission amends chapter III of title 39 of the Code of Federal Regulations as follows:

## PART 3001—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 3001 continues to read as follows:

**Authority:** 39 U.S.C. 404(d); 503; 504; 3661.

■ 2. Add subpart E to read as follows:

### Subpart E—Information Requests

Sec.

3001.100 Applicability and scope.
3001.101 Information request.

#### § 3001.100 Applicability and scope.

(a) *Applicability.* The Commission may:

(1) Require the Postal Service to provide any information, and any associated documents or things in its possession or control, or any information, and any associated documents or things that it can obtain through reasonable effort and expense, that are likely to materially assist the Commission in its conduct of proceedings, in its preparation of reports, or in performance of its functions under title 39 of the U.S. Code.

(2) Request that any person other than the Postal Service provide any information, and any associated documents or things in its possession or control, or any information, and any associated documents or things that it can obtain through reasonable effort and expense, that are likely to materially assist the Commission in its conduct of proceedings, in its preparation of reports, or in performance of its functions under title 39 of the U.S. Code.

(b) *Scope.* Information includes, but is not limited to, explanations, confirmations, factual descriptions, and data. Document refers to a hard copy or electronic conveyance of information and may be stored in any medium from which information can be obtained either directly or, if necessary, after translation into a reasonably usable form. Documents include, but are not limited to, writings, notes, graphs, charts, data files, emails, drawings, photographs, and images. Things include all matter, other than documents, that convey information. Documents and things shall collectively be referred to as materials.

#### § 3001.101 Information request.

(a) An information request may be issued at the discretion of the Commission, the Chairman of the Commission, or the presiding officer

seeking that any person provide information, documents, or things covered by § 3001.100. An information request shall describe the information, documents, or things sought, briefly explain the reason for the request, and specify a date on which the response(s) shall be due.

(b) Any person may request the issuance of an information request by motion. The motion shall list the information, documents, or things sought; explain the reasons the information request should be made, and justify why the information sought is relevant and material to the Commission's duties under title 39 of the U.S. Code. At any time after the motion, the Commission, the Chairman of the Commission, or the presiding officer may issue an information request that includes all or some of the proposed questions or modifies the proposed questions.

## PART 3004—PUBLIC RECORDS AND FREEDOM OF INFORMATION ACT

■ 3. The authority citation for part 3004 continues to read as follows:

**Authority:** 5 U.S.C. 552; 39 U.S.C. 503.

■ 4. Amend § 3004.30, by revising paragraphs (d) introductory text and (e) to read as follows:

**§ 3004.30 Relationship among the Freedom of Information Act, the Privacy Act, and the Commission's procedures for according appropriate confidentiality.**

* * * * *

(d) *Requesting a Postal Service record.* The Commission maintains custody of records that are both Commission and Postal Service records. In all instances that the Postal Service submits materials to the Commission that the Postal Service reasonably believes to be exempt from public disclosure, the Postal Service shall follow the procedures described in subpart B of part 3007 of this chapter.

* * * * *

(e) *Requesting a record submitted under seal by a person other than the Postal Service.* The Commission maintains records of a confidential nature submitted by persons other than the Postal Service as non-public materials.

(1) A request made pursuant to FOIA for records designated as non-public by a person other than the Postal Service shall be considered in light of all applicable exemptions; and

(2) A request made pursuant to part 3007 of this chapter for records designated as non-public by a person other than the Postal Service shall be considered under the applicable standards set forth in that part.

■ 5. Amend § 3004.70, by revising the section heading and paragraphs (a), (b), and (c) to read as follows:

**§ 3004.70 Submission of non-public materials by a person other than the Postal Service.**

(a) *Overlap with treatment of non-public materials.* Any person who submits materials to the Commission (submitter) that the submitter reasonably believes to be exempt from public disclosure shall follow the procedures described in subpart B of part 3007 of this chapter.

(b) *Notice of request.* Except as provided in § 3004.30(d), if a FOIA request seeks materials designated as non-public materials, the Commission will provide the submitter with notice of the request. The Commission may also provide notice when it has reason to believe that materials submitted by a person other than the Postal Service are possibly exempt from disclosure and may fall within the scope of any FOIA request.

(c) *Objections to disclosure.* A submitter may file written objections to the request specifying all grounds for withholding the information under FOIA within 7 days of the date of the notice. If the submitter fails to respond to the notice, the submitter will be considered to have no objection, beyond those objections articulated in its application for non-public treatment pursuant to § 3007.201 of this chapter, to the disclosure of the information.

* * * * *

■ 6. Revise part 3007 to read as follows:

## PART 3007—NON–PUBLIC MATERIALS PROVIDED TO THE COMMISSION

### Subpart A—General Provisions

Sec.
3007.100 Applicability and Scope.
3007.101 Definitions.
3007.102 Treatment of non-public materials.
3007.103 Commission action to determine non-public treatment.
3007.104 Standard for public disclosure of materials claimed to contain non-public information.

### Subpart B—Submitting Non-public Materials and Seeking Non-public Treatment

3007.200 General requirements for submitting non-public materials and seeking non-public treatment.
3007.201 Application for non-public treatment.
3007.202 Redacted version of the non-public materials.
3007.203 Unredacted version of the non-public materials.
3007.204 Protections for any person other than the submitter with a proprietary interest.
3007.205 Non-public materials inadvertently submitted publicly.

### Subpart C—Seeking Access to Non-public Materials

3007.300 Eligibility for access to non-public materials.
3007.301 Motion for access to non-public materials.
3007.302 Non-dissemination, use, and care of non-public materials.
3007.303 Sanctions for violating protective conditions.
3007.304 Termination and amendment of access to non-public materials.
3007.305 Producing non-public materials in non-Commission proceedings.
Appendix A to subpart C of part 3007—Template Forms

### Subpart D—Seeking Public Disclosure of Non-public Materials

3007.400 Motion for disclosure of non-public materials.
3007.401 Materials for which non-public treatment has expired.
Appendix A to subpart D of part 3007—Template Form

**Authority:** 39 U.S.C. 503, 504.

### Subpart A—General Provisions

**§ 3007.100 Applicability and Scope.**

(a) *Applicability.* The rules in this part apply whenever:

(1) The Postal Service claims that any materials it provides to the Commission in connection with any proceeding or other purpose under title 39 of the U.S. Code, contain non-public information;

(2) Any person other than the Postal Service claims that any materials it provides to the Commission contain non-public information;

(3) The Commission is in the process of determining the appropriate degree of confidentiality to be accorded materials identified by any person to contain non-public information in accordance with these rules; or

(4) The Commission is in the process of determining how to ensure appropriate confidentiality for materials identified to contain non-public information that is furnished to any person in accordance with these rules.

(b) *Scope.* Information includes, but is not limited to, explanations, confirmations, factual descriptions, and data. Document refers to a hard copy or electronic conveyance of information and may be stored in any medium from which information can be obtained either directly or, if necessary, after translation into a reasonably usable form. Documents include, but are not limited to, writings, notes, graphs,

charts, data files, emails, drawings, photographs, and images. Things include all matter, other than documents, that convey information. Documents and things shall collectively be referred to as materials.

**§ 3007.101 Definitions.**

(a) *Non-public materials* means any documents or things that are provided to the Commission and identified as containing non-public information. The Postal Service may claim that information that would be exempt from disclosure pursuant to 39 U.S.C. 410(c), 504(g), 3652(f), or 3654(f) is non-public information. Any person other than the Postal Service with a proprietary interest in the materials may claim that information that would be protectable under Federal Rule of Civil Procedure 26(c) is non-public information. Any person may claim that information that is exempt from public disclosure under 5 U.S.C. 552(b) is non-public information. Non-public materials cease to be non-public if the status has expired or been terminated by the Commission pursuant to this part. Except as provided by § 3007.205, non-public materials cease to be non-public if the submitter publicly discloses the materials with the consent of each affected person with a propriety interest in the materials (if applicable). The cessation of non-public status applies to the particular document or thing and the particular information contained therein (in whole or in part, as applicable).

(b) *Submitter* means any natural or legal person, including the Postal Service, that provides non-public materials to the Commission and seeks non-public treatment in accordance with the rules of this part.

**§ 3007.102 Treatment of non-public materials.**

(a) Except as described in part 3007 or part 3004 of this chapter, the Commission will neither disclose nor grant access to any non-public materials (and the non-public information contained therein).

(b) To accord appropriate confidentiality to non-public information and non-public materials during any stage of a proceeding before the Commission, or in connection with any other purpose under title 39 of the U.S. Code, the Commission may, based on Federal Rule of Civil Procedure 26(c):

(1) Prohibit the public disclosure of the non-public information and non-public materials;

(2) Specify terms for public disclosure of the non-public information and non-public materials;

(3) Order a specific method for disclosing the non-public information and non-public materials;

(4) Restrict the scope of the disclosure of the non-public information and non-public materials as they relate to certain matters;

(5) Restrict who may access the non-public information and non-public materials;

(6) Require that a trade secret be revealed only in a specific and limited manner or to limited or specified persons; and

(7) Order other relief as appropriate including sealing a deposition or part of a proceeding.

**§ 3007.103 Commission action to determine non-public treatment.**

(a) Information requests as described in subpart E of part 3001 of this chapter, preliminary notices, or interim orders may be issued to help the Commission determine the non-public treatment, if any, to be accorded to the materials claimed by any person to be non-public.

(b) Upon motion by any person, the Commission may issue an order containing a description of and timeframe for the non-public treatment, if any, to be accorded to materials claimed by any person to be non-public.

(c) Upon its own motion, the Commission may issue notice of its preliminary determination concerning the appropriate degree of protection, if any, to be accorded to materials claimed by any person to be non-public. A response is due within 7 calendar days of issuance of the preliminary determination, unless the Commission otherwise provides. No reply to a response shall be filed, unless the Commission otherwise provides. Pending the Commission's resolution of the preliminary determination, information designated as non-public will be accorded non-public treatment. The Commission will enter an order determining what non-public treatment, if any, will be accorded to the materials after the response period described in this paragraph has expired. The determination of the Commission shall follow the applicable standard described in § 3007.104.

**§ 3007.104 Standard for public disclosure of materials claimed to contain non-public information.**

(a) In determining whether to publicly disclose materials claimed by the Postal Service to contain non-public information, the Commission shall balance the nature and extent of the likely commercial injury identified by the Postal Service against the public interest in maintaining the financial transparency of a government entity competing in commercial markets.

(b) In determining whether to publicly disclose materials in which the Commission determines any person other than the Postal Service has a proprietary interest, the Commission shall balance the interests of the parties consistent with the analysis undertaken by a federal court when applying the protective conditions appearing in Federal Rule of Civil Procedure 26(c).

## Subpart B—Submitting Non-Public Materials and Seeking Non-Public Treatment

**§ 3007.200 General requirements for submitting non-public materials and seeking non-public treatment.**

(a) Whenever providing non-public materials to the Commission, the submitter shall concomitantly provide the following: An application for non-public treatment that clearly identifies all non-public materials and describes the circumstances causing them to be submitted to the Commission in accordance with § 3007.201, a redacted (public) version of the non-public materials in accordance with § 3007.202, and an unredacted (sealed) version of the non-public materials in accordance with § 3007.203.

(b) Before submitting non-public materials to the Commission, if the submitter has reason to believe that any person other than the submitter has a proprietary interest in the information contained within the non-public materials, the submitter shall inform each affected person of the nature and scope of the submission to the Commission, including the pertinent docket designation(s) (to the extent practicable) and that the affected person may address any confidentiality concerns directly with the Commission.

**§ 3007.201 Application for non-public treatment.**

(a) *Burden of persuasion.* An application for non-public treatment shall fulfill the burden of persuasion that the materials designated as non-public should be withheld from the public.

(b) *Contents of application.* An application for non-public treatment shall include a specific and detailed statement setting forth the information specified in paragraphs (b)(1) through (8) of this section:

(1) The rationale for claiming that the materials are non-public, including the specific statutory provision(s) supporting the claim, and an

explanation justifying application of the provision(s) to the materials.

(2) A statement of whether the submitter, any person other than the submitter, or both have a proprietary interest in the information contained within the non-public materials, and the identification(s) specified in paragraphs (b)(2)(i) through (iii) of this section (whichever is applicable). For purposes of this paragraph, identification means the name, phone number, and email address of an individual.

(i) If the submitter has a proprietary interest in the information contained within the materials, identification of an individual designated by the submitter to accept actual notice of a motion related to the non-public materials or notice of the pendency of a subpoena or order requiring production of the materials.

(ii) If any person other than the submitter has a proprietary interest in the information contained within the materials, identification of each person who is known to have a proprietary interest in the information. If such an identification is sensitive or impracticable, an explanation shall be provided along with the identification of an individual designated by the submitter to provide notice to each affected person.

(iii) If both the submitter and any person other than the submitter have a proprietary interest in the information contained within the non-public materials, identification in accordance with both paragraphs (b)(2)(i) and (ii) of this section shall be provided. The submitter may designate the same individual to fulfill the requirements of paragraphs (b)(2)(i) and (ii) of this section.

(3) A description of the information contained within the materials claimed to be non-public in a manner that, without revealing the information at issue, would allow the Commission to thoroughly evaluate the basis for the claim that the information contained within the materials are non-public.

(4) Particular identification of the nature and extent of the harm alleged and the likelihood of each harm alleged to result from disclosure.

(5) At least one specific hypothetical, illustrative example of each alleged harm.

(6) The extent of the protection from public disclosure alleged to be necessary.

(7) The length of time for which non-public treatment is alleged to be necessary with justification thereof.

(8) Any other relevant factors or reasons to support the application.

(c) *Incorporation by reference.* If the material designated as non-public has been previously claimed to be non-public material by a prior application for non-public treatment, the submitter may incorporate by reference the prior application. Any application that incorporates by reference a prior application that is accessible through the Commission's website (*http://www.prc.gov*) shall state the date, docket number, and the name of the filer of the prior application. In all other circumstances, the application that incorporates by reference a prior application shall attach the prior application.

**§ 3007.202 Redacted version of the non-public materials.**

(a) Except as allowed under paragraph (b) of this section, the submitter shall use the graphical redaction (blackout) method to redact non-public information from the materials. The submitter shall blackout only the information that is claimed to be non-public.

(b) The submitter shall justify using any other redaction method. The application for non-public treatment shall state with particularity the competitive harm or practical difficulty alleged to result from using the blackout method. The submitter shall specifically identify any alterations made to the unredacted version, including the location and number of lines or pages removed.

(c) If electronic, the redacted version shall be filed in a searchable format, unless the submitter certifies that doing so would be impracticable.

**§ 3007.203 Unredacted version of the non-public materials.**

(a) Each page or portion of the unredacted version of the materials for which non-public treatment is sought shall be marked in a manner reasonably calculated to alert custodians to the confidential nature of the materials.

(b) The Filing Online method that results in posting a document that is available to the public, which is accessible through the Commission's website (*http://www.prc.gov*) described under §§ 3001.9 and 3001.10 of this chapter may not be used to submit the unredacted version of non-public materials.

(c) The filing of the unredacted version of the non-public materials shall be made in accordance with the following requirements.

(1) Except if using an alternative system approved by the Commission under paragraph (c)(2) of this section, the unredacted version of the non-public materials shall be filed in a sealed envelope clearly marked ''Confidential. Do Not Post on Web'' to the Office of Secretary and Administration, Postal Regulatory Commission, 901 New York Avenue NW, Suite 200, Washington, DC 20268–0001. The unredacted version of the non-public materials may not be password protected. Two copies of the unredacted version of a non-public document shall be filed using an electronic format such as compact discs (CDs), or digital video discs or digital versatile discs (DVDs) that shall be clearly marked ''Confidential. Do Not Post on Web.'' If making an electronic unredacted version of a non-public document is impracticable, two hard copies (paper) versions of the non-public document may be filed.

(2) The Secretary of the Commission has authority to approve the use of a secure alternative system to file non-public materials. The Secretary may set forth any minimum requirements associated with using an alternative system. If a filer using the alternative system fails to comply with any of the Secretary's requirements, the Secretary has discretion to revoke the filer's eligibility to use the alternative system or impose requirements specific to the filer as necessary to ensure secure transmission of non-public materials.

(d) The unredacted version of a spreadsheet shall display the formulas used and their links to related spreadsheets. The unredacted version of workpapers or data shall be submitted in a form, and be accompanied by sufficient explanation and documentation, to allow them to be replicated using a publicly available PC application.

**§ 3007.204 Protections for any person other than the submitter with a proprietary interest.**

Any person other than the submitter with a proprietary interest in materials that have been or will be submitted to the Commission may address any confidentiality concerns directly with the Commission by seeking non-public treatment in accordance with the requirements of this subpart, responding to a motion for access to non-public materials in accordance with the requirements of subpart C of this part, or responding to a motion for disclosure of non-public materials in accordance with the requirements of subpart D of this part.

**§ 3007.205 Non-public materials inadvertently submitted publicly.**

(a) Any filer or person with a proprietary interest that discovers the

inclusion of materials that could have been subject to a claim for non-public treatment are contained within a public filing made in accordance with §§ 3001.9 and 3001.10 of this chapter shall telephone Dockets personnel immediately to request that the non-public materials be removed from the publicly available materials. Upon receipt of that telephone request, Dockets personnel will remove from the publicly available materials those materials for which non-public treatment are being requested until the end of the next business day in order to provide the filer or person with a proprietary interest an opportunity to file an application for non-public treatment and the non-public materials in accordance with the requirements of this subpart. If any filer makes repeated use of this rule, the Secretary has discretion to impose additional requirements on this filer as necessary to ensure secure filing of non-public materials.

(b) Any submitter or person with a proprietary interest that discovers the inclusion of materials that could have been subject to a claim for non-public treatment are contained within a publicly available submission made to the Commission in circumstances other than through a public filing made in accordance with §§ 3001.9 and 3001.10 of this chapter shall telephone the Commission personnel to whom the submission was directed immediately to request that the non-public materials be removed from the publicly available materials. Upon receipt of that telephone request, the Commission personnel will remove from the publicly available materials those materials for which non-public treatment are being requested until the end of the next business day in order to provide the submitter or person with a proprietary interest an opportunity to submit an application for non-public treatment and the non-public materials in accordance with the requirements of this subpart. If any submitter makes repeated use of this rule, the Secretary has discretion to impose additional requirements on this submitter as necessary to ensure secure submission of non-public materials.

(c) An application for non-public treatment made under paragraph (a) or (b) of this section shall also clearly indicate if any special relief is sought. Examples of special relief include a request that any person not granted access to the materials under § 3007.300 or § 3007.301 perform any or all of the following actions:

(1) Immediately destroy or return all versions of the materials that are claimed to have been inadvertently submitted publicly;

(2) Refrain from disclosing or using the materials, and the information contained therein, that are claimed to be non-public; and

(3) Take reasonable steps to retrieve any materials, and the information contained therein, that are claimed to be non-public and were disclosed to any person not granted access to the materials under § 3007.300 or § 3007.301 prior to the submission of application for non-public treatment.

## Subpart C—Seeking Access to Non-Public Materials

### § 3007.300 Eligibility for access to non-public materials.

(a) The following persons may access non-public materials without an order issued pursuant to § 3007.301(e):

(1) Members of the Commission;

(2) Commission employees, including Public Representatives, carrying out their official responsibilities;

(3) Non-employees who have executed appropriate non-disclosure agreements (such as contractors, attorneys, or subject matter experts), assisting the Commission in carrying out its duties;

(4) Reviewing courts and their staffs;

(5) Court reporters, stenographers, or persons operating audio or video recording equipment for such court reporters or stenographers at hearings or depositions.

(b) No person involved in competitive decision-making for any individual or entity that might gain competitive advantage from using non-public materials shall be granted access to non-public materials. Involved in competitive decision-making includes consulting on marketing or advertising strategies, pricing, product research and development, product design, or the competitive structuring and composition of bids, offers or proposals. It does not include rendering legal advice or performing other services that are not directly in furtherance of activities in competition with an individual or entity having a proprietary interest in the protected material.

(c) Any person not described in paragraph (a) or (b) of this section may request access to non-public materials as described in § 3007.301, for the purpose of aiding participation in a pending Commission proceeding (including compliance proceedings) or aiding the initiation of a proceeding before the Commission.

### § 3007.301 Motion for access to non-public materials.

(a) *Filing requirements.* A request for access to non-public materials shall be made by filing a motion with the Commission. Any part of the motion revealing non- public information shall be filed in accordance with subpart B of this part. The motion shall be filed in the docket in which the materials were filed or in the docket in which the materials will be used; in all other circumstances, the motion shall be filed in the G docket for the applicable fiscal year.

(b) *Content requirements.* The motion shall:

(1) Identify the particular non-public materials to which the movant seeks access;

(2) Include a detailed statement justifying the request for access:

(i) If access is sought to aid participation in any pending Commission proceeding, the motion shall identify all proceedings (including compliance proceedings) in which the movant proposes to use the materials and how those materials are relevant to those proceedings, or

(ii) If access is sought to aid initiation of a proceeding before the Commission, the motion shall describe the subject of the proposed proceeding, how the materials sought are relevant to that proposed proceeding, and when the movant anticipates initiating the proposed proceeding;

(3) List all relevant affiliations, including employment or other relationship (including agent, consultant or contractor) with the movant, and whether the movant is affiliated with the delivery services, communications or mailing industries;

(4) Specify if actual notice of the motion has been provided to each person identified in the application pursuant to § 3007.201(b)(2). If the motion states that actual notice has been provided, the motion shall identify the individual(s) to whom actual notice was provided, the date(s) and approximate time(s) of actual notice, the method(s) of actual notice (by telephone conversation, face-to-face conversation, or an exchange of telephone or email messages), and whether the movant is authorized to represent that the motion (in whole or in part) has been resolved or is contested by the submitter or any other affected person;

(5) Attach a description of protective conditions completed and signed by the movant's attorney or non-attorney representative, who may use and modify the template Protective Conditions Statement in Appendix A to this subpart; and

(6) Attach a certification to comply with protective conditions executed by each person (and any individual working on behalf of that person) seeking access, who may use and modify the template Certification to Comply with Protective Conditions in Appendix A to this subpart.

(c) *Response.* If actual notice of the motion was provided in advance of the filing to each person identified pursuant to § 3007.201(b)(2) by telephone conversation, face-to-face conversation, or an exchange of telephone or email messages, a response to the motion is due within 3 business days of the filing of the motion, unless the Commission otherwise provides. In all other circumstances, a response to the motion is due within 7 calendar days of filing the motion, unless the Commission otherwise provides.

(d) *Reply.* No reply to a response shall be filed, unless the Commission otherwise provides.

(e) *Commission ruling.* The Commission may enter an order at any time after receiving a motion if the movant states that: Actual notice has been given to each person identified pursuant to § 3007.201(b)(2) and that the movant is authorized to represent that the motion is uncontested. In all other circumstances, the Commission will enter an order determining if access will be granted after the response period described in paragraph (c) of this section has expired. If no opposition to the motion has been filed by the submitter or any person other than the submitter with a proprietary interest before the expiration of the response period described in paragraph (c) of this section, the Commission may issue an order granting access, subject to the agreed protective conditions. In determining whether to grant access to non-public materials, the Commission shall balance the interests of the parties consistent with the analysis undertaken by a Federal court when applying the protective conditions appearing in Federal Rule of Civil Procedure 26(c). If access is granted, access shall commence following the issuance of the appropriate order setting forth all protective conditions.

**§ 3007.302 Non-dissemination, use, and care of non-public materials.**

(a) No person who has been granted access to non-public materials in accordance with § 3007.300 or § 3007.301 may disseminate the materials or the information contained therein, in whole or in part, to any person not allowed access pursuant to § 3007.300 or § 3007.301.

(b) Persons with access to non-public materials under § 3007.300 or § 3007.301 shall use non-public materials only for the purposes for which the non-public materials are supplied.

(c) Persons with access to non-public materials under § 3007.300 or § 3007.301 shall protect the non-public materials from any person not granted access under § 3007.300 or § 3007.301 by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized disclosure of these materials as those persons, in the ordinary course of business, would be expected to use to protect their own proprietary material or trade secrets and other internal, confidential, commercially sensitive, and privileged information.

**§ 3007.303 Sanctions for violating protective conditions.**

(a) If a person who has been granted access to non-public materials under § 3007.301 violates the terms of the order granting access, the Commission may impose sanctions on the person who violated the order, the persons or entities on whose behalf the person was acting, or both. The sanctions may include any or all of the following:

(1) Dismissing the proceeding in whole or in part;

(2) Ruling by default against the person who violated the order or the persons or entities on whose behalf the person was acting;

(3) Revoking access to non-public materials;

(4) Restricting access to non-public materials in the future; or

(5) Such other sanctions, as deemed appropriate by the Commission.

(b) This rule does not prevent any person, including the Postal Service, whose interests are damaged by the violation of an order granting access subject to protective conditions, from pursuing any remedies available under the law against the person who violated the order, the persons or entities on whose behalf the person was acting, or both.

**§ 3007.304 Termination and amendment of access to non-public materials.**

(a) *Termination of access.* (1) Except as provided in paragraph (b) of this section, access to non-public materials granted under § 3007.301 terminates either when the Commission issues the final order or report concluding the proceeding(s) in which the participant who filed the motion seeking access represented that the non-public materials would be used, or when the person granted access withdraws or is otherwise no longer involved in the proceeding(s), whichever occurs first. For purposes of this paragraph, an order or report is not considered final until after the possibility of judicial review expires (including the completion of any Commission response to judicial review, if applicable).

(2) Upon termination of access, all non-public materials, and any duplicates, in the possession of each person (and any individual working on behalf of that person) granted access shall be destroyed or returned to the Commission. The participant who filed the motion seeking access shall file with the Commission a notice of termination of access and attach a certification of compliance with protective conditions executed by each person (and any individual working on behalf of that person) granted access to the non-public materials. The template Certification of Compliance with Protective Conditions and Termination of Access in Appendix A to this subpart may be used and modified to comply with this requirement.

(b) *Amendment of access.* Any person may file a motion seeking to amend any protective conditions related to access of non-public materials, including extending the timeframe for which access is granted or expanding the persons to whom access is to be granted, in accordance with § 3007.301.

**§ 3007.305 Producing non-public materials in non-Commission proceedings.**

(a) If a court or other administrative agency issues a subpoena or orders production of non-public materials that a person obtained under protective conditions ordered by the Commission, the target of the subpoena or order shall, within 2 days of receipt of the subpoena or order, notify each person identified pursuant to § 3007.201(b)(2) of the pendency of the subpoena or order to allow time to object to that production or to seek a protective order or other relief.

(b) Any person that has obtained non-public materials under protective conditions ordered by the Commission and seeks to disclose the non-public materials in a court or other administrative proceeding shall make a good faith effort to obtain protective conditions at least as effective as those set forth in the Commission order establishing the protective conditions.

(c) Unless overridden by the reviewing court or other administrative agency, protective conditions ordered by the Commission will remain in effect.

**Appendix A to Subpart C of Part 3007—Template Forms**

BILLING CODE 7710–FW–P

## Protective Conditions Statement

_____ (name of submitter of non-public materials) requests confidential treatment of non-public materials identified as _____ (non-confidential description of non-public materials) (hereinafter "these materials") in Commission Docket No(s). _____ (designation of docket(s) in which these materials were filed).

_____ (name of participant filing motion) (hereinafter "the movant") requests access to these materials related to _____ (designation of docket(s) or description of proposed proceeding(s) in which these materials are to be used) (hereinafter "this matter").

The movant has provided to each person seeking access to these materials:

- this Protective Conditions Statement,
- the Certification to Comply with Protective Conditions,
- the Certification of Compliance with Protective Conditions and Termination of Access; and
- the Commission's rules applicable to access to non-public materials filed in Commission proceedings (subpart C of part 3007 of the U.S. Code of Federal Regulations).

Each person (and any individual working on behalf of that person) seeking access to these materials has executed a Certification to Comply with Protective Conditions by signing in ink or by typing /s/ before his or her name in the signature block. The movant attaches the Protective Conditions Statement and the executed Certification(s) to Comply with Protective Conditions to the motion for access filed with the Commission.

The movant and each person seeking access to these materials agree to comply with the following protective conditions:

1. In accordance with 39 CFR 3007.303, the Commission may impose sanctions on any person who violates these protective conditions, the persons or entities on whose behalf the person was acting, or both.

2. In accordance with 39 CFR 3007.300(b), no person involved in competitive decision-making for any individual or entity that might gain competitive advantage from using these materials shall be granted access to these materials. Involved in competitive decision-making includes consulting on marketing or advertising strategies, pricing, product research and development, product design, or the competitive structuring and composition of bids, offers or proposals. It does not include rendering legal advice or performing other services that are not directly in furtherance of activities in competition with an individual or entity having a proprietary interest in the protected material.

3. In accordance with 39 CFR 3007.302(a), a person granted access to these materials may not disseminate these materials in whole or in part to any person not allowed access pursuant to 39 CFR 3007.300(a) (Commission and court personnel) or 3007.301 (other persons granted access by Commission order) except in compliance with:

a. Specific Commission order,

b. Subpart B of 39 CFR 3007 (procedure for filing these materials in Commission proceedings), or

c. 39 CFR 3007.305 (production of these materials in a court or other administrative proceeding).

4. In accordance with 39 CFR 3007.302(b) and (c), all persons granted access to these materials:

a. must use these materials only related to this matter; and

b. must protect these materials from any person not authorized to obtain access under 39 CFR 3007.300 or 3007.301 by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized disclosure of these materials as those persons, in the ordinary course of business, would be expected to use to protect their own proprietary material or trade secrets and other internal, confidential, commercially sensitive, and privileged information.

5. The duties of each person granted access to these materials apply to all:

a. Disclosures or duplications of these materials in writing, orally, electronically, or otherwise, by any means, format, or medium;

b. Excerpts from, parts of, or the entirety of these materials;

c. Written materials that quote or contain these materials; and

d. Revised, amended, or supplemental versions of these materials.

6. All copies of these materials will be clearly marked as “Confidential” and bear the name of the person granted access.

7. Immediately after access has terminated pursuant to 39 CFR 3007.304(a)(1), each person (and any individual working on behalf of that person) who has obtained a copy of these materials must execute the Certification of Compliance with Protective Conditions and Termination of

Access. In compliance with 39 CFR 3007.304(a)(2), the movant will attach the executed Certification(s) of Compliance with Protective Conditions and Termination of Access to the notice of termination of access filed with the Commission.

8. Each person granted access to these materials consents to these or such other conditions as the Commission may approve.

Respectfully submitted,

(signature of representative) /s/

(print name of representative)

(address line 1 of representative)

(address line 2 of representative)

(telephone number of representative)

(e-mail address of representative)

(choose the appropriate response) Attorney / Non-Attorney Representative for

(name of the movant)

You may delete the instructional text to complete this form. This form may be filed as an attachment to the motion for access to non-public materials under 39 CFR 3007.301(b)(5).

**Certification to Comply with Protective Conditions**

_____ (name of submitter of non-public materials) requests confidential treatment of non-public materials identified as _____ (non-confidential description of non-public materials) (hereinafter "these materials") filed in Commission Docket No(s). _____ (designation of docket(s) in which these materials were filed).

_____ (name of participant filing motion) requests that the Commission grant me access to these materials to use related to _____ (designation of docket(s) or description of proposed proceeding(s) in which these materials are to be used) (hereinafter "this matter").

I certify that:

I have read and understand the Protective Conditions Statement and this Certification to Comply with Protective Conditions;

I am eligible to receive access to these materials because I am not involved in competitive decision-making for any individual or entity that might gain competitive advantage from using these materials; and

I will comply with all protective conditions established by the Commission.

(signature of individual receiving access) /s/ _____

(print name of individual receiving access)

(title of individual receiving access)

(employer of individual receiving access)

(name of the participant filing the motion)

(date)

You may delete the instructional text to complete this form. This form may be filed as an attachment to the motion for access to non-public materials under 39 CFR 3007.301(b)(6).

**Certification of Compliance with Protective Conditions and Termination of Access**

_____ (name of submitter of non-public materials) requests confidential treatment of non-public materials identified as _____ (non-confidential description of non-public materials) (hereinafter "these materials") filed in Commission Docket No(s). _____ (designation of docket(s) in which these materials were filed).

The Commission granted the request by _____ (name of participant filing notice) to grant me access to these materials to use related to _____ (designation of docket(s) or description of proposed proceeding(s) in which these materials are to be used) (hereinafter "this matter").

I certify that:

- ○ I accessed, maintained, and used these materials in accordance with the protective conditions established by the Commission;
- ○ Effective _____ (date), my access to these materials was terminated; and
- ○ Effective _____ (date), I no longer have any of these materials or any duplicates.

(signature of individual granted access) /s/ _____

(print name of individual granted access)

(title of individual granted access)

(employer of individual granted access)

(name of participant filing notice)

(date)

You may delete the instructional text to complete this form. This form should be filed as an attachment to the notice of termination of access to non-public materials under 39 CFR 3007.304(a)(2).

BILLING CODE 7710–FW–C

## Subpart D—Seeking Public Disclosure of Non-Public Materials

### § 3007.400 Motion for disclosure of non-public materials.

(a) *Application of this section.* This section applies to non-public materials during the initial duration of non-public status, up to 10 years, and any non-public materials for which the Commission enters an order extending the duration of that status under § 3007.401(a).

(b) *Motion for disclosure of non-public materials.* Any person may file a motion with the Commission requesting that non-public materials be publicly disclosed. Any part of the motion revealing non-public information shall be filed in accordance with subpart B of this part. The motion shall justify why the non-public materials should be made public and specifically address any pertinent rationale(s) provided in the application for non-public treatment. The motion shall specify whether actual notice of the motion has been provided to each person identified in the application pursuant to § 3007.201(b)(2). If the motion states that actual notice has been provided, the motion shall identify the individual(s) to whom actual notice was provided, the date(s) and approximate time(s) of actual notice, the method(s) of actual notice (by telephone conversation, face-to-face conversation, or an exchange of telephone or email messages), and whether the movant is authorized to represent that the motion (in whole or in part) has been resolved or is contested by the submitter or any other affected person. The motion shall be filed in the docket in which the materials were filed or in the docket in which the materials will be used; in all other circumstances, the motion shall be filed in the G docket for the applicable fiscal year.

(c) *Response.* If actual notice of the motion was provided in advance of the filing to each person identified pursuant to § 3007.201(b)(2) by telephone conversation, face-to-face conversation, or an exchange of telephone or email messages, a response to the motion is due within 3 business days of the filing of the motion, unless the Commission otherwise provides. In all other circumstances, a response to the motion is due within 7 calendar days of filing the motion, unless the Commission otherwise provides.

(d) *Reply.* No reply to a response shall be filed, unless the Commission otherwise provides.

(e) *Non-public treatment pending resolution.* Pending the Commission's resolution of the motion, information designated as non-public will be accorded non-public treatment.

(f) *Commission ruling.* The Commission may enter an order at any time after receiving a motion if the movant states that: Actual notice has been given to each person identified pursuant to § 3007.201(b)(2) and that the movant is authorized to represent that the motion is uncontested. In all other circumstances, the Commission will enter an order determining what non-public treatment, if any, will be accorded to the materials after the response period described in paragraph (c) of this section has expired. The determination of the Commission shall follow the applicable standard described in § 3007.104.

### § 3007.401 Materials for which non-public treatment has expired.

(a) *Expiration of non-public treatment.* Ten years after the date of submission to the Commission, non-public materials shall lose non-public status unless otherwise provided by the Commission.

(b) *Request for Disclosure of Materials for Which Non-Public Treatment has Expired.* Any person may request that materials for which non-public treatment has expired under paragraph (a) of this section be publicly disclosed. Any part of the request revealing non-public information shall be filed in accordance with subpart B of this part. The request shall identify the materials requested and date(s) that materials were originally submitted under seal. The template Request for Materials for Which Non-public Treatment Has Expired in appendix A to this subpart may be used and modified to comply with this requirement. The request shall be filed in the docket in which the materials were filed or in the docket in which the materials will be used; in all other circumstances, the request shall be filed in the G docket for the applicable fiscal year. All documents are treated in accordance with the Commission's record retention schedule, which may reduce the availability of some non-public information.

(c) *Response.* A response to the request is due within 7 calendar days of the filing of the request, unless the Commission otherwise provides. Any response opposing the request shall seek an extension of non-public status by including an application for non-public treatment compliant with § 3007.201. This extension application shall also include specific facts in support of any assertion that commercial injury is likely to occur if the information contained in the materials is publicly disclosed despite the passage of 10 years or the timeframe established by Commission order.

(d) *Reply.* Within 7 calendar days of the filing of a response, any person (including the requestor) may file a reply, unless the Commission otherwise provides.

(e) *Non-public treatment pending resolution.* Pending the resolution of the request by the Commission, information designated as non-public will be accorded non-public treatment.

(f) *Ruling.* The Commission may grant the request at any time after the response period described in paragraph (c) of this section has expired. The Commission may deny the request and enter an order extending the duration of non-public status at any time after the reply period described in paragraph (d) of this section has expired. The determination of the Commission shall follow the applicable standard described in § 3007.104.

## Appendix A to Subpart D of Part 3007—Template Request Form

BILLING CODE 7710–FW–P

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

(Caption)_____ Docket No. _____-____

_____

REQUEST FOR MATERIALS
FOR WHICH NON-PUBLIC TREATMENT HAS EXPIRED

_____ __, 20__ (date)

On _____ (date non-public materials were initially submitted), non-public treatment was requested for the materials identified as _____ (non-confidential description of non-public materials) (hereinafter "these materials"). Because the non-public treatment of these materials has expired, I request that these materials be disclosed to the public.

Respectfully submitted,

(signature of representative) /s/ _____

(print name of representative)

(address line 1 of representative)

(address line 2 of representative)

(telephone number of representative)

(e-mail address of representative)

(choose the appropriate response) Attorney / Non-Attorney Representative for

(name of the requestor)

You may delete the instructional text to complete this form and file a request under 39 CFR 3007.401(b).

[FR Doc. 2018–14183 Filed 7–2–18; 8:45 am]
**BILLING CODE 7710–FW–C**

# FEDERAL REGISTER

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Part III

## Department of Education

34 CFR Parts 600 and 668
Program Integrity and Improvement; Final Rule

**DEPARTMENT OF EDUCATION**

**34 CFR Parts 600 and 668**

**[Docket ID ED–2018–OPE–0041]**

**RIN 1840–AD39**

**Program Integrity and Improvement**

**AGENCY:** Office of Postsecondary Education, Department of Education.

**ACTION:** Final rule; delay of effective date.

**SUMMARY:** The Secretary delays, until July 1, 2020, the effective date of selected provisions of the final regulations entitled Program Integrity and Improvement published in the **Federal Register** on December 19, 2016 (the 2016 final regulations). The Secretary is delaying the effective date of selected provisions of the 2016 final regulations based on concerns recently raised by regulated parties and to ensure that there is adequate time to conduct negotiated rulemaking to reconsider selected provisions of 2016 final regulations and, as necessary, develop revised regulations. The provisions for which the effective date is being delayed are listed in the **SUPPLEMENTARY INFORMATION** section of this document.

**DATES:** Effective June 29, 2018, the effective date for the amendments to 34 CFR 600.2, 600.9(c), 668.2, and the addition of 34 CFR 668.50, published December 19, 2016, at 81 FR 92236, is delayed until July 1, 2020.

**FOR FURTHER INFORMATION CONTACT:** Sophia McArdle, Ph.D., U.S. Department of Education, 400 Maryland Ave. SW, Mail Stop 290–44, Washington, DC 20202. Telephone: (202) 453–6318. Email: *sophia.mcardle@ed.gov.*

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

**SUPPLEMENTARY INFORMATION:** Based on concerns recently raised by regulated parties related to implementation of the 2016 final regulations, the Secretary delays, until July 1, 2020, the effective date of selected provisions of the 2016 final regulations (81 FR 92236). The Department is implementing this delay to hear from the regulated community and students about these concerns and to consider, through negotiated rulemaking, possible revisions to selected provisions of the 2016 final regulations.

Two letters in particular prompted this delay. The Department received a letter dated February 6, 2018 (February 6 letter), from the American Council on Education (*www.acenet.edu/news-room/Documents/ACE-Letter-on-State-Authorization-Concern.pdf*), which represents nearly 1,800 college university presidents from all types of U.S. accredited, degree-granting institutions and the executives at related associations. The February 6 letter stated that, ''students who are residents of certain states may be ineligible for federal financial aid if they are studying online at institutions located outside their states. This is related to the requirement imposed by the state authorization regulations that mandates institutions disclose to students the appropriate state complaint process for their state of residence. A number of states, including California, do not currently have complaint processes for all out-of-state institutions.''

On February 7, 2018, the Department received a letter from the Western Interstate Commission for Higher Education (WICHE) Cooperative for Educational Technologies, the National Council for State Authorization Reciprocity, and the Distance Education Accrediting Commission, all of which represent regulated parties (February 7 letter). In the letter, these entities stated that there is widespread concern and confusion in the higher education community regarding the implementation of the 2016 final regulations, particularly with respect to State authorization of distance education and related disclosures. The authors of the February 7 letter argued that the 2016 final regulations would be costly and burdensome for most colleges and universities that offer distance education and that some States have not implemented the student complaint policies and procedures required by the regulations. The authors also expressed that institutions need additional information from the Department to better understand how to comply with the 2016 final regulations. They stated, for instance, that the definition of ''residence'' in the preamble of the 2016 final regulations may conflict with State laws and common practice among students for establishing residency.

The authors of the two letters also asked the Department to clarify the format in which they should make public and individualized disclosures of the State authorization status for every State, the complaint resolution processes for every State, and details on State licensure eligibility for every discipline that requires a license to enter a profession. The authors suggested that the Department should delay the effective date of the 2016 final regulations and submit the issues to additional negotiated rulemaking or, alternatively, clarify the final regulations through guidance. We believe that these disclosure issues, particularly those regarding individualized student disclosures, also require further review and the consideration of whether more detailed requirements are necessary for proper implementation. Issues that need further consideration and clarification include the disclosures that may need to be made to a student when the student changes his or her residence, what factors would allow an institution to become aware that a student has changed his or her residence so that individualized disclosures could be made, and the length of time a student must reside at the new address to be considered a resident of that State for the purposes of State authorization disclosures. These clarifications are necessary because the handling of these situations may vary State by State and be further complicated by the fact that each State's definition of ''residence'' may have been originally developed for other purposes. Other issues in need of further clarification include what happens in the case of a student who enrolls in a program that meets the licensure requirements of the State in which the student was living at the time, but then relocates to a new State where the program does not fulfill the requirements for licensure as well as the obligation of the university if the program no longer meets the licensure requirements, due to the student's move, not a change in the program.

Finally, to add further complexity, students may not always notify their institution if they change addresses, or if they relocate temporarily to another State. While the preamble of the 2016 final regulations stated that an institution may rely on a student's self-determination of residency unless it has information to the contrary, there may need to be additional clarification or safeguards for institutions in the event that a student does not notify the institution of a change in residency.

The rule, as currently drafted, does not account for these complexities. Therefore, we believe that, among other things, a more precise definition of ''residence''—which can be defined by States in different ways for different purposes—should be established through rulemaking to ensure institutions have the clarity needed to determine a student's residence. We believe that we will need to provide institutions with significantly more detail to properly operationalize this term and will need to work with impacted stakeholders to determine

how best to address a concern that is complex and potentially costly to institutions and students.

For both of the residency and disclosure issues, guidance is not the appropriate vehicle to provide the clarifications needed. Due to the complexity of these issues, we believe that it is important to solicit the input of stakeholders who have been engaged in meeting these requirements in developing workable solutions. Further, guidance is non-binding and, therefore, could not be used to establish any new requirements. Lastly, the necessary changes may affect the burden on some regulated parties, which would require an updated estimate of regulatory impact. The Department therefore believes that the clarifications requested are so substantive that they would require further rulemaking including negotiated rulemaking under the Higher Education Act of 1965, as amended (HEA).

We believe that delaying the effective date of selected provisions of the 2016 final regulations will benefit students.

The 2016 final regulations are currently scheduled to go into effect in July. Many institutions and students ordinarily not significantly involved in distance education provide and take online courses in the summer. We believe the delay will especially benefit those students who are planning to take coursework via online programs during the summer months, or who may be making plans to participate in internships in other States. If the selected provisions of 2016 final regulations were to go into effect on July 1, 2018, an institution may be hesitant to offer these courses outside the State in which the institution is located, because the uncertainty of how to determine students' residency, and the associated requirements, may make a State unwilling to pursue State authorization in all of the possible locations its students may reside during the summer.

If selected provisions of 2016 final regulations were to go into effect on July 1, 2018, some institutions, especially those with limited resources, could determine that the costs of obtaining State authorization, ensuring the relevant States have complaint procedures, and assessing licensure requirements, are not worth the benefit of eligibility for title IV aid if only a small number of students enroll online from a particular State, and therefore may not obtain State authorization for all applicable States. Thus, some students might not be able to continue their education during the summer if during those months they must relocate to a State in which the institution does not have the required State authorization. Thus, if we did not delay selected provisions of the 2016 final regulations, students would potentially lose the opportunity to use title IV aid for these courses. Institutions that routinely provide distance education to large numbers of students from all 50 States may have already obtained State authorization and assessed the complaint systems and licensure requirements since the cost-benefit ratio favors such an action. As a result, the delay will not have any significant effect on students attending those institutions.

Further, the Department has provided guidance regarding student complaints and student consumer disclosures as related to distance education in a Dear Colleague letter issued on July 27, 2012 (DCL GEN–12–13),[1] ensuring that during this delay of selected provisions of the final regulations institutions will be aware of their existing obligations and that students will receive these protections. Under 34 CFR 668.43(b), an institution is required to provide to students its State approval or licensing and the contact information for filing complaints. In DCL GEN–12–13, in Questions and Answers (Q&A) 9 through 13, we provide guidance on how institutions may meet this requirement with respect to distance education. In Q&A 9, we clarify that an institution offering distance education in multiple States can satisfy the provisions of 34 CFR 668.43(b) requiring that it provide State contact information for filing complaints by providing a link to a noninstitutional website that identifies the contact information for multiple States so long as the link is accessible from the institution's website and the link is prominently displayed and accurately described. Q&A 9 also states that the institution should ensure the website link is functioning and accurate. Q&A 10 clarifies that, if an institution offering distance education in a State has only one student in that State, the institution must still provide contact information for that State. In Q&A 12, we make clear that if a student taking a program by distance education moves to another State, and the institution is aware of the move, the institution must ensure that the student has access to the State contact information or filing complaints in that State. Finally, in Q&A 13, we note that for a student who is taking distance education and is in the military, the contact information for the institution's main location is considered sufficient contact information when the student is given an assignment outside of the United States.

Based on the above considerations, the Department delays until July 1, 2020, the effective date of selected provisions of the final regulations in title 34 of the Code of Federal Regulations (CFR):

- § 600.2 Definitions (definition of ''State authorization reciprocity agreement'').
- § 600.9(c) (State authorization distance education regulations).
- § 668.2 (definition of ''Distance education'').
- § 668.50 (institutional disclosures for distance or correspondence programs regulations).

*Public Comment:* In response to our invitation in the notice of proposed rulemaking published in the **Federal Register** on May 25, 2018 (83 FR 24250) (NPRM), 39 parties submitted comments on the delay of the effective date. We do not discuss comments or recommendations that are beyond the scope of this regulatory action or that would require statutory change.

**Analysis of Comments and Changes**

An analysis of the comments and of any changes since publication of the NPRM follows.

*Comment:* Many commenters supported the proposed rule to delay the effective date of the 2016 final regulations until July 1, 2020, because they believed that non-regulatory guidance from the Department is unlikely to address the current gap between institutional understanding of the final regulations and the Department's expectations for compliance. Commenters supported the Department's plan to refer the 2016 final regulations to the review and consideration afforded by the negotiated rulemaking process. Commenters also stated that the delay is prudent given the potential impact on institutions, learners, and the State authorization process, and will make it possible to resolve any confusion for students, institutions, States, and accreditors about the requirements of the 2016 final regulations. One commenter noted that some parts of the 2016 final regulations are very onerous and expensive for institutions to implement and a delay would give institutions more time to plan and budget for the changes.

*Discussion:* We appreciate the commenters' support.

*Changes:* None.

*Comment:* Many commenters opposed delaying the effective date of the 2016 final regulations because of the potential

[1] Available at: *https://ifap.ed.gov/dpcletters/GEN1213.html.*

harm to students, as well as on procedural grounds.

**Harm to Students**

*Comment:* Commenters stated that delaying the effective date of the 2016 final regulations would negatively impact students because the consumer protections and disclosures that would have been available to students under the 2016 final regulations will not be available to students. A few commenters expressed concern that students' ability to file complaints against institutions would be impeded by delaying the effective date of the provisions in the 2016 final regulations related to the State complaint process.

*Discussion:* While we do not have specific data with regard to how many schools and States have come into compliance with the 2016 final regulations, based on the information we do have, we expect that many students will still receive disclosures regarding distance education programs during the period of the delay due to steps institutions have already taken. In addition, as also previously noted, DCL GEN–12–13 provides guidance regarding student complaints and student consumer disclosures as related to distance education, ensuring that during the delay institutions will be aware of their existing obligations and that students will receive the contact information needed in order to file a complaint against the institution. Under 34 CFR 668.43(b), an institution is required to provide to students its State approval or licensing and the contact information for filing complaints. DCL GEN–12–13 clarifies this requirement with respect to distance education as discussed above. We believe that these requirements will offer students protection during the delay.

With respect to other disclosures, we acknowledged in the NPRM that, as a result of the proposed delay, it is possible that students might not receive disclosures of adverse actions taken against a particular institution or program. Students also may not receive other information about an institution, such as information about refund policies or whether a program meets certain State licensure requirements. This information could help students identify programs that offer credentials that potential employers recognize and value; delaying the requirement to provide these disclosures may require students that desire this information to obtain it from another source or may lead students to choose sub-optimal programs for their preferred courses of study. We note, however, that the Department has never required ground-based campuses to provide this information to students, including campuses that enroll large numbers of students from other States. Thus, for students who attend on-ground campuses, the program they completed may meet licensure requirements in the State in which the campus is located but not licensure requirements in other States.

*Changes:* None.

*Comment:* Commenters also noted that the 2016 final regulations require State and Federal oversight of American institutions receiving Federal financial aid but operating in foreign locations, thereby ensuring core protections for students enrolled in campuses abroad, but that the Department offers no rationale for delaying the effective date of this component of the rule. Thus, the commenters believed that the effective date of these final regulations should not be delayed.

*Discussion:* We are persuaded by the commenters and, for the reasons they specify, are not delaying § 600.9(d) (State authorization of foreign locations of domestic institution regulations).

*Changes:* We are not delaying § 600.9(d) (State authorization of foreign locations of domestic institution regulations). These regulations will go into effect July 1, 2018.

*Comment:* Commenters also noted that the 2016 final regulations strengthen States' oversight capacity by ensuring that States that sought to regulate distance education would be able to identify and regulate schools offering distance education in their State. These commenters argued that delaying the effective date of the 2016 final regulations would undermine this State oversight of distance education programs and permit schools to use Federal funds for programs that operate outside of the oversight of State regulators. Some commenters noted that State approval boards and regulatory schemes vary from State to State and that States should be able to reject institutions that do not meet a State's higher standards. Some commenters also stated that a delay of the effective date of the 2016 final regulations would impede States from ensuring that distance education students have the same State-level protections as students enrolled at brick-and-mortar institutions, and limit States' ability to bring enforcement actions against schools offering online programs in their States.

*Discussion:* We believe that concerns about undermining State regulatory and enforcement efforts may be overstated. A State already has the authority to administer legal authorization to operate in the State as the State sees fit, whether it be to approve an institution to operate in-State, regardless of the physical location of the institution, or require an institution that is operating without approval in the State to cease such operations regardless of the physical location of the institution. There is also no requirement that a State join a reciprocity agreement, whether it is a State-to-State reciprocity agreement or a reciprocity agreement that is administered by a non-State entity. A State can also decide to leave any reciprocity agreement it had previously joined. States do not need additional Federal regulations in order to enforce their own laws if they choose to do so.

*Changes:* None.

*Comment:* Some commenters stated that the definition of ''State authorization reciprocity agreement'' in the 2016 final regulations is confusing, and noted particular concern about the part of the definition that says that such an agreement ''does not prohibit any State in the agreement from enforcing its own statutes and regulations, whether general or specifically directed at all or a subgroup of educational institutions.'' They stated that some entities are interpreting this text to mean that a State authorization reciprocity agreement that is acceptable to the Department must allow a State that is a member of the agreement to enforce its own statutes and regulations even if those statutes and regulations conflict with the provisions of an agreement into which the State entered. The commenters contended that delaying the effective date of the 2016 final regulations would undermine the ability of States to protect their residents because the States would no longer be able to enforce their own statutes and regulations if doing so were prohibited by a State authorization reciprocity agreement. Other commenters indicated that it was unclear whether this part of the definition allows enforcement of State regulations that conflict with the provisions of a reciprocity agreement.

*Discussion:* We view the confusion and concern about what constitutes a State authorization reciprocity agreement under the 2016 final regulations and how that current definition is meant to be operationalized to be additional reasons to delay the effective date of selected provisions of the 2016 final regulations so that this issue can be clarified.

*Changes:* None.

*Procedural Concerns*

*Comment:* Some commenters expressed concerns about procedural issues surrounding the proposed delay,

contending that the 15-day comment period does not allow enough time for meaningful comments. Commenters further stated that the Department did not provide adequate justification for delaying the effective date of the 2016 final regulations and that the Department could issue guidance, rather than delay the effective date. Some commenters also asserted that the Department must conduct negotiated rulemaking under the HEA to implement the proposed delay. They argued that the Department did not meet the criteria for an exemption from such rulemaking under the Administrative Procedure Act (APA), believing that the Department did not establish ''good cause'' to waive negotiated rulemaking. Commenters also opined that institutions have worked over the past 18 months to implement the 2016 final regulations, and their investments should not be wasted now by an unnecessary delay of the consumer protections and disclosures. Some commenters also stated that the proposed delay is overly broad and that since the Department justifies the delay based on only three issues, the Department should have proposed to delay only those three parts of the 2016 final regulations.

*Discussion:* The APA, 5 U.S.C. 553(c), requires an agency to provide interested parties an opportunity to comment on proposed regulations, but does not stipulate the length of the comment period. A 15-day comment period was necessary because the selected provisions of the 2016 rule are scheduled to take effect on July 1, 2018, and a final rule delaying the effective date must be published prior to that date. A longer comment period would not have allowed sufficient time for the Department to review and respond to comments, and publish a final rule.

We believe that we have adequately justified our decision to delay the effective date of selected provisions of the 2016 final regulations and that it would be inappropriate to issue guidance, rather than implement the delay. Guidance is not the appropriate vehicle to provide the clarifications needed related to the residency and disclosure issues. Guidance is non-binding and, therefore, could not be used to establish any new requirements. More importantly, due to the complexity of the issues and the substantive nature of the necessary clarifications, we believe that, in developing workable solutions, it is important to conduct negotiated rulemaking under the HEA in order to solicit the input of stakeholders who have been engaged in meeting these requirements. Additionally, the necessary changes may affect the burden on regulated parties, which would require an updated estimate of regulatory impact.

With regard to waiver of negotiated rulemaking, section 492(b)(2) of the HEA provides that the Secretary may waive negotiated rulemaking if she determines that there is good cause to do so, and publishes the basis for such determination in the **Federal Register** at the same time as the proposed regulations are first published. Negotiated rulemaking requires a number of steps that typically take the Department well over 12 months to complete. The Department could not have completed the negotiated rulemaking process between February 6, 2018 (the date the Department received the first of the two letters that were the catalyst for the delay) and the July 1, 2018, effective date . Thus, the Department has good cause to waive the negotiated rulemaking requirement with regard to this delay the effective date of the final regulations to July 1, 2020.

As stated, negotiated rulemaking requires a number of steps that typically take the Department well over 12 months to complete. First, the HEA requires the Department to hold public hearings before commencing any negotiations. Based upon the feedback the Department receives during the hearings, the Department then identifies those issues on which it will conduct negotiated rulemaking, announces those, and solicits nominations for non-Federal negotiators. Negotiations themselves are typically held over a three-month period. Following the negotiations, the Department prepares a notice of proposed rulemaking and submits the proposed rule to the Office of Management and Budget (OMB) for review. The proposed rule is then open for public comment for 30 to 60 days. Following the receipt of public comments, the Department considers those comments and prepares final regulations that are reviewed by OMB before publication. Accordingly, we would not be able to complete the negotiated rulemaking process until 2019, so regulations resulting from that process will not be effective before July 1, 2020 per section 482 of the HEA (20 U.S.C. 1089), also known as the ''master calendar requirement.'' The master calendar requirement specifies provides that a regulatory change that has been published in final form on or before November 1 prior to the start of an award year—which begins on July 1 of any given year—may take effect only at the beginning of the next award year, or, in other words, on July 1 of the next year.

In this instance, the catalysts for the delay are the February 6 and February 7 letters. While some commenters stated that the Department was aware of the same issues raised in these letters during the 2016 rulemaking and heard about these same issues in August and October 2017, we only more recently determined that further consultation in the form of negotiated rulemaking was the appropriate vehicle by which to clarify the 2016 final regulations, and it was the cited letters that changed our understanding of the extent of stakeholder concerns. Thus, based on this further understanding, we believe that negotiated rulemaking is necessary in order to make important, substantive clarifications, and that it is in the interests of institutions, States, and students for the effective date of the selected provisions of the final regulations to be delayed and the regulations reconsidered. The Department could not have completed the 12-month negotiated rulemaking process between February 6, 2018, and the July 1, 2018, effective date. Thus, the Department has good cause to waive the negotiated rulemaking requirement with regard to its proposal to delay the effective date of selected provisions of the final regulations to July 1, 2020, in order to complete a new negotiated rulemaking proceeding to address the concerns identified by some of the regulated parties in the higher education community. It would be confusing and counterproductive for the selected provisions of the 2016 final regulations to go into effect before the conclusion of this reconsideration process.

We do not believe the proposed delay is overly broad and that because the delay discussion only addressed three issues, the Department should only delay the effective date of those three parts of the 2016 final regulations. We have agreed with the commenters that § 600.9(d) (State authorization of foreign locations of domestic institution regulations) should not be delayed. Otherwise, it is unclear what parts of the regulations will be impacted by negotiated rulemaking and how these provisions could impact other parts of the regulations.

With respect to the comments that institutions have worked over the past 18 months to implement the 2016 final regulations, and their investments should not be wasted now by an unnecessary delay of the consumer protections and disclosures, we do not believe that these investments were a waste, as the results of these efforts will be helpful to students and information

from institutions that made those changes can inform the upcoming negotiated rulemaking process.

*Changes:* None.

**Executive Orders 12866, 13563, and 13771**

*Regulatory Impact Analysis*

Under Executive Order 12866, it must be determined whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This regulatory action is a significant regulatory action subject to review by OMB under section 3(f)(4) of Executive Order 12866. The quantified economic effects and net budget impact associated with the delayed effective date are not expected to be economically significant. Institutions will be relieved of an expected Paperwork Reduction Act burden of approximately $364,419 in annualized cost savings or $5.2 million in present value terms for the delay period; though it is possible some institutions have already incurred these costs preparing for the current effective date.

We have also reviewed this final rule under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency:

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

In choosing among alternative regulatory approaches, we selected the approach that would maximize net benefits. In particular, the Department believes avoiding the compliance costs for institutions and the potential unintended harm to students if institutions decide not to offer distance education courses to students who switch locations for a semester or do not allow students to receive title IV aid for such courses because the definition of ''residency'' needs clarification outweighs any negative effect of the delayed disclosures. Based on the analysis that follows, the Department believes that this delay of the effective date of selected provisions of the 2016 final regulations is consistent with the principles in Executive Order 13563.

Consistent with Executive Order 13771 (82 FR 9339, February 3, 2017), we have estimated that this final rule has a potential upper bound effect of estimated annualized cost savings of $705,737, or $10,081,963 in present value terms, using a 7 percent discount rate over a perpetual time horizon, in administrative and information disclosure costs. This is an upper bound estimate of these cost savings, since some institutions may have begun development of disclosures to meet the requirements of the 2016 final regulations. As a central estimate, the Department estimates institutions will be relieved of an expected Paperwork Reduction Act burden of approximately $364,419 in annualized cost savings or $5.2 million in present value terms for the delay period; though it is possible some States have already incurred these costs preparing for the current effective date.

Because of these savings, this final rule is considered an Executive Order 13771 deregulatory action. In the NPRM published May 25, 2018, the Department explicitly requested comments on whether these administrative cost savings and foregone benefits calculations and discussions are accurate and fully capture the impacts of this final rule. Some commenters disagreed with the Department's estimates, especially of the costs to borrowers of not receiving certain disclosures and protections, and those comments are summarized in the *Effects of Delay* section.

*Effects of Delay*

The Regulatory Impact Analysis of the 2016 final regulations stated that the regulations would have the following primary benefits: (1) Updated and clarified requirements for State authorization of distance education and foreign additional locations, (2) a process for students to access complaint resolution in either the State in which the institution is authorized or the State in which they reside, and (3) increased transparency and access to institutional and program information. In the NPRM, we acknowledged that the delay would result in students not receiving certain disclosures about licensure and adverse actions against programs, as well as information about a process for submitting complaints in their State. The Department also estimated that institutions would benefit from the delay by having more time before incurring the costs of compliance and an opportunity to get more clarity on the details of the State authorization requirements and how they fit their programs.

Several commenters responded to the Department's analysis, both from an institutional and a borrower and consumer advocate perspective. Several commenters representing various institutions, many of which supported the delay, appreciated the Department's willingness to reopen the issue and clarify requirements that institutions find unclear. They also reiterated that the December 2016 final regulations underestimated the costs of obtaining State authorization and complying with that rule, but did not specify what additional costs there would be or what

assumptions the Department should change to more accurately capture institutional costs. Therefore, we are not changing our estimates of institutional costs in the NPRM analysis, but reiterate our acknowledgement that these are representative cost estimates and the specific costs to individual institutions will vary based on the extent of their participation in distance education, their systems and staffing, and the way they pursue State authorization.

Another set of comments focused on the potential harms to students from the delay, noting that online education is the fastest growing segment of the postsecondary market and that most of the largest providers are proprietary institutions, several with recent or ongoing investigations. Several commenters offered a variety of statistics consistent with the Department's own information that proprietary institutions are key players in the distance education market. For example, one commenter noted that proprietary schools in the top 12 providers in 2016 accounted for approximately 40 percent of distance education students. Several commenters pointed to the higher cost of distance-education-only programs at proprietary institutions, citing a cumulative average Federal student loan debt for graduates of proprietary institutions of $31,298.60 compared to $28,482.20 across all sectors and $21,525.60 for those in programs that are not entirely online. Commenters also pointed out that 770,000 of the 2.1 million students enrolled online in 2015 attended programs outside their State of residence and deserve the same protections as students at campus-based programs. Several commenters noted that proprietary institutions have a greater share of their students who are low-income, minority, or first-generation students, something the Department has recognized, so delaying the disclosures would have a detrimental impact on students with potentially less resources to seek out information from other sources.

The Department appreciates the comments and analysis submitted. We recognize that the burden of the delay does fall on students and believe that the description of the effects of the delay reflects this. However, as noted in the *Analysis of Comments* section in this preamble, many students will still receive sufficient disclosures regarding distance education programs during the period of the delay due to steps institutions have already taken to comply with the 2016 final regulations. In addition, as also previously noted, DCL GEN–12–13 provides guidance regarding student complaints and student consumer disclosures as related to distance education, ensuring that during the delay institutions will be aware of their existing obligations and that students will receive these protections. The Department maintains its position that, in allowing reconsideration of the 2016 final regulations to provide institutions greater clarity on key issues, the benefits of the delay of the selected provisions are greater than the potential costs to students of the delayed disclosures and complaint processes that could already be accessible from other sources. The Department has modified its decision to delay the effective date of the 2018 final regulations and has decided not to delay § 600.9(d) (State authorization of foreign locations of domestic institution regulations).The analysis of the effects of the delay for the selected provisions has not changed substantially and is included below.

As a result of the delay, students might not receive disclosures of adverse actions taken against a particular institution or program. Students also may not receive other information about an institution, such as information about refund policies or whether a program meets certain State licensure requirements. Increased access to such information could help students identify programs that offer credentials that potential employers recognize and value, so delaying the effective date of the requirement to provide these disclosures may require students to obtain this information from another source or may lead students to choose sub-optimal programs for their preferred courses of study.

Additionally, the delay of the disclosures related to the complaints resolution process could make it harder for students to access available consumer protections. Some students may be aware of Federal Student Aid's Ombudsman Group, State Attorneys General offices, or other resources for potential assistance, but the disclosure would help affected students be aware of these options.

The Department also believes that, as a result of uncertainty as to the definition of ''residency'' and other aspects of the 2016 final regulations, institutions may refuse enrollment or title IV aid to distance education students as a safeguard against unintentional non-compliance—an unintended potential effect. For example, if a student pursues a summer internship and relocates to another State for the summer semester, institutions may choose not to allow them to take courses online because their residency is unclear. A student who is unable to take classes during the summer months may be unable to complete his or her program on time, especially if the student is working or raising children and cannot manage a 15-credit course load during the regular academic terms. The Department believes the possibility of this outcome and the disruption it could have to students' education plans supports delaying the effective date of the 2016 final regulations to prevent institutions from taking such actions while the Department conducts negotiated rulemaking to develop clearer regulations.

Delay may, however, better allow institutions to address the costs of complying with the 2016 final regulations. In promulgating those regulations, the Department recognized that institutions could face compliance costs associated with obtaining State authorization for distance education programs or operating foreign locations. But the Department did not ascribe specific costs to the State authorization regulations and associated definitions because it presumed that institutions were already complying with applicable State authorization requirements and because the 2016 final regulations do not require institutions to have distance education programs.

Although the Department did not ascribe specific costs to the State authorization regulations, it provided examples of costs ranging from $5,000 to $16,000 depending on institution size, for a total estimated annual cost for all institutions of $19.3 million. Several commenters stated that the Department underestimated the costs of compliance with the regulations, noting that extensive research may be required for each program in each State. One institution reported that it costs $23,520 to obtain authorization for a program with an internship in all 50 States and $3,650 to obtain authorization for a new 100 percent online program in all 50 States. To renew the authorization for its existing programs, this institution estimated a cost of $75,000 annually, including fees, costs for surety bonds, and accounting services, and noted these costs have been increasing in recent years. The Department believes this institution's estimate is credible; however, we requested comment on whether this example provides a typical or accurate level of expected compliance costs across a representative population, and the extent to which institutions have already incurred these costs. As discussed previously, several commenters mentioned that the 2016 final regulations underestimated the cost for institutions but did not include

specific numbers with which to update the estimate or discuss whether the $75,000 cost provided by the earlier commenter was in line with other institutions' costs. In practice, actual costs to institutions vary based on a number of factors including an institution's size, the extent to which an institution provides distance education, and whether it participates in a State authorization reciprocity agreement or chooses to obtain authorization in specific States.

Delay may also allow institutions to postpone incurring costs associated with the disclosure requirements. As indicated in the *Paperwork Reduction Act of 1995* section of the 2016 final regulations, those costs were estimated to be 152,405 hours and $5,570,403 annually.

*Net Budget Impact*

As noted in the 2016 final regulations, in the absence of evidence that the regulations would significantly change the size and nature of the student loan borrower population, the Department estimated no significant net budget impact from the 2016 final regulations. While the updated requirements for State authorization and the option to use State authorization reciprocity agreements may expand the availability of distance education, student loan volume will not necessarily expand greatly. Additional distance education could provide convenient options for students to pursue their educations and loan funding may shift from physical to online campuses. Distance education has expanded significantly already and the 2016 final regulations are only one factor in institutions' plans within this field. The distribution of title IV, HEA program funding could continue to evolve, but the overall volume is also driven by demographic and economic conditions that are not affected by the 2016 final regulations and State authorization requirements were not expected to change loan volumes in a way that would result in a significant net budget impact. This analysis is limited to the effect of delaying the effective date of the selected provisions of the 2016 final regulations to July 1, 2020, and does not account for any potential future substantive changes in the upcoming regulations.

*Regulatory Flexibility Analysis*

This final rule would affect institutions that participate in the title IV, HEA programs, many of which are considered small entities. The U.S. Small Business Administration (SBA) Size Standards define ''for-profit institutions'' as ''small businesses'' if they are independently owned and operated and not dominant in their field of operation with total annual revenue below $7 million. The SBA Size Standards define ''not-for-profit institutions'' as ''small organizations'' if they are independently owned and operated and not dominant in their field of operation, or as ''small entities'' if they are institutions controlled by governmental entities with populations below 50,000. Under these definitions, approximately 4,267 of the institutions of higher education (IHEs) that would be subject to the paperwork compliance provisions of the 2016 final regulations are small entities. Accordingly, we have reviewed the estimates from the 2016 final regulations and prepared this regulatory flexibility analysis to present an estimate of the effect on small entities of the delay of the effective date of the 2016 final regulations.

In the Regulatory Flexibility Analysis for the 2016 final regulations, the Department estimated that 4,267 of the 6,890 IHEs participating in the title IV, HEA programs were considered small entities—1,878 are not-for-profit institutions, 2,099 are for-profit institutions with programs of two years or less, and 290 are for-profit institutions with four-year programs. Using the definition described above, approximately 60 percent of IHEs qualify as small entities, even if the range of revenues at the not-for-profit institutions varies greatly. Many small institutions may focus on local provision of specific programs and would not be significantly affected by the delay of the effective date of the 2016 final regulations because they do not offer distance education. As described in the analysis of the 2016 final regulations, distance education is a growing area with potentially significant effects on the postsecondary education market and the small entities that participated in it, providing an opportunity to expand and serve more students than their physical locations can accommodate but also increasing competitive pressure from online options. Overall, as of Fall 2016, approximately 15 percent of students receive their education exclusively through distance education while 68.3 percent took no distance education courses. However, at proprietary institutions almost 59.2 percent of students were exclusively distance education students and 30.4 percent had not enrolled in any distance education courses.[2] The delay of selected provisions of the effective date of the 2016 final regulations, and the resulting uncertainty regarding State authorization requirements for distance education, may slow the reshuffling of the postsecondary education market or the increased participation of small entities in distance education, but that is not necessarily the case. Distance education has expanded over recent years even in the absence of a clear State authorization regime.

In the analysis of the 2016 final regulations, we noted that the Department estimated total State Authorization Reciprocity Agreement (SARA) fees and additional State fees of approximately $7 million annually for small entities, but acknowledged that costs could vary significantly by type of institution and institutions' resources and that these considerations may influence the extent to which small entities operate distance education programs. Small entities that do participate in the distance education sector may benefit from avoiding these fees during the delay period. If 50 percent of small entities offer distance education, the average annual cost savings per small entity during the delay would be approximately $3,280, but that would increase to $6,560 if distance education was only offered by 25 percent of small entities. This estimate assumes small entities have not already taken steps to comply with the State authorization requirements in the 2016 final regulations. In the NPRM, the Department welcomed comments on the distribution of small entities offering distance education, the estimated costs to obtain State authorization for their programs, and the extent to which small entities have already incurred costs to comply with the 2016 final regulations. One comment indicated that of the 1,800 institutions that participate in SARA (and thus are likely to offer distance education programs), 45 percent (810) enroll less than 2,500 students. That enrollment figure does not correspond to the Department's definition of a ''small entity,'' but it does indicate that many smaller institutions are participating in distance education programs, even if a significant share of students are enrolled in programs offered by large institutions.

The Department also estimated that small entities would incur 13,981 hours of burden in connection with information collection requirements with an estimated cost of $510,991

[2] 2017 Digest of Education Statistics Table 311.15: Number and percentage of students enrolled in degree-granting postsecondary institutions, by distance education participation, location of student, level of enrollment, and control and level of institution: Fall 2015 and Fall 2016. Available at *https://nces.ed.gov/programs/digest/d17/tables/dt17_311.15.asp?current=yes.*

annually. Small entities may be able to avoid some of the anticipated burden during the delay. To the extent small entities would need to spend funds to comply with State authorization requirements for distance education, the proposed delay would allow them to postpone incurring those costs. And although institutions may have incurred some of the $510,991 annual costs to prepare for the information collection requirements, it is possible that institutions could avoid up to that amount during the period of the delay.

*Paperwork Reduction Act of 1995*

As indicated in the Paperwork Reduction Act section published in the 2016 final regulations, the assessed estimated burden was 152,565 hours affecting institutions with an estimated cost of $5,576,251 for Sections 600.9 and 668.50. This final rule delays the effective date of selected provisions of the cited regulations.

Section 600.9(d) will go into effect on July 1, 2018, with an assessed burden of 160 hours and $5,848 in institutional costs. The maximum potential reduction in burden hours and costs from the delay are the 152,405 hours and $5,570,403 associated with sections 668.50(b) and (c).

The table below identifies the regulatory sections, OMB Control Numbers, estimated burden hours, and estimated costs of those final regulations that have not been delayed.

| Regulatory section | OMB Control No. | Burden hours | Estimated cost $36.55/hour institution |
|---|---|---|---|
| 668.50(b) | 1845–0145 | 151,715 | 5,545183 |
| 668.50(c) | 1845–0145 | 690 | 25,220 |
| Total | ..... | 152,405 | 5,570,403 |
| Cost savings due to delayed effective date. | | | |

This final rule delays the effective date of selected provisions of the cited regulations.

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**List of Subjects**

*34 CFR Part 600*

Colleges and universities, Foreign relations, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

*34 CFR Part 668*

Administrative practice and procedure, Colleges and universities, Consumer protection, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

■ Accordingly, the effective date for the amendments to 34 CFR 600.2, 600.9, 668.2, and the addition of 34 CFR 668.50, published December 19, 2016, at 81 FR 92236, is delayed until July 1, 2020.

Dated: June 28, 2018.

**Betsy DeVos,**

*Secretary of Education.*

[FR Doc. 2018–14373 Filed 6–29–18; 4:15 pm]

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Part IV

## Department of Education

34 CFR Part 300
Assistance to States for the Education of Children With Disabilities; Preschool Grants for Children With Disabilities; Final Rule

**DEPARTMENT OF EDUCATION**

**34 CFR Part 300**

**RIN 1820–AB77**

**[Docket ID ED–2017–OSERS–0128]**

## Assistance to States for the Education of Children With Disabilities; Preschool Grants for Children With Disabilities

**AGENCY:** Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Final rule; delay of compliance date.

**SUMMARY:** The Department postpones by two years the date for States to comply with the ''Equity in IDEA'' or ''significant disproportionality'' regulations, from July 1, 2018, to July 1, 2020. The Department also postpones the date for including children ages three through five in the analysis of significant disproportionality, with respect to the identification of children as children with disabilities and as children with a particular impairment, from July 1, 2020, to July 1, 2022.

**DATES:** As of June 29, 2018, the date of compliance for recipients of Federal financial assistance to which the regulations published at 81 FR 92376 (December 19, 2016) apply is delayed. Recipients of Federal financial assistance to which the regulations published at 81 FR 92376 apply must now comply with those regulations by July 1, 2020, except that States are not required to include children ages three through five in the calculations under § 300.647(b)(3)(i) and (ii) until July 1, 2022.

**FOR FURTHER INFORMATION CONTACT:** Mary Louise Dirrigl, U.S. Department of Education, 400 Maryland Avenue SW, Room 5156, Potomac Center Plaza, Washington, DC 20202–2600. Telephone: (202) 245–7324.

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

**SUPPLEMENTARY INFORMATION:** On February 27, 2018, the Secretary published a notice of proposed rulemaking (NPRM) in the **Federal Register** (83 FR 8396) proposing to postpone by two years the date for States to comply with the ''Equity in IDEA'' or ''significant disproportionality'' regulations, 81 FR 92376 (December 19, 2016) (2016 significant disproportionality regulations), from July 1, 2018, to July 1, 2020. The NPRM also proposed to postpone the date for including children ages three through five in the analysis of significant disproportionality, with respect to the identification of children as children with disabilities and as children with a particular impairment, from July 1, 2020, to July 1, 2022.

There are no differences between the NPRM and these final regulations.

*Public Comment:* In response to our invitation in the NPRM, 390 parties submitted comments on the proposed regulations.

*Analysis of Comments and Changes:* An analysis of the comments follows.

### Current State Practice and Impacts on Children With Disabilities

*Comments:* Many commenters opposed postponing the compliance date for the 2016 significant disproportionality regulations, stating in various ways that the status quo is unacceptable. A few of these commenters argued that States failed to identify significant disproportionality in the identification, placement, and discipline of children with disabilities, despite the fact that, in the commenters' view, they should. The commenters argue that, in their view, States' failure to identify or remedy significant disproportionality under IDEA has been a known civil rights problem for many years, that this failure has received sufficient study, and that the Department should not delay any further in addressing the issue.

Other commenters elaborated. Some stated that improperly identifying, placing, or disciplining children causes them harm by segregating them and depriving them of the services they need to receive a free appropriate public education (FAPE) in the least restrictive environment. Some stated that significant disproportionality arises from discrimination or, according to one commenter, improper or ineffective State policies. Other commenters stated that improper discipline can place children in the ''school-to-prison pipeline.'' Some of these commenters argued that the status quo had high, long-term social and economic costs to children with disabilities and to society. These commenters opposed postponing the compliance date so that the harm to children with disabilities may be addressed as quickly as possible.

Still others elaborated further, some sharing personal experiences and observations of the improper identification, placement, or discipline of children of color with disabilities and others providing lengthy, detailed, and scholarly discussions of significant disproportionality and of interventions proven to be successful in, for example, addressing disciplinary issues. These commenters too opposed postponing the compliance date so that the harm to children with disabilities may be addressed as quickly as possible.

*Discussion:* The Department does not agree with the commenters that the causes of, and remedies for, significant disproportionality based on race and ethnicity in the identification, placement, and discipline of children with disabilities in LEAs across the country have received sufficient study. The Department does agree with those commenters who asserted that the status quo requires further scrutiny and study to, among other things, review the conflicting research regarding significant disproportionality and the over or under identification of children in special education. The Department also believes that the racial disparities in the identification, placement, or discipline of children with disabilities are not necessarily evidence of, or primarily caused by, discrimination, as some research indicates. See, *e.g.,* Paul L. Morgan, et al, ''Are Minority Children Disproportionately Represented in Early Intervention and Early Childhood Special Education?'', 41 Educational Researcher 339 (2012) (that higher minority identification and placement rates reflect higher minority need, not racism); John Paul Wright, et al, ''Prior problem behavior accounts for the racial gap in suspensions,'' 42 Journal of Criminal Justice 257 (2014) (racial gap in suspensions is not due to racism).

The over-representation of one racial or ethnic group that rises to the level of significant disproportionality may occur for a variety of other reasons. These include systemic challenges that State educational agencies (SEAs) and local educational agencies (LEAs) face in meeting the capacity and training needs of teachers and staff in properly identifying, placing, or disciplining children with disabilities.

The reasons also include, as we stated in the 2016 significant disproportionality regulations, appropriate identification where there is higher prevalence of a disability in a particular racial or ethnic group, as well as correlatives of poverty and the presence of specialized schools, hospitals, or community services that may draw large numbers of children with disabilities and their families to an LEA. 81 FR 92380–92381, 92384.

Further, courts have repeatedly noted that overrepresentation is not necessarily due to discrimination. The Supreme Court has noted that the fact that a group's ''representation'' is not in ''proportion'' to its share of the ''local

population'' is not proof of discrimination. *See Richmond* v. *J.A. Croson Co.,* 488 U.S. 469, 507 (1989). Lower courts have similarly concluded that ''disparity does not, by itself, constitute discrimination,'' s*ee Belk* v. *Charlotte-Mecklenburg Board of Education,* 269 F.3d 305, 332 (4th Cir. 2001) (en banc), either in discipline, *see id.; see also People Who Care* v. *Rockford Board of Education,* 111 F.3d 538, 538 (7th Cir. 1997), or in special education, *see id.* at 538. In short, the presence of significant disproportionality is not necessarily an indication of underlying racial or ethnic discrimination.

As explained in the discussion of comments that follow, the Department is not certain that the standard methodology in the 2016 significant disproportionality regulations is the best method for States to identify significant disproportionality in LEAs across the country. Postponing the compliance date will give us the opportunity to thoughtfully and soundly evaluate the regulations and issues raised in this rulemaking to best ensure that all children with disabilities are appropriately identified, placed, and disciplined, and that all children get the services they need and receive FAPE in the least restrictive environment. To this end, the Department will explore how to best implement the statute in a legally viable manner that addresses over-identification, without incentivizing under-identification.

We disagree, in sum, with commenters who assumed or explicitly stated that the standard methodology in the 2016 significant disproportionality regulations is the appropriate mechanism to address problems in the status quo. The delay will also give States the opportunity to examine this issue through their own policies and procedures.

*Changes:* None.

*Comments:* A number of commenters asserted that delaying the compliance date and allowing the status quo to continue for (at least) two more years is, variously, morally wrong, the wrong message to send to children with disabilities and their families, inconsistent with the purpose of IDEA to reduce disproportionality, inconsistent with congressional intent, and a failure to champion the rights of children with disabilities.

*Discussion:* We disagree. Like the comments just discussed, these comments also assume, or state outright, that the standard methodology is the appropriate method for States to identify significant disproportionality. The Department is not certain that this is the case. It would be wrong and inconsistent with IDEA to require a system that potentially denies services based on a child's ethnic or racial status/group. We are concerned the 2016 significant disproportionality regulations could result in de facto quotas, which in turn could result in a denial of services based on a child's ethnic or racial status/group. The Secretary is concerned that the regulations will create an environment where children in need of special education and related services do not receive those services because of the color of their skin.

The risk ratio approach is not required by section 618(d) of the statute, which does not require any particular methodology. We would like to explore how best to implement the statute with additional flexibilities and/or protections. As explained in the discussion of comments that follows, postponing the compliance date will give us the opportunity to further evaluate the regulations and issues raised in this rulemaking.

*Changes:* None.

**Quotas**

*Comments:* Some commenters stated that the compliance date should be postponed and that the 2016 significant disproportionality regulations should, ultimately, be repealed. These commenters expressed concern that the standard methodology establishes, or will cause LEAs to establish, racial or ethnic quotas for the number of children who may be identified as children with disabilities or children with a particular disability, placed in a given placement, or disciplined.

One commenter argued that the risk of quotas justified a temporary postponement, even assuming the standard methodology makes sense in the long run. The commenter argued that due to disadvantages they face, disproportionate numbers of African-American children need special education and related services, but these disparities may sufficiently diminish in the future and African-Americans will no longer risk being denied access to special education and related services due to a quota.

Some commenters stated that LEAs would have an incentive to make decisions about identifying, placing, and disciplining children with disabilities to satisfy a quota, not on the basis of each child's individual needs, and thus contrary to IDEA's fundamental approach for providing each child with FAPE. Other commenters, similarly, found that the incentive for quotas are built into the risk ratio itself because States have to make determinations of significant disproportionality by limiting the number or percentage of children of a certain race or ethnicity identified, placed, or disciplined in a certain way.

A few other commenters argued that the text of 20 U.S.C. 1418(d)(2)(B) mandates a focus on disproportionate over-identification of a minority group versus the correct rate in determining the existence of disproportionality, rather than overrepresentation compared to the population, as the standard methodology does. They argued that its use of overrepresentation compared to the population as the benchmark for disproportionality creates serious constitutional problems that should be avoided. Others similarly argued that the focus should be on ''differential treatment'' of minorities, not higher identification rates that merely reflect appropriate identification.

A commenter stated that racial quotas and preferences, express or implied, are impermissible under the laws of a number of States that forbid racial preferences, even when they might be allowed under Federal law. Therefore, the commenter argued, the Department ought to postpone the compliance date in order to address the implications for using the standard methodology in those States.

Still a few others noted that establishing racial or ethnic quotas could expose States, LEAs, and their officials to legal liability.

Most commenters disagreed, stating that quotas are not the goal of the rule, which instead was to create a more equitable playing field for all children. Some of these commenters elaborated that the Department and States could mitigate the risk of quotas through close monitoring of States for compliance with IDEA. Another commenter noted that quotas would be more likely if the regulations mandated a specific risk ratio threshold, which they do not.

One commenter stated that the significant disproportionality provision has been part of the law for 15 years, yet there is no evidence of any misunderstanding of the statute or that there has been insufficient time for issues to arise and be resolved.

Two commenters argued that significant disproportionality is not the only provision in IDEA that could incentivize quotas and that delaying the compliance date will not reduce these other incentives for quotas.

One commenter suggested several alternatives to delaying the compliance date including, that the Department not regulate at all, require compliance with

the 2016 significant disproportionality regulations until the Department develops a new regulation to supersede it, and to provide more technical assistance. This commenter stated that adoption of one of these alternatives would allow the Department to evaluate whether quotas are being used and how to prevent their use.

Another commenter argued that even if the substance of the 2016 significant disproportionality regulations is sound, the regulations should be postponed because the definition of disproportionality amounted to a racial classification, which constitutionally cannot be imposed by an agency until after it makes specific evidentiary findings of ''widespread discrimination'' of the sort that did not accompany the 2016 significant disproportionality regulations.

*Discussion:* The Secretary believes that education should fail no child because of the color of his or her skin. No child should be misidentified as a child with (or without) a disability, placed in a more restrictive setting, or improperly disciplined because of the color of his or her skin or his or her ethnic background. These are precisely the risks that the Department believes the standard methodology may pose and, therefore, we believe it is necessary to evaluate further the issues raised in this rulemaking.

Court rulings make clear that a regulatory requirement can create an illegal incentive for de facto quotas or racial preferences even when that is not the intent of the regulation, and even when the regulation purports to prohibit quotas. For example, financial ''pressure'' or ''incentive to meet'' racial ''numerical goals'' can violate the Constitution, even when accompanied by a stated command not to discriminate. *Lutheran Church* v. *FCC,* 141 F.3d 344, 352 (DC Cir. 1998). Similar principles obtain with respect to discipline and placement in the education context. *See People Who Care* v. *Rockford Board of Education,* 111 F.3d 528, 538 (7th Cir. 1997).

The Department is concerned that the 2016 significant disproportionality regulations may create an incentive for LEAs to establish de facto quotas in identification, placement, and discipline—or otherwise create a chilling effect on such identification—to avoid being identified with significant disproportionality and having to reserve 15 percent of their IDEA Part B subgrant to provide comprehensive coordinated early intervening services (CEIS). If, as one commenter asserts, there are other provisions in IDEA that incentivize quotas, those are not the subject of this rulemaking exercise.

The Department attempted to address the concern about quotas in the 2016 significant disproportionality regulations by noting that quotas were prohibited and including specific language in the 2016 significant disproportionality regulations to note that nothing in the rule abrogated the right to FAPE in the least restrictive environment. The discussion in the 2016 significant disproportionality regulation disclaiming an intent to establish quotas is insufficient protection against LEAs creating de facto quotas because, regardless of the disclaimer, the regulations themselves may, in fact, incentivize quotas. In light of this and commenters' ongoing concerns about this issue, further evaluation is needed.

We agree with commenters that the 2016 significant disproportionality regulations may create an incentive for LEAs to establish de facto quotas for the identification, placement, and discipline of children with disabilities and to artificially reduce the number of children identified, placed outside of the regular classroom, and disciplined to avoid being identified with significant disproportionality and being required to reserve 15 percent of their IDEA Part B subgrant to provide comprehensive CEIS. We are delaying the compliance date to evaluate our regulatory approach to ensure that it implements the statute in a manner that does not incentivize quotas.

Put somewhat differently, if to stay under a State-mandated risk ratio threshold, LEAs are not properly identifying, placing, or disciplining children, then LEAs are not providing special education and related services based on the needs of each individual child as IDEA requires. Instead, the individualized education program, developed and revised in accordance with IDEA requirements, as necessary, to meet the unique and specific needs of each child, is the mechanism to ensure each child receives FAPE. However, creating an environment where LEAs and schools may engage in practices designed to artificially avoid exceeding the State-established risk ratio threshold for identification, placement, and discipline over meeting each individual child's needs, could undermine IDEA's focus on the individual needs of each child and, in turn, individualized decision-making. We believe the issue of incentivizing quotas, and potentially undermining the focus on individualized educational determinations, is an important issue to examine further before requiring compliance with the 2016 significant disproportionality regulations.

Some commenters noted that compliance with numerical thresholds can have unintended consequences and have, in some instances, resulted in the denial of FAPE to children with disabilities. For example, as some commenters also noted, in the State of Texas, the SEA's Performance-Based Monitoring and Analysis system measured the percentage of children identified as children with disabilities and receiving special education and related services under IDEA against a standard identification rate of 8.5 percent. Although exceeding 8.5 percent was not prohibited, because LEAs were measured against a numerical standard that would determine the level of monitoring the LEA would receive, LEAs around the State reduced the number of children they identified as children with disabilities under IDEA to no more than 8.5 percent of their student populations, thereby potentially depriving many children of the special education and related services to which they were entitled under IDEA.

Here, under the standard methodology, exceeding the risk ratio threshold may result in an LEA being identified with significant disproportionality, which would result in the LEA being required under IDEA section 618(d)(2) to reserve 15 percent of its IDEA Part B (section 611 and section 619) funds for comprehensive CEIS. We want to evaluate whether the numerical thresholds in the 2016 significant disproportionality regulations may incentivize quotas or lead LEAs to artificially reduce the number of children identified as children with disabilities under the IDEA. While Texas has eliminated the 8.5 percent indicator, it is a clear example of what can happen when schools are required to meet numerical thresholds in conjunction with serving children with disabilities.

Even if the regulations would not lead to any rigid racial quotas, postponement would still be appropriate. Risk ratios are determined by comparing the risk of a particular outcome for children in one racial or ethnic group to the risk of that outcome for children in all other racial and ethnic groups. This renders risk ratios racial classifications subject to constitutional scrutiny. *See, e.g., Walker* v. *City of Mesquite,* 169 F.3d 973 (5th Cir. 1999).

The Federal government cannot impose or incentivize such racial classifications until *after* it makes findings of widespread discrimination necessitating their use. *See Shaw* v. *Hunt,* 517 U.S. 899, 908 n.4 (1996);

*Middleton* v. *City of Flint,* 92 F.3d 396, 405 (6th Cir. 1996). The Department did not make any such findings in the **Federal Register** notice accompanying its 2016 significant disproportionality regulations. *See* 81 FR at 92381, 92384. So even if one assumes that the text and substance of the regulations are sound, and States should ultimately be required to comply with them, the procedural predicate for requiring such compliance is not yet present, because their basis was not adequately articulated.

We disagree with one commenter's assertion that the nearly 15 years of implementation of the most recent amendments to the IDEA makes it less likely that the 2016 significant disproportionality regulations could result in the use of quotas. Prior to the 2016 significant disproportionality regulations, as many other commenters note, while many States used versions of the risk ratio, States had varying methodologies for identifying significant disproportionality, and the majority of States would be implementing methodologies consistent with the 2016 significant disproportionality regulations for the first time.

Regarding the commenters' suggested alternatives—including close monitoring of States for compliance with IDEA, mandating a specific risk ratio threshold, and establishing an appropriate identification rate—some are not feasible. In adopting the 2016 significant disproportionality regulations, we considered specifying risk ratio thresholds and identification rates but could not arrive at a non-arbitrary way to do so. That has not changed.[1] As to monitoring, we are not certain that compliance-driven monitoring will, by itself, effectively address the factors contributing to significant disproportionality or enable the Department to best support States to improve their systems. Because monitoring may not be able to resolve applicable issues, we will evaluate the question during the delay as part of our review of the 2016 significant disproportionality regulations. However, as a matter of general practice and in keeping with the Department's commitment to continuous improvement, we are looking at all of our processes, including monitoring, to ensure they are effectively leveraged to support States in efforts to ensure that all children with disabilities receive appropriate special education and related services.

The Secretary is reluctant to implement a methodology that may result in encouraging quotas or significantly reducing the number of children with disabilities identified, placed, and disciplined, and cause more of the very same effects upon children in States around the country.

Instead, the Department will delay the compliance date for two years while we evaluate what the comments make clear is a complex question.

*Changes:* None.

**Fairness to States—Work Already Done**

*Comment:* A number of commenters argued that the Department should not postpone the compliance date as a matter of fairness. For States already close to full implementation of the regulations—and a few commenters stated this was many, if not all, States—a postponement so close to the original compliance date would disregard their compliance efforts to date, disregard the costs of these efforts to date, reward States that have not been so diligent, and potentially cause confusion. Some of these commenters, therefore, suggested that if the Department were to postpone the compliance date, States that choose to do so should be permitted to implement the 2016 significant disproportionality regulations for school year (SY) 2018–19, as originally planned.

Other commenters disagreed, noting that some States need additional time to implement or study the standard methodology and comprehensive CEIS. Still others noted that the Department should provide TA to States that need it and that some States are already reducing significant disproportionality by implementing multi-tiered systems of support, though neither of these are particularly affected by delaying the compliance date.

*Discussion:* We recognize the time, effort, and resources States have already committed to implementing the regulations. Delaying the compliance date does not disregard this important work. The NPRM proposing the delay did not propose to preclude States from continuing their efforts and using the standard methodology, or any other methodology for that matter, during the two-year delay. States may implement the standard methodology or may use any methodology of their choosing to collect and examine data to identify significant disproportionality in their LEAs until the Department evaluates the regulations and issues raised in this rulemaking. Note, some States have communicated to the Department that they need additional time to properly implement the 2016 significant disproportionality regulations, and this delay will provide that time to those States as well as allow the Department to evaluate these important issues further.

The delay of the compliance date does not, of course, affect a State's annual obligation under IDEA section 618(d)(1) to collect and examine data to determine whether significant disproportionality based on race or ethnicity is occurring in the State and LEAs of the State with respect to the identification, placement and discipline of children with disabilities. In addition, the State must ensure that if an LEA is identified with significant disproportionality, it implements the remedies in IDEA section 618(d)(2), which includes review and, if appropriate, revision of policies, procedures, and practices; publicly reporting on any revisions; and reserving 15 percent of IDEA Part B funds to provide comprehensive CEIS.

But to determine whether significant disproportionality exists in its LEAs in SY 2018–2019 and SY 2019–2020, during the period of this delay, a State may use the methodology it had in place before the Department published the 2016 significant disproportionality regulations, or any other methodology for collecting and examining data to identify significant disproportionality that the State deems appropriate. The Department will work with States to provide technical assistance where it is needed.

*Changes:* None.

**Limitations in the Standard Methodology**

*Comment:* A number of commenters argued that the Department should delay implementation of the 2016 significant disproportionality regulations because of limitations in the standard methodology itself: Given the number of categories of analysis, there is likely to be some kind of significant disproportionality in LEAs with large populations; risk ratios and alternate risk ratios are less meaningful measures in LEAs with small or homogenous populations; and there are often data quality and data availability issues.

By contrast, a number of other commenters argued that the Department should not delay implementation of the regulations because the standard methodology works well—providing States with flexibility to address their individual student populations—or well enough that any limitations in the

[1] We would like to explore how best to implement the statute with additional flexibilities and/or protections. Even if, upon additional review, the Department were to determine that a risk ratio methodology is permissible, it could only be implemented after making a finding to that effect and if rigorous legal safeguards and protections are guaranteed.

methodology may be addressed through implementation.

*Discussion:* We recognize the merits of both positions. Given our concern about quotas reducing the number of children identified with disabilities and depriving them of needed special education and related services, we believe it is more prudent to delay the compliance date and address that concern through a review of the standard methodology before States are required to implement the regulations rather than during implementation.

As to the other possible shortcomings the commenters pointed out, these are issues we fully anticipate will be addressed during our review of the standard methodology.

*Changes:* None.

**Limitations Not Directly Related to the Standard Methodology**

*Comment:* A number of commenters argued that the Department should delay the compliance date of the 2016 significant disproportionality regulations for reasons mostly unrelated to the standard methodology: That the causes of significant disproportionality, such as a lack of access to adequate healthcare and other correlatives of poverty, are larger societal issues outside of the control of schools and that research is unclear whether the problem of significant disproportionality is over-identification or under-identification of children with disabilities. Some of these commenters argued that Congress is better suited to address all these issues, while others argued that the schools should be given the opportunity afforded by postponing the compliance date to attempt to address the causes of significant disproportionality.

A few commenters drew the opposite conclusion from similar observations. They asserted that the standard methodology should be left to go into effect in July 2018 and schools and governments can work together to address the broad issues surrounding the issue of, and the root causes of, significant disproportionality. One commenter advocated that disproportionality should be measured as both over-identification and under-identification in each category of identification for special education and related services.

Still other commenters supported a delay and suggested repeal of the 2016 significant disproportionality regulations for financial reasons: LEAs identified with significant disproportionality must reserve 15 percent of their IDEA Part B funds to implement comprehensive CEIS, which could shift funding from children with disabilities and increase State maintenance of fiscal support requirements. One commenter noted that significant disproportionality should be addressed using a different source of funding than IDEA. Another noted that the reservation of funds could negatively affect LEAs that themselves do not have significant disproportionality but are located within, or are members of, Educational Service Agencies that are identified with significant disproportionality. One commenter noted that the reservation of 15 percent of funding was excessive in an instance where a change to policies, procedures, and practices would result in eliminating significant disproportionality within their LEA, and another suggested the Department allow States additional exemptions to limit LEAs from being required to reserve 15 percent of their funding if the LEAs met certain criteria.

*Discussion:* Though issues concerning comprehensive CEIS arise from statutory requirements and not the 2016 significant disproportionality regulations, these other observations further demonstrate the complexity of the issues presented by the 2016 significant disproportionality regulations. We anticipate these will be included in our broader evaluation of the regulations going forward. Changes beyond a delay in the compliance date may require a statutory or regulatory change. Commenters made these and similar arguments and observations in response to the March 2, 2016, NPRM that proposed the significant disproportionality regulations (81 FR 10968).

As we stated in the preamble to the 2016 significant disproportionality regulations: Racial and ethnic disparities in the identification, placement, and discipline of children with disabilities can have a wide range of causes, including systemic issues well beyond the typical purview of most LEAs (81 FR 92383–92384, causes of racial and ethnic disparity that originate outside of school); the Department has an obligation to implement and enforce the requirements of IDEA as they exist today, and we will work with Congress on any potential changes to IDEA, including to section 618(d) (81 FR 92380, the Department should await congressional action); we understand that overrepresentation of one racial or ethnic group that rises to the level of significant disproportionality may occur for a variety of reasons, including over-identification of that racial or ethnic group, under-identification of another racial or ethnic group or groups, or appropriate identification with higher prevalence of a disability in a particular racial or ethnic group (81 FR 92380–92381, under-identification versus over-identification); it is quite possible for children with disabilities from a particular racial or ethnic subgroup to be identified, disciplined, or placed in restrictive settings at rates markedly higher than their peers in other LEAs within the State (81 FR 92399–92405, exemptions to LEAs, racially homogenous LEAs and those with small populations); the Department reads the term ''placement'' in the introductory paragraph of section 618(d)(2) to include disciplinary actions that are also removals of the child from his or her current placement for varying lengths of time, including removals that may constitute a change in placement under certain circumstances (81 FR 92442–92443, authority to use discipline as a category of analysis); regardless of IDEA funding levels, States must comply with all IDEA requirements, including the requirements related to significant disproportionality (81 FR 92446–92448, funding IDEA and comprehensive CEIS); an LEA identified with significant disproportionality will not be able to take advantage of the LEA MOE adjustment that would otherwise be available under § 300.205 because of the way that the MOE adjustment provision and the authority to use Part B funds for CEIS are interconnected (81 FR 92451–92452, implications of comprehensive CEIS for LEA maintenance of effort). These observations further demonstrate the complexity of the issues presented by the 2016 significant disproportionality regulations. We will address these issues as appropriate in our evaluation.

*Changes:* None.

**Limiting Comments**

*Comment:* Pointing to the statement in the NPRM that ''[we] will not consider comments on the text or substance of the final regulations'' (83 FR 8396), a small number of commenters stated that the Department has improperly limited the comments it will consider and that it is not seeking comments with an open mind. As evidence, one commenter cited a statement by a Department spokesperson that ''ED is looking closely at this rule and has determined that, while this review takes place, it is prudent to delay implementation by two years.''

*Discussion:* In inviting comment on the NPRM, we stated:

> We invite you to submit comments on this notice of proposed rulemaking. We will

consider comments on proposed compliance dates only and will not consider comments on the text or substance of the final regulations. (83 FR 8396.)

We did not improperly limit comments. Rather, we asked the public to speak to the question of whether the Department should postpone the compliance date of the 2016 significant disproportionality regulations, rather than to discuss, without reference to the delay, what the text or substance of any new regulations should be.

Indeed, commenters appear to have understood this and commented on the proposed delay and the substance of the 2016 significant disproportionality regulations in connection with the delay.

The Department received approximately 25 percent more comments on the NPRM proposing postponement of the compliance date (390 parties) than it did in response to its invitation to comment on the significant disproportionality regulations in 2016 (316 parties). We received comments not only on the proposed delay of the compliance date but also on the substance of the 2016 significant disproportionality regulations themselves, the adequacy (or inadequacy) of our rulemaking process under the Administrative Procedure Act (APA), the regulatory impact analysis, the cost benefit analysis, and the statement of alternatives considered. Commenters recognized that the NPRM invited comments on the merits of the 2016 significant disproportionality regulations, with several going so far as to criticize the Department for inviting comments on issues that had already been covered in 2016.

The full statement made by a Department spokesperson indicates no more than the proposal reflected in the NPRM itself that a delay of two years would be prudent and does not connote a lack of reasonable consideration of the public's perspectives:

> Through the regulatory review process, we've heard from states, school districts, superintendents and other stakeholders on a wide range of issues, including the significant disproportionality rule. Because of the concerns raised, the department is looking closely at this rule and has determined that while this review takes place, it is prudent to delay implementation for two years.

Consistent with the APA, the Department properly sought public comment on the proposal to delay the compliance date for the 2016 significant disproportionality regulations. We reviewed and considered those comments and, in this document, we are responding in detail to all of the comments we received.

*Changes:* None.

*Comments:* A few commenters expressed concern that one of the commenters cited in the NPRM who submitted comments in response to the Department's 2017 regulatory reform notice that were critical of the 2016 significant disproportionality regulations is now employed by the Department.

One of these commenters was concerned that the Department did not timely respond to a Freedom of Information Act (FOIA) request seeking the public comments on significant disproportionality that the Department relied upon in the NPRM. This commenter, therefore, suggested that the Department should seek a second round of comments after clarifying that it will consider comments on the text and substance of the 2016 significant disproportionality regulations.

*Discussion:* There is no prohibition against any individual submitting comments on a Department rulemaking and then subsequently accepting employment at the Department. In addition, other commenters expressed similar concerns regarding the regulations and the Department took all of these into account in its analysis. With respect to the FOIA request, the comments that informed the NPRM are a matter of public record, as are all of the comments we received in response to the Department-wide regulatory review. Given the availability of those comments, we do not agree with the commenter that the nature of the Department's response to a FOIA request requires that we establish a second comment period.

*Changes:* None.

**Justification Under APA**

*Comment:* Many commenters asserted that the Department did not adequately justify delaying the compliance date because there has been no change in circumstances since the publication of the 2016 significant disproportionality regulations. These commenters point out that the Department's only stated justifications for the delay are topics that were already subject to notice and comment and addressed in the 2016 significant disproportionality regulations. These topics included discussions of the Department's statutory authority, the examination of group outcomes through statistical measures rather than the individual needs of each child, incentives for racial quotas, lack of clear guidance on ''reasonableness,'' and alignment with State Performance Plan indicators.

*Discussion:* The Department agrees that it discussed these topics in the 2016 significant disproportionality regulations but disagrees that this precludes the Department from re-evaluating the 2016 significant disproportionality regulations and the reasoning and evidence supporting them. The APA does not bind an agency to its earlier policy determinations, even in the absence of changed facts and circumstances, provided that the agency discloses what it is doing and why, which we have done here.

Even though the Department addressed the issue of quotas in the 2016 significant disproportionality regulations, the Department is concerned that it did not give sufficient weight to incentives for, and consequences of, express or implied racial quotas. The Department's response was, essentially, to prohibit the use or implementation of quotas, while maintaining a regulatory framework that nonetheless requires establishing numerical thresholds. As indicated, such a system may result in de facto quotas that have significant effects on the proper identification, placement, and discipline of children with disabilities. As some commenters noted, in response to a numerical threshold point in the State's Performance-Based Monitoring and Analysis System, many LEAs in Texas reduced the number of children identified as children with a disability under the IDEA. We believe the issue of incentives for, and consequences of, express or implied racial quotas warrants further examination prior to requiring compliance with the standard methodology. The Department believes it is important to postpone the compliance date of the 2016 significant disproportionality regulations now so that it may weigh the risk of denying FAPE to many children with a disability due to the potential use of quotas against the benefits of implementing the standard methodology.

*Changes:* None.

*Comment:* One commenter argued that a two-year delay will not add any additional insights into the proposed methods for reducing disproportionality beyond what has been found by previous Federal task forces, researchers, government agencies, and other experts.

*Discussion:* The Department disagrees. Even since publication of the 2016 significant disproportionality regulations, there has been further research that demonstrates the complexity of the issues presented by the 2016 significant disproportionality regulations. See, Paul Morgan, *et al.,*

''Are Black Children Disproportionately Overrepresented in Special Education? A Best-Evidence Synthesis'' 83 Exceptional Children (2017) and research cited therein. The Department will use the time provided by postponing the compliance date to examine the issues raised in this rulemaking.

*Changes:* None.

*Comment:* A few commenters suggested that Executive Order 13777 was not a proper basis for delaying the compliance date. The order, these commenters argued, was designed to reduce regulatory burden, but the NPRM does not mention burden as a justification for delaying the compliance date. One commenter argued the Department proposed a delay of these regulations to meet a quota imposed by Executive Order 13777 to satisfy the regulatory reform agenda.

*Discussion:* The Department disagrees. The commenters have described the scope of Executive Order 13777 too narrowly. Under that order, the Department created a regulatory reform task force that reviewed and solicited public comment on all of the Department's regulations and sought to identify regulations that: (i) Eliminate jobs, or inhibit job creation; (ii) are outdated, unnecessary, or ineffective; (iii) impose costs that exceed benefits; (iv) create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies; (v) are inconsistent with the requirements of section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note), or the guidance issued pursuant to that provision, in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility; or (vi) derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

As we have explained, the Secretary is concerned that the 2016 significant disproportionality regulations, potentially creates an express or implied incentive for LEAs to set quotas, may ultimately, and improperly, reduce the number of children identified as children with disabilities, properly placed, or disciplined. Therefore, in connection with our regulatory review under Executive Order 13777, we proposed and are now adopting a delay of the compliance date for the 2016 significant disproportionality regulations. The delay effected by this rule is justified on the basis of the policy rationales advanced, irrespective of Executive Order 13777.

*Changes:* None.

*Comment:* Two commenters argued that the Department did not provide a reasoned basis for delaying the compliance date of the regulations and that the NPRM did not provide the public the transparency required by the APA.

*Discussion:* The Department disagrees. We have stated the reasons for proposing and delaying the compliance date in the NPRM and at length here. The Department has complied with the APA and provided the public ample opportunity to meaningfully comment on the proposal to delay the compliance dates to July 1, 2020, and July 1, 2022, respectively.

*Changes:* None.

**Availability of Judicial Remedies**

*Comment:* One commenter argued the timing of the NPRM's publication recklessly or intentionally is so late that it prevents affected parties from having enough time to seek and obtain judicial review prior to the rule's effective date.

*Discussion:* The Department disagrees. The timing of the NPRM was not an attempt to prevent parties from obtaining judicial review. The development of proposed rules is an involved process that takes time to complete. IDEA requires the Department to provide the public with a 75-day comment period when regulating under Part B or Part C. (IDEA section 607(c); 20 U.S.C. 1406(c).) The Department has been working diligently to propose this delay; review, consider and respond to public comment; and publish a final rule. Nothing the Department has done prevents an aggrieved party from seeking judicial review after this document is published.

The Department notes that, in any event, States may, and many States have commented that they intend to, implement the standard methodology in the 2016 significant disproportionality regulations even if the Department delays these regulations. States that choose not to implement the standard methodology may use any methodology of their choosing to collect and examine data to identify significant disproportionality in their LEAs until the Department evaluates the regulations and issues raised in this rulemaking, to best ensure that all children with disabilities are appropriately identified, placed, and disciplined, and that all children get the services they need and receive FAPE in the least restrictive environment.

*Changes:* None.

**Comprehensive CEIS**

*Comment:* Several commenters, both supportive of and opposed to postponing the compliance date, argued that the Department should maintain the expanded authorized use of funds for comprehensive CEIS under § 300.646(d)(2), whether or not it postpones the compliance date. Specifically, the commenters argued that States in either case should still be permitted to allow LEAs to use funds reserved for comprehensive CEIS to serve children from age three through grade 12, with and without disabilities. This, the commenters argued, is a reasonable reading of the statute and a reasonable remedy for significant disproportionality.

Some commenters argued that the Department did not have authority under IDEA to expand the authorized use of funds for comprehensive CEIS and that the Department should rescind this provision of the regulation. Others disagreed, stating that the Department has the authority to expand the use of funds for children three to five years old and children with disabilities and that the children most affected by significant disproportionality should have access to services provided through comprehensive CEIS.

*Discussion:* The Department understands all of the commenters' concerns surrounding comprehensive CEIS, but the NPRM proposing the delay in the compliance date proposed no changes to the regulations governing comprehensive CEIS. The delay will give the Department the opportunity to review these issues in detail. Until the Department acts to change the regulations, however, LEAs may choose, consistent with the 2016 significant disproportionality regulations, to use IDEA Part B funds reserved for comprehensive CEIS to serve children ages three through grade 12, with and without disabilities, upon a determination of significant disproportionality, whether or not a State implements the standard methodology in the 2016 significant disproportionality regulations.

*Changes:* None.

**Remedies for Significant Disproportionality in Discipline**

*Comment:* Some commenters argued the Department did not have the authority under IDEA to include discipline as a type of disproportionality triggering action under 20 U.S.C. 1418(d)(2). Other commenters disagreed and noted that disciplinary actions can be considered a change in placement, and therefore, it is

appropriate to include discipline in the standard methodology.

*Discussion:* We appreciate the comments. When Congress added discipline to IDEA section 618(d)(1) (20 U.S.C. 1418(d)(1)), it made no corresponding change to IDEA section 618(d)(2) (20 U.S.C. 1418(d)(2)), which created an ambiguity because IDEA section 618(d)(2) does not explicitly state that the remedies in IDEA section 618(d)(2) apply to removals from placement that are the result of disciplinary actions.

The NPRM proposing the delay in the compliance date proposed no changes to the treatment of discipline under the 2016 significant disproportionality regulations. Until the Department evaluates the regulations and issues raised in this rulemaking, discipline remains a category of analysis for determining significant disproportionality, and the reservation of funds for comprehensive CEIS and the other statutory remedies apply upon a State's finding of significant disproportionality. The delay will give the Department the opportunity to review these issues in detail.

*Changes:* None.

**Children Ages Three Through Five**

*Comment:* A few commenters, while opposed to delaying the compliance date for school-aged children, did support delaying the compliance date for including data for children ages three through five years old due to issues with data quality and availability for this age range.

Other commenters argued the Department did not provide any justification for delaying the compliance date to include data for children ages three through five, and one commenter argued that this delay would affect the collection of discipline data for this age range.

*Discussion:* We disagree that we did not provide a justification for a delay in the compliance date for children ages three through five in the analysis of significant disproportionality, with respect to the identification of children as children with disabilities and as children with a particular impairment. We cited concerns about the potential effects of implementing the standard methodology for all age ranges, and we further agree with the commenters who cited concerns about data quality and missing data. We disagree with the commenter who argued the delay would affect existing discipline data collections; the delay does not affect any existing data collections. We therefore postpone the date for States to include children ages three through five years in their significant disproportionality analysis with respect to the identification of children as children with disabilities and as children with a particular impairment until July 1, 2022.

*Changes:* None.

**Non-Compliance**

*Comment:* One commenter argued the proposed rule seeks to delay compliance without explaining how the Department intends to ensure States and LEAs comply with IDEA in the meantime, and that the delay means that the Department has decided to ignore widespread noncompliance, an assertion made by a number of other commenters.

*Discussion:* We disagree. As we explained earlier, the delay of the compliance date does not change the State's annual obligation under IDEA section 618(d)(1) to collect and examine data to determine whether significant disproportionality is occurring in the State and LEAs of the State with respect to the identification, placement, and discipline of children with disabilities. In addition, the State must ensure that if an LEA is identified with significant disproportionality, it implements the remedies in IDEA section 618(d)(2). Notwithstanding the delay, States must continue to make these annual determinations. To do so, they may use the methodology they had in place before the Department adopted the 2016 significant disproportionality regulations, the standard methodology in the 2016 significant disproportionality regulations, or any other methodology for collecting and examining data that the State, in its discretion, deems appropriate. As part of the IDEA Part B LEA Maintenance of Effort (MOE) Reduction and CEIS data collection, States will continue to report to the Department and the public whether each LEA was identified with significant disproportionality and the category or categories of analysis under which the LEA was identified. The Department will continue its monitoring activities under IDEA. As such, the Department is not ignoring widespread non-compliance with IDEA, but instead attempting to ensure compliance with IDEA's requirements.

*Changes:* None.

**Data**

*Comment:* One commenter argued that delaying the compliance date will deny the public the opportunity to receive information to which they are entitled under IDEA regarding the identity of LEAs found by States to have significantly disproportionality and how each LEA addressed significant disproportionality. Another commenter argued OSERS is responsible for gathering IDEA section 618(d) data on local special education disparities from State to State. The commenter further argued that OSEP should provide an LEA-level restricted-use data set for researchers only instead of only national and State level data. A number of commenters argued that delaying the compliance date deprives the public of the most-up-to-date information on significant disproportionality.

*Discussion:* We disagree. The Department is not required under IDEA section 618 to collect data that States use to identify LEAs with significant disproportionality, such as risk ratios calculated as part of a review for significant disproportionality. In fact, collection of that data would be a significant and expensive undertaking, both for the States and the Department. While States report as part of the IDEA Part B LEA Maintenance of Effort (MOE) Reduction and CEIS data collection, whether each LEA was identified with significant disproportionality and the category or categories of analysis under which the LEA was identified, the Department is not required to provide the identity of LEAs identified with significant disproportionality.

*Changes:* None.

**Cost-Benefit Analysis**

*Comment:* One commenter stated that the Department did not include the correct number of States in the Analysis of Costs and Benefits. The commenter noted the Department calculated the cost for 55 States and believed this was an error. Other commenters noted the Department underestimated the number of States that will be ready to implement the regulations on July 1, 2018.

Several commenters noted that State and local agencies have already expended resources to prepare to comply with the regulations on July 1, 2018, and that these sunk costs should be included in the analysis of costs, benefits, and transfers. Those commenters also argued that the Department needs to account for the costs associated with the resources States will have to expend to help LEAs and parents understand the delay and the subsequent confusion caused by the delay.

*Discussion:* Under IDEA section 602(31), the term ''State'' means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas. Therefore, the Department calculated the costs associated with this regulation for the 50 States, the District of Columbia, Puerto Rico, Guam, American Samoa,

and the Virgin Islands, or 55 ''States'' as defined under IDEA. We address the balance of comments on the cost-benefit analysis in the *Discussion of Costs, Benefits, and Transfers* in the cost-benefit section of this document.

*Changes:* None.

**Alternatives Considered and Significance Under E.O. 12866**

*Comments:* One commenter argued the regulatory impact analysis in the NPRM was insufficient because the Department did not include alternatives such as not regulating; providing more technical assistance and guidance to States to avoid negative outcomes; evaluating the impact of the standard methodology; or publicizing compliance reviews under Title VI of the Civil Rights Act. Another commenter acknowledged the Department considered alternatives even though they disagreed with delaying the compliance date of the regulation. The same commenter argued the regulation was not a significant regulatory action.

*Discussion:* We recognize that commenters had concern about the breadth of regulatory alternatives discussed in the NPRM and therefore have addressed additional alternatives in the regulatory impact analysis of this final rule. As for the significance of the regulations, we disagree that postponing the compliance date is not significant under the Executive Order 12866. We determined that it is significant because it raises novel legal or policy issues arising out of legal mandates. While the Department initially made that determination, it did so subject to the approval of the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB). We note as well that the proposal and adoption of the 2016 significant disproportionality regulations were also significant regulatory actions.

*Changes:* None.

**Executive Orders 12866, 13563, and 13771**

*Regulatory Impact Analysis*

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This regulatory action is a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor their regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things, and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and

(5) Identify and assess available alternatives to direct regulation, including providing economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these final regulations only upon a reasoned determination that their benefits justify their costs. Complying with the standard methodology imposes costs on regulated entities and, absent a clear understanding of the unintended consequences of the standard methodology, we believe it is appropriate to delay implementation of the 2016 significant disproportionality regulations. We believe that further review of the regulations is necessary to ensure that net benefits are maximized in the long-term and, as noted elsewhere in this notice, we believe that two years provides sufficient time for such review. Based on the analysis that follows, the Department believes that these regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In this Regulatory Impact Analysis we discuss the need for regulatory action, alternatives considered, the potential costs and benefits, net budget impacts, assumptions, limitations, and data sources.

*Need for These Regulations*

As explained in the preamble, this regulatory action will delay the compliance date of the 2016 significant disproportionality regulations. We are concerned that those regulations may not meet their fundamental purpose, namely to ensure the proper identification of LEAs with significant disproportionality among children with disabilities. This delay will give the Department, the States, and the public additional time to evaluate the questions involved and determine how best to serve children with disabilities without increasing the risk that children with disabilities are denied FAPE.

*Alternatives Considered*

Without the delay of the July 1, 2018, compliance date, States and LEAs would be required to implement the 2016 significant disproportionality regulations. In addition to the alternatives discussed in the NPRM, the Department reviewed and considered various alternatives to the proposed rule submitted by commenters in response to the NPRM.

The Department considered comments requesting that the Department withdraw the NPRM and

require States to comply with the standard methodology and modified remedies on July 1, 2018. We are declining this suggestion because, as stated throughout this document, we are concerned, among other reasons, about the potential unintended consequences of implementing the 2016 significant disproportionality regulations and the potential denial of FAPE to children with disabilities.

Other commenters noted the Department could take several steps to prevent unintended consequences without delaying the compliance date. For example, one commenter suggested the Department study whether quotas are being used and prevent their use. Other commenters suggested the Department could simply increase monitoring and enforcement of States and LEAs to prevent racial quotas or other unintended consequences. Another commenter suggested evaluating the impact of the standard methodology. Another commenter suggested the Department could provide additional technical assistance to prevent concerning outcomes. The same commenter suggested the Department initiate and publicize compliance reviews under Title VI of the Civil Rights Act to ensure States and LEAs do not adopt numerical quotas based on race. Knowing if these measures would be effective requires careful review, which we will do during this delay.

As stated in the NPRM, the Department considered delaying the compliance date for one, two, and three years. Several commenters argued the justification provided for the number of years considered was insufficient. The Department welcomes the opportunity to clarify its justification. We believe that a one-year delay would not provide the Department sufficient time to examine the potential unintended consequences of the standard methodology; especially since it will take time for States to implement and the Department to review the impact of States that decide to implement the standard methodology. The Department believes that a three-year delay would postpone compliance for longer than necessary to complete the additional evaluation we plan to undertake. Therefore, the Department determined a two-year delay would provide sufficient time to review all the complex issues raised and discussed throughout this document, including looking more closely at the alternatives the commenters offered above, and determine how better to serve children with disabilities.

*Discussion of Costs, Benefits and Transfers*

The Department has analyzed the costs and benefits of this final rule. Due to uncertainty about the number of States that will exercise the flexibility to delay implementation of the standard methodology, the number of LEAs that would be identified with significant disproportionality in any year, and the probable effects of any delay in implementation on services for children with disabilities, we cannot evaluate the costs and benefits of this regulation with absolute precision. In the NPRM, the Department estimated that these regulations would result in a cost savings of $10.9 to $11.5 million over ten years.

However, a number of commenters raised concerns about our analysis, particularly noting the lack of a discussion of costs associated with these regulations and our estimation of the number of States that would exercise the flexibility to delay implementation under this regulation. The Department has reviewed these comments and has revised some assumptions in response to the information we received.

We discuss specific public comments, where relevant, in the appropriate sections below. As a result of the changes discussed below, the Department now estimates this delay will result in a net cost savings of between $7.4 and $7.8 million over a ten-year period, with a reduction in associated transfers of between $41.5 and $43.8 million.[2]

*Costs*

A number of commenters noted that our regulatory impact analysis in the NPRM did not include a discussion of costs, generally, while others specifically raised concerns regarding the likely effects of delayed implementation on the appropriate identification, placement, and discipline of children with disabilities, specifically arguing that a delay would likely result in improper identification, more restrictive placements, and more exclusionary discipline practices, all leading to higher school failures, drop outs, juvenile justice referrals or involvement, and lower quality long-term outcomes.

One commenter noted that, in the 2016 significant disproportionality regulations, the Department estimated that the benefits of the rule outweighed the estimated costs of $50.1 to $60.5 million. Therefore, the commenter argued, the costs of delay (a deferral of the benefits identified in the 2016 significant disproportionality regulations) must outweigh the benefits (reduced costs).

In response to those commenters, we provide the following additional analysis. We believe that many of the commenters misunderstood the potential effects of this delay. In a number of cases, it was apparent that commenters believed a delay in the compliance date would exempt States from making annual determinations regarding significant disproportionality and requiring LEAs identified with significant disproportionality from reserving 15 percent of their IDEA Part B funds for comprehensive CEIS. That is incorrect.

With this delay, States are still required to comply with the statutory requirements of IDEA, including an annual review for significant disproportionality. The delay in the compliance date only delays the date by which States would be required to implement the standard methodology. Further, States are still required to ensure that all children with disabilities are appropriately identified and receive a free appropriate public education in the least restrictive environment. To that end, we do not believe it is reasonable to assume that the full scope of ''costs'' identified by commenters will result from this regulatory action.

Indeed, in the 2016 significant disproportionality regulations, the Department identified five sources of benefits from the significant disproportionality regulations: (1) Greater transparency; (2) increased role for the State Advisory Panels; (3) reduction in the use of inappropriate policies, practices, and procedures; (4) increased comparability of data across States; and (5) expansion of activities allowable under comprehensive CEIS. As many commenters noted, several of these benefits have already started to accrue.

States have worked diligently since the publication of the 2016 significant disproportionality regulations to meet the original July 1, 2018, compliance date. As part of those efforts, they have involved a wide range of stakeholders, including their State Advisory Panels, to explore the issue of significant disproportionality and their current practices. Those efforts have greatly increased the transparency around State determinations and dramatically expanded the involvement of a diverse range of stakeholders, including State Advisory Panels and groups that had not historically been involved in special education issues.

[2] The Department has included a copy of all calculation spreadsheets supporting this analysis in the docket folder for this notice.

Further, nothing in this final rule would prohibit States and LEAs from using funds for comprehensive CEIS to serve children ages three through five and children with disabilities. As such, the only benefits we believe could be reasonably argued to be delayed as a result of this regulatory action would be the reduction in the use of inappropriate policies, practices, and procedures, and the increased comparability of data across States.

We recognize that several commenters noted that they would use the delay to provide additional technical assistance to their LEAs to proactively resolve issues before they were identified under the standard methodology. As such, while some inappropriate policies, practices, and procedures may not be revised as a result of fewer LEAs being identified with significant disproportionality during the period of the delay, we believe that the increased focus on these issues since the publication of the 2016 significant disproportionality regulations and State technical assistance efforts in the interim may actually minimize the effects thereof. As in the 2016 significant disproportionality regulations, we are unable to meaningfully quantify the economic impacts of these costs.

Several commenters argued that the delay in compliance date would result in confusion in the field and would require States to expend resources to clarify the regulatory environment for their LEAs and parents. While we recognize that a change in State plans for implementation will need to be communicated with LEAs and parents, we do not believe that such efforts would be exceptionally time-consuming given that most States that opt to delay implementation of the standard methodology will likely continue ongoing efforts to evaluate significant disproportionality.

Nonetheless, we have revised our estimates to include the efforts of one management analyst for 160 hours for each State that opts to delay their compliance with the 2016 significant disproportionality regulations. As discussed below, we estimate there will be 35 States in this group. We believe that this amount of time would be far more than sufficient to address any and all concerns and confusion on the part of LEAs and parents regarding any delay and likely represents an overestimate of the actual burdens faced by such States. The Department estimates that this will result in a cost of approximately $249,980.

*Benefits*

In the NPRM, the Department's estimated cost savings were based largely on an assumption of the number of States that would implement the standard methodology on July 1, 2018, the number that would implement on July 1, 2019, and the number that would implement on July 1, 2020. A number of commenters raised concerns with our estimates because, they argued, the estimates did not appropriately capture costs already borne by States to implement the standard methodology, regardless of whether they delay implementation. However, it is clear to the Department that these costs are properly considered sunk investments, that is, expenditures already incurred by entities that cannot be recovered in any case. Regardless of whether the Department delayed the required compliance date, States would be unable to recover those expenses, and therefore it would not be appropriate to assign their value as either a cost or benefit of this action.

However, we do note that nothing in this regulatory action invalidates the work already performed by States. States that are prepared to implement the standard methodology on July 1, 2018, remain able to do so, and those that delay implementation until a later date would not necessarily be required to recreate the work already completed. Nonetheless, the Department has made related adjustments to its cost estimates.

Specifically, while sunk investments are not appropriately considered as a ''cost'' of any regulatory action, we recognize that our initial estimates did assume that States delaying compliance until 2019 or 2020 would also delay all of their start-up activities as well. To the extent that these States, or a subset of them, have already completed some of these activities, we should not have calculated a cost savings based on delaying those activities for one or two years. While we cannot determine with absolute precision how many of these activities have already been completed by States given the information provided by the public, we will assume that approximately 50 percent of start-up activities for all States delaying implementation until 2019 or 2020 have already occurred, and therefore will not calculate any cost savings associated with their delay. In addition, several commenters stated that the Department's estimates regarding the number of States that would implement the standard methodology in each year inappropriately inflated the calculated savings by estimating more States would delay implementation than was reasonable. Further, information received by the agency outside of this regulatory action, as well as other publicly available information, indicate that more than the 10 States initially estimated by the Department are likely to implement the standard methodology on July 1, 2018.

Given this information, the Department has revised its estimated number of States implementing the standard methodology in each year. While the public comment raised this issue, it did not provide information on how many States, or which specific States, will implement the standard methodology on any given timeline. Given that we do not otherwise have data with regard to this matter, we cannot estimate these numbers with absolute precision. While we believe it is likely that a significant subset of States will choose to delay implementation of the standard methodology given the new flexibility under this rule, our revised estimates assume that 20 States will implement the 2016 significant disproportionality regulations on July 1, 2018. We further assume 10 States will implement the standard methodology on July 1, 2019, with the remainder doing so on July 1, 2020, if the standard methodology is required by law then.

To the extent that more than 35 States take advantage of this new flexibility, these assumptions will result in an underestimate of actual cost savings of this final rule. For an analysis of the likely effect on the estimated cost savings of fewer States implementing the standard methodology on July 1, 2018, see the *Sensitivity Analysis* section of this document. In line with these revised estimates, we also estimate that 150 additional LEAs will be identified with significant disproportionality in Year 1, 220 in Year 2, and 400 in Year 3. Note that these assumptions are based on the number of States implementing the standard methodology in each year. At this time, the Department has received no information that would lead it to adjust its original estimated number of LEAs that would be identified in each year outside of a revision of the number of States.

Given the revised assumptions noted above, the Department now estimates that the rule will result in $7.6 to $8.0 million in gross cost savings (benefits) over ten years.

*Transfers*

As noted in the NPRM, the Department's calculation of total transfers under the rule is based on the number of LEAs newly identified as

having significant disproportionality in each year and then multiplying that total by 15 percent of the average LEA allocation. To improve comparability of estimates and provide greater transparency for the public, the Department has not updated baseline assumptions regarding the average required reservation per LEA for comprehensive CEIS. Given the revisions to our estimates discussed above, the Department now estimates that this rule will result in a net reduction in transfers of between $41.5 and $43.8 million over a ten-year period.

*Sensitivity Analysis*

The Department's estimated costs and benefits of this final rule are driven largely by the estimated number of States that choose to implement the standard methodology in each year. As such, we have conducted an analysis to demonstrate the sensitivity of our estimates to these assumptions. In the table below, we note the estimated net cost savings, calculated at a 7 percent discount rate, for eight different scenarios. The scenarios are combinations of what we believe to be extreme upper and lower bound estimates of (1) the number of States implementing the standard methodology on July 1, 2018, and (2) the number of States delaying implementation for the full two years (until July 1, 2020).[3]

In addition to these extreme upper and lower bounds, we also provide estimates using the primary assumptions of the estimates described above. For the number of States implementing the standard methodology on July 1, 2018, we use an upper bound of 40 States and a lower bound of 15. For purposes of the number of States delaying implementation for the full two years, we use an upper bound which assumes all States not implementing on July 1, 2018 will delay the full two years and a lower bound which assumes that no States will opt to delay the full two years, but will only delay for a single year—until July 1, 2019.

TABLE 1—IMPACT ON ESTIMATED COSTS AT SEVEN PERCENT DISCOUNT RATE OF VARIED ASSUMPTIONS

| | Number of States delaying for 2 years | | |
|---|---|---|---|
| | Upper bound | Primary estimate | Lower bound |
| Number of States implementing standard methodology on July 1, 2018: | | | |
| Upper Bound | ($3,688,937) | † | ($2,074,891) |
| Primary estimate | (8,391,391) | (7,361,007) | (4,716,579) |
| Lower Bound | (9,729,101) | (8,115,057) | (5,470,627) |

† No estimate is provided as a combination of the upper bound estimate of the number of States implementing the standard methodology on July 1, 2018 (40), and the primary estimate of the number delaying until July 1, 2020 (25) is not possible.

As a result of these analyses, the Department believes it is reasonable to assume that, even when factoring in the potential unquantified costs of this action, this final rule represents a deregulatory action with net cost savings to regulated entities. We will further evaluate the analyses and assumptions upon which the cost-benefit calculations are made along with the regulations and issues raised in this rulemaking, to best ensure that all children with disabilities are appropriately identified, placed, and disciplined, and that all children get the services they need and receive FAPE in the least restrictive environment.

*Executive Order 13771*

This final rule is considered an E.O. 13771 deregulatory action. Consistent with Executive Order 13771 (82 FR 9339, February 3, 2017), we have estimated that this proposed regulatory action will not impose any net additional costs.

*Regulatory Flexibility Act Certification*

The Secretary certifies that these regulations would not have a significant economic impact on a substantial number of small entities.

The U.S. Small Business Administration (SBA) Size Standards define ''small entities'' as for-profit or nonprofit institutions with total annual revenue below $7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, LEAs, or special districts), with a population of less than 50,000. These regulations would affect all LEAs, including the estimated 17,371 LEAs that meet the definition of small entities. However, we have determined that the regulations would not have a significant economic impact on these small entities. As stated earlier, this regulatory action imposes no new net costs.

*Paperwork Reduction Act of 1995*

This regulatory action does not contain any information collection requirements.

*Intergovernmental Review*

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of the Department's specific plans and actions for this program.

*Accessible Format:* Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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[3] The number of States implementing the standard methodology in July 1, 2019 is a function of the other two assumptions, and therefore does not need a separate range of assumptions.

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**List of Subjects in 34 CFR Part 300**

Administrative practice and procedure, Education of individuals with disabilities, Elementary and secondary education, Equal educational opportunity, Grant programs—education, Privacy, Private schools, Reporting and recordkeeping requirements.

Accordingly, the date of compliance for recipients of Federal financial assistance to which the regulations published at 81 FR 92376 (December 19, 2016) apply is delayed. Recipients of Federal financial assistance to which the regulations published at 81 FR 92376 apply must now comply with those regulations by July 1, 2020, except that States are not required to include children ages three through five in the calculations under § 300.647(b)(3)(i) and (ii) until July 1, 2022.

Dated: June 28, 2018.

**Johnny W. Collett,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 2018–14374 Filed 6–29–18; 4:15 pm]

**BILLING CODE 4000–01–P**

# FEDERAL REGISTER

Vol. 83 Tuesday,
No. 128 July 3, 2018

Part V

## The President

Memorandum of June 4, 2018—Delegation of Authority Under Section 709 of the Department of State Authorities Act, Fiscal Year 2017
Presidential Determination No. 2018–09 of June 4, 2018—Suspension of Limitations Under the Jerusalem Embassy Act

Federal Register
Vol. 83, No. 128
Tuesday, July 3, 2018

# Presidential Documents

**Title 3—**

**The President**

**Memorandum of June 4, 2018**

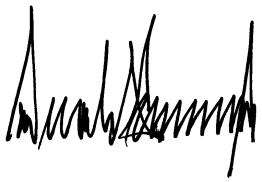
## Delegation of Authority Under Section 709 of the Department of State Authorities Act, Fiscal Year 2017

**Memorandum for the Secretary of State**

By the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby delegate to the Secretary of State the authority to submit, in consultation with the Secretary of the Treasury, the Attorney General, and the Director of National Intelligence, the report required under section 709 of the Department of State Authorities Act, Fiscal Year 2017 (Public Law 114–323) (the ''Act''), as amended.

The delegation in this memorandum shall apply to any provision of any future public law that is the same or substantially the same as section 709 of the Act.

You are authorized and directed to publish this memorandum in the *Federal Register.*



THE WHITE HOUSE,
*Washington, June 4, 2018*

[FR Doc. 2018–14485
Filed 7–2–18; 11:15 am]
Billing code 4710–10–P

# Presidential Documents

**Presidential Determination No. 2018–09 of June 4, 2018**

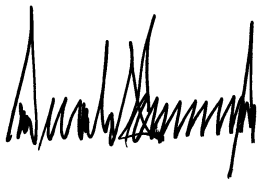
## Suspension of Limitations Under the Jerusalem Embassy Act

**Memorandum for the Secretary of State**

By the authority vested in me as President by the Constitution and the laws of the United States, including section 7(a) of the Jerusalem Embassy Act of 1995 (Public Law 104–45) (the ''Act''), I hereby determine that it is necessary, in order to protect the national security interests of the United States, to suspend for a period of 6 months the limitations set forth in sections 3(b) and 7(b) of the Act.

You are authorized and directed to transmit this determination, accompanied by a report in accordance with section 7(a) of the Act, to the Congress and to publish this determination in the *Federal Register.*

The suspension set forth in this determination shall take effect after you transmit this determination and the accompanying report to the Congress.



THE WHITE HOUSE,
*Washington, June 4, 2018*

[FR Doc. 2018–14487
Filed 7–2–18; 11:15 am]
Billing code 4710–10–P

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**Federal Register**

Vol. 83, No. 128

Tuesday, July 3, 2018

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## FEDERAL REGISTER PAGES AND DATE, JULY

30831–31036 ..... 2
31037–31324 ..... 3

## CFR PARTS AFFECTED DURING JULY

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**2 CFR**
180 ..... 31037

**3 CFR**
**Administrative Orders:**
Memorandums:
Memorandum of June 4, 2018 ..... 31321
Presidential Determinations:
No. 2018–1 of June 4, 2018 ..... 31323

**7 CFR**
4280 ..... 30831

**12 CFR**
611 ..... 30833
615 ..... 30833

**14 CFR**
97 ..... 30833, 30836

**16 CFR**
1112 ..... 30837
1237 ..... 30837

**17 CFR**
**Proposed Rules:**
1 ..... 31078

**20 CFR**
404 ..... 30849
416 ..... 30849

**24 CFR**
200 ..... 31038
330 ..... 31042

**29 CFR**
1910 ..... 31045
**Proposed Rules:**
1910 ..... 31086

**32 CFR**
706 ..... 31046

**33 CFR**
100 ..... 30860, 31047
117 ..... 31048
165 ..... 30862, 30863, 30865, 30866, 30869, 30871, 30872, 30875, 30877, 31048, 31050, 31052, 31054, 31055, 31057, 31059, 31060, 31062

**34 CFR**
300 ..... 31306
600 ..... 31296
668 ..... 31296

**39 CFR**
3001 ..... 31258
3004 ..... 31258
3007 ..... 31258

**40 CFR**
52 ..... 31064, 31068, 31072
63 ..... 30879
**Proposed Rules:**
Ch. I ..... 31098
52 ..... 31087
80 ..... 31098
745 ..... 30889

**44 CFR**
64 ..... 31075

**47 CFR**
54 ..... 30883, 30884
**Proposed Rules:**
0 ..... 30901
1 ..... 30901
5 ..... 30901
51 ..... 31099
61 ..... 31099
73 ..... 30901
74 ..... 30901

**50 CFR**
635 ..... 30884
648 ..... 30887

## LIST OF PUBLIC LAWS

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**Last List June 27, 2018**

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